

## EXAMINATION OF THE LEGAL IMPLICATIONS OF THE INVASION OF SENATE OF THE FEDERAL REPUBLIC OF NIGERIA.

DR. A.U. ABONYI\*

### Abstract

All over the world, politics is recognized as a game. Every game has its rules and regulations so as to guarantee orderliness among the players. In Nigeria, this important aspect appears to be lacking and the situation over time now presents a picture of a lawless political arena. This situation is not peculiar to the federal government but cuts across the states and has deeply permeated into the local government administration such that what we have today is clearly a game of “selfish interest” than a game based on rules. This no doubt has led to confusion in Nigeria and the arms of government and the legislature are not spared. The legislature is a revered arm of government and is constitutionally vested with specific duties to perform like the other two arms. Of great importance among the duties of the legislature is law making and owing to the fundamental importance of laws in the existence of any community, all the states of the federation are duly represented in the National Assembly while the local governments have their representatives in the state assemblies. In the local governments, individual communities are represented by their respective councilors. With the above, it is evident that the legislature occupies a strategic position in the life of any nation and much is expected from it as a body, the expectation is higher from individual legislator as a representative of his people. The event which took place in the National Assembly recently (Senate and House of Representatives) has raised questions as to whether the legislature as an institution has lived up to its expectation. This question is reoccurring daily and the recent invasion of the Senate of Federal Republic of Nigeria by thugs allegedly loyal to a serving senator makes this issue more agitating and controversial and hence the need to look into this topic to ascertain the legal implications of this act looking at the Constitution of Nigeria and other extant laws in the land. The paper is also aimed at offering suggestions to check similar events in the future as well as make recommendations that will guarantee legislative advocacy and awareness on the activities of the legislature in Nigeria. Finally, the paper has one of its objectives which is to verify whether the senate as a house has powers to discipline one of her members and if such power is exercised, whether the senator affected has powers to recourse to “self-help” or use non-legal procedure as a response or reaction to such exercise of powers by the senate.

**Key words:** Senate, Mace, Invasion, Impunity and Resolution

## Introduction

The legislature in every society is regarded as the beckon of hope for viable democratic governance. This position is not different in Nigeria hence the legislature is recognized as the bastion of democracy in the country. Over the years, the state of Nigeria passed through a protracted difficult reign of military dictatorship which nearly if not totally wiped away the entity called Nigeria. At the mercy of the Almighty who gave Nigeria encouragement and support, a coalition of pro-democracy activists and the campaign of some determined national leaders brought in a democratically elected government in Nigeria in 1999. Although the state has not achieved all that the citizens desired which removed the juntas from power, it is practically evident from 1999 that things were really changing for the better. Remarkably, the concept of rule of law became restored and revived and this was notwithstanding that the law relied upon and applied leading to the seaming progress was the 1999 Constitution which many have criticized to be “a military document” made and handed over to Nigerians in the misguided impression to be the law “of” “by” and “for” the people of Nigeria. One important point is that Nigerians believe that it is better to have something than have nothing at all hence, the 1999 Constitution no matter its background was received by Nigerians with the collective spirit that as the cardinal law of the land must be obeyed.<sup>1</sup>

The Nigerians Constitution created the arms of government and gave each of them their powers and functions. In Nigerian, the legislature comprises the National Assembly which has two chambers, the state houses of Assembly as well as the local government legislative council. So many things have happened in the legislature since 1999 and one wonders and ask questions whether really anything has indeed changed?. Not only that the legislature became a weapon in the hands of political opponents to settle their conflict of interest and “problems”, the legislators became willing tools in the hands of powerful forces to terminate the tenure of elected officials at different levels of governance. The cases of governors and deputy governors who were removed in office through the manipulation of the legislators remain clear in our minds.

In 1999, Deprieye Alameiseya of Bayelsa State was removed by the State Assembly though the removal was tainted as it was condemned to have not followed due process. The Enugu state Assembly also removed the Deputy Governor His Excellency Onyebuchi Chukwu for no impeachable offence but on allegation that he was operating a poultry farm in his official apartment. Even among the legislators themselves, there has been problems and we are all witnesses to “distinguished” members of the legislative houses fighting each other and causing themselves bodily harm and sometimes the situation reaching a climax of almost “killing each other”. This is pathetic and in our view is impunity and no longer a child’s play.

The situation has not improved and the invasion of the Senate of Federal Republic of Nigeria on the 18<sup>th</sup> of April 2018 by “thugs” loyal to a serving senator is a thing that should be of concern to

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\* **Dr. A.U. Abonyi**, Department of Commercial/Property Law, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam, Anambra State. Email: [barristerucheckukwu2002@gmail.com](mailto:barristerucheckukwu2002@gmail.com) 08033887683

<sup>1</sup> Section 1(3) of 1999 Constitution of Federal Republic of Nigeria as amended in 2011.

all. This has raised many questions that must be answered which are (i) Is any citizen of Nigeria above the law including a senator of the senate of Federal Republic of Nigeria? (ii) Is it an act permitted or prohibited by law for a person to invade the senate in her plenary and forcefully remove the mace without the consent of the senate president, and indeed the senate? (iii) Is the Senate of Federal Republic of Nigeria so porous security wise that a stranger or strangers can freely work into the senate chambers in plenary and take the mace and gallantly leave the chambers or was the invasion hatched plan to pull down the leadership of the senate and was it motivated by powerful forces within and outside the senate (v) Should the invasion not also be likened to be a fall out of widening corrupt practices in every realm of Nigerian society? These are pertinent questions in our sincere view which must be given serious consideration and attention in the overall clamour “no longer” for change but “for changing the change” within the context and due process of the law. Any change devoid of due process of law is not “a change” dedicated to the improvement of life and common good of the people but is deceptive and deliberately intended to project the benefit of few in power. This is the type of change rekindled in the Senate of Federal Republic of Nigeria on the 19<sup>th</sup> day of April, 2018.

### **Definition of Terms:**

It is imperative to explain some terms and words so as to ensure a comprehensive understanding of this paper. The explanation will also facilitate a tidier presentation and no doubt will help the appreciation of the issues raised and the conceptual meaning intended.

### **Senate**

The Senate of any state or country in our view is a council or body of legislators with powers to make law for the state. It is the parliament or part of it in a democratic society. The Oxford Learners Dictionary defined the word Senate to mean a council of the Ancient Roman Republic sharing legislative power with other Assemblies.<sup>2</sup> With the nature of its duty to the state, a senate of any Country is described as an assembly of distinguished citizens elected on the basis of their integrity, training and competence to represent their constituents in making laws that ultimately affect the survival and common good of the masses. From the above, it can be concluded that the institution of the Senate is required and expected to be a revered institution and only persons of impeccable personality should be elected into the office. The question yet to be answered is whether the Nigerian senators are among persons expected to have such impeccable character and if they are among, then we ask and agitate our minds whether with what is happening today in the senate, our senators deserve to be called honourable or distinguished senators. In our view, while some of them have a certain degree of integrity, majority are undoubtedly a mismatch and do not even qualify for the least position of ward councilor in the respective electoral wards nationwide.

In Nigeria, the Senate is a creation of the Constitution and is the upper chamber of the National Assembly established to make laws for the Country side by side with the lower chamber the House

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<sup>2</sup> Oxford Learners Dictionaryonline.com accessed 28/5/2008

of Representatives and other assemblies in the states and local governments in Nigeria.<sup>3</sup> The United States, France, Nigeria and other Countries operate the Senate as upper legislative chamber

### **Invasion**

The word invasion connotes force intended to take control from a constituted authority. It is an unlawful but desperate act to forcefully take control of an institution from the authority controlling the Institution. According to Meriam Dictionary on line scholar, invasion is the act of entering by force to take control.<sup>4</sup> The act is likened by the Oxford Dictionary to the entry of army of another Country by force in order to take control as was the case of German invasion of Poland in 1939. Invasion refers to a large number of persons or things arriving somewhere especially people or things that are disturbing or unpleasant.

Invasion in our view is an act intended to disturb and trigger unpleasant scene. It is motivated by the intent to use force to take control from existing authority. The definition above is apt with what happened in the Senate of the Federal Republic of Nigeria on the 19<sup>th</sup> of April, 2018. Not only that people entered the Senate, they came with force with intent to disturb and cause unpleasant scene, take away the mace and take control of the upper chamber. This is serious as it is also shocking.

### **Mace**

The mace is a symbol of authority of any legislative authority or house. As Oxford Dictionary puts it, mace is a decorative stick carried as a sign of authority of a house or assembly.<sup>5</sup> The mace is a highly ornamental staff of metal or wood carried before a sovereign or other higher official which represents authority.<sup>6</sup>

In Nigeria, the mace is an ornamental staff of authority which is usually associated with a parliament and without the mace, it is practically impossible for the house to sit and carry out its legislative activity or exercise any legislative function or power.

### **Impunity**

Impunity is a reoccurring term in political and other discourse in Nigeria. It cuts across lower and high places in the country. Cambridge Dictionary defined impunity to mean “freedom from punishment or from unpleasant results of something that has been done”<sup>7</sup>. The effect of the above definition is that impunity is a resistance from being punished for an act which is not pleasant nor cherished but has been done. The perpetrator conducts himself or herself as if he is above punishment or is absolutely uncontrollable. It is a very negative signal that a person who has done an act by his own further act or in his collaboration with others evade punishment or is free from punishment for such unpleasant act.

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<sup>3</sup> Section 4(1) of 1999 Constitution of the Federal Republic of Nigeria as amended in 2011

<sup>4</sup> Meriam Dictionary online.com (accessed 28/5/2018)

<sup>5</sup> Oxford Learners Dictionaryonline.com accessed (28/5/2008)

<sup>6</sup> Fact sheet No. 25 “The Parliament of Kenya National Assembly and the Mace”

<sup>7</sup> Cambridge Dictionary online.com (accessed 28/5/2018)

The word impunity in our humble view involves an act of favour which leads to a disregard or defiance of a laid down rules or guidelines. Hon Justice Oyewole of the Court of Appeal reasoned that impunity involves all citizens including government bodies and is not restricted to one class<sup>8</sup>. Further to the above, the Stop Impunity Nigeria (SIN), an organization campaigning against acts of impunity has reasoned that there are acts of leaders in Nigeria recently which can be described as impunity and listed them to include the disruption of the proceeding of High Court in Ekiti State by thugs allegedly loyal to the governor of the State. The act is condemned in its entirety as acts of impunity<sup>9</sup>. Impunity therefore, is an act which is unpleasant and is an aberration of the rule of law. There are cases of impunity in the life of Nigeria as a Country, example include the deployment of troops by Obasanjo to Odi, Bayelsa State, which led to grave human rights violations, the infamous liberal approach adopted in the prosecution of some former governors by former Attorney General of the Federation Michael Aondonkaa includes that of Governors Orji Uzor Kalu and even James Onanefe Ibori. The former AGF before his appointment was having squabbles with EFCC in courts on the issue of fighting corruption but on assumption of office, his position changed. This is impunity, it means knowing the law and standing tall against it. Such former governors freed by courts in Nigeria were convicted overseas. Even the former Gov. Kalu earlier freed was later convicted years when Aondonkaa left office.

Another area of impunity is the arraignment of Senator Bukola Saraki before the code of conduct tribunal on charges of false declaration of his assets when he served as governor of Kwara State . The issue of impunity here is not that the Senate President was arraigned (because he is not above the law) the act of impunity which has to be addressed is that the Bureau that arraigned him did not follow or comply with due process in arraigning him as laid down by Section 3(D) of the Code of Conduct and Tribunal Act which stated thus:

The Bureau (i.e. code of conduct bureau) shall receive complainants about non-compliance with or breach of this Act and where the Bureau considers it necessary to do so, refer such complaints to the code of conduct Tribunal established by Section 30 of the Act, provided that where the person concerned makes a written admission of such breach or non compliance, no reference to the tribunal shall be necessary.

The key issues raised in the above section of the Act are:

- i. The fact that the code of conduct bureau has the powers to receive complaints about breach or non-compliance.
- ii. The bureau can receive the complaint where such is considered necessary.

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<sup>8</sup> Fact sheet No 25 "The Parliament of Kenya National Assembly and the Mace"  
[http://stopimpunitynigeria.org/campaign/rule of law](http://stopimpunitynigeria.org/campaign/rule%20of%20law) (accessed 28/5/2018)

<sup>9</sup> SIN (Stop Impunity Nigeria) Press Statement, sin documents 29/9/2014 [sinonline.com](http://sinonline.com).impunity Nigeria.

- iii. The bureau shall make reference to the Tribunal (in form of arraignment) only where the person involved in the alleged breach failed to make a written admission but where such admission is made, no reference shall be necessary and the matter ends.

By the provision, which stipulates that reference shall not be necessary where written admission of the breach is made, it shows that the complaint against the person involved must be made known to the individual and his response obtained whether “admission” or denial, if admission then reference is made to the tribunal. From the contention of the senate president, the procedure is faulted as no opportunity was given to him as contemplated under section 3(D) of the Act. If this is so, then the act is nothing but impunity on the part of the bureau. We are also witnesses to the impunity surrounding the removal of former CJN, Walter Onoghene in 2019.

Nigerians experienced another series of impunity in the polity on the 19th day of April 2014 when some unknown thugs suspected to be loyal to a senator or senators invaded the senate and took away the mace blazingly without restriction. This is not only unlawful but indeed a naked act of impunity of the highest dimension.

**(C) The Functions of National Assembly in Nigeria.**

In Nigeria, the powers and functions of the National Assembly is created by the constitution<sup>10</sup>. It should be noted that Nigeria being a country consisting of 36 states with federal capital territory and the local government council is governed based on the stipulations of the Constitution and other legislations enacted by the legislative bodies in the three levels of administrations. What it means is that the principle of sharing of powers among the three levels of government also affect the legislative arm and while the federal legislature comprising of Senate (upper chamber) and House of Representatives (lower chamber) make laws for the federation, the state assemblies legislate for states while the local government legislative council make laws for the local government authorities.

It is essential to note that, the National Assembly under section 4(2) (3) (4) a and b of the Constitution is under obligation to:

- (a) make laws for the peace, order and good governance of the federation in respect of matters in the Exclusive list set out in part I of the second schedule of the constitution in the exclusion of the state House of Assembly.
- (b) make laws on matters in the concurrent list set out in first column of part II of second schedule of the constitution and exercise this powers in the same manner and respect as the state House of Assemblies can do.
- (c) enact laws on any other such matter to which it is empowered to make laws in accordance with the provisions of the constitution.

The purport of the above provisions is that the National Assembly including the Senate has the powers to enact laws over all matters in the Exclusive list, in the concurrent list or such other

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<sup>10</sup> Section 4(1) of 1999 Constitution of Fed. Republic of Nigeria (as amended in 2011)

matter or matters not listed in any of the two list above which the national assembly is by the Constitution is authorized or empowered to make law. It therefore means that the powers and functions of the national assembly of Nigeria is no doubt tasking, challenging and much is expected from the members of the two chambers of the National Assembly in terms of not just the enormity of work but also demonstration of integrity, competence, experience , expertise and rare sense of discipline.

The above powers and functions of the national assembly have been sustained by our courts and reference must be made to the case of *Ogun State v. Federation*<sup>11</sup> where the court reinforced the provisions above when it held per Fatayi Williams (CJN) that the National Assembly is conferred with the powers to make laws on matters in the Exclusive Legislative list. The Supreme Court also made a distinction to the effect that where a matter is in the concurrent list but is a matter affecting any of the matters in the exclusive list, the state assembly will not have the competence to legislate on it. In *AG Ogun State v. Aberuagba*, the Supreme court held per Bello JSC who stated thus.

“it must however be emphasized that it is not within the competence of a state to make Sales Tax Law affecting any of the matters in the exclusive legislative list”.

What is important in the above analysis is to stress the point that one of the essential functions of the National Assembly is to make laws for order and good governance of the federation and in doing so, the constitution of such country like Nigeria gives a direction on how such functions are performed or discharged to avoid confusion and anarchy. It is therefore cardinal to point out that the National Assembly of the Federal Republic of Nigeria is constitutionally vested with the powers to discharge the following functions summarized below:

(a) **Making of Laws:** This is the fundamental duty and obligation of the National Assembly under the Constitution<sup>12</sup>. The laws made touches on various matters and areas within the legislative competence of the house and may be sponsored by the executive, the respective legislators in the two chambers, members of the public, civil society groups and even nongovernmental organization especially in areas and issues that are people oriented and tending towards promotion of interest of the masses. Such bills proposed by any of the persons mentioned may be passed by the Senate or the House of Representatives and once done,<sup>13</sup> it is sent for the president’s assent which when refused will lead to the house voting once more in support of the bill which once majority vote is secured, the assent is dispensed with.<sup>14</sup>

(b) **Budgetary Approval, Appropriation Issues and Control Over Public funds:** The National Assembly also has the tasking duty to approve the budget presented by the presidency and has the powers while discharging this function to invite the president and any of his cabinet members or ministers or heads of departments or ministries for clarifications and explanations in the budget. The House has the primary responsibility of passing in to law such Appropriation Bill

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<sup>11</sup> 1982) 3 NCLR 166 at 178

<sup>12</sup> Section 4(1) of CFRN, 1999 (as amended in 2011)

<sup>13</sup> Section 58(1) of CFRN, 1999 (as amended in 2011)

<sup>14</sup> Section 58(5) of CFRN, 1999 (as amended in 2011)

or Supplementary Appropriation Bill or Bills submitted to it by the executive and is empowered while discharging this duty to make adjustment by “cutting down” or “stepping up” the budget in a particular manner or generally in what the members feel and believe will be in the overall interest of the country<sup>15</sup>. This includes appropriation in respect of other bills for the payment, issue or withdrawal from the consolidated Revenue Fund (CRF) or any other public fund of the federation of any money charged thereon or any alteration in the amount of such payment or withdrawal. A good example of funds consolidated in the consolidated Revenue pool is the Excess Crude Account (ECA) and by virtue of the legislative authority of the National Assembly, the consent of the house is required before any money is pulled out there from and such consent must be obtained before any such money is pulled out and should not be a post-action approval in the form of ratification like the much talked purchase of the “Tokana Aircraft” by the Federal government from United States without the approval of the National Assembly. It is noted that the National Assembly performs this function touching on budget and appropriation through a “Joint Finance Committee” of the Senate and House of Representatives created under sections 62(3) of the Constitution. This not only makes the work easier but also makes it all inclusive and the two chambers carried along.

It must be pointed out that even though the National Assembly has the unfettered powers and control over public funds especially one in the consolidated revenue fund as supported by the Constitution (section 59, 80(1,2,3,4) and 81 (1,2), it is evident that the National Assembly must not unnecessarily use their powers to delay the passage of the budget so as to strangle the executive as the president is also permitted by Section 82 of the Constitution where the Appropriation bill for any financial year has not been passed to authorize withdrawal of money from the consolidated fund for purpose of meeting expenditure necessary to carry on the service of the government of the federation for a period not exceeding 6 months or until the coming into operation of the bill. However, there is a proviso that the president in making such withdrawal from the consolidated fund cannot go beyond the limit provided in the Appropriation passed for the year preceding the current financial year. Indeed all the above checks show the beauty of democracy, if it were in the military, Abacha could not have waited nor could he have consulted members of his “supreme military council” before dishing out an express order for the withdrawal of such money.

(c) **Over Sighting Functions of the National Assembly:** The modern trend and practice is that the over sight function of the National Assembly today is seen as the “beaming of light” of the Assembly on the activities of government departments, parastatals, commissions, agencies and ministries to find out or discover what is going on in such areas. This function and powers of the National Assembly has yielded much result in the governance of the Country and has also led to revelations of unpleasant things happening in some of these government departments or offices. The National Assembly performs this responsibility in the overall interest of the country. We have seen cases of heads of different agencies being summoned to give explanations over an issue or issues happening in their office by either the Senate or the House of Representatives. They recently resolved to set up a committee to investigate the activities of a Federal Government Agency known

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<sup>15</sup> Section 59(1) of CFRN, 1999 (as amended in 2011), section 80 (1) (2) (3) (4), section 81 (1) (2) of constitution of Federal Rep. of Nigeria 1999 (as amended)



as National Emergency Management Agency (NEMA). NEMA is established by an Act of the National Assembly (NEMA Act) to take steps towards addressing and controlling national emergencies in any part of the country.

**History, Origin, Powers and Effect of the Mace in the National Assembly:** The mace which is an ornamental staff of a metal or wood is carried before a sovereign or a high official in a civic ceremony by mace bearer<sup>16</sup>. In Nigeria, the mace is carried by the sergeant-at-arms who carries the mace and moves before the president of the senate or speaker of the House of Representatives. It represents the official's authority. Procession that features maces include parliamentary or academic occasions. The earliest ceremonial maces were practical weapons to protect the kings borne by the sergeant-at-arms a royal bodyguard established in France by King Phillip Augustus II who arguably was the first French Monarch and a member of House of Capet and in England probably by King Richard I also called (Richard the Lionheart).<sup>17</sup>

The history of the civic mace carried by sergeant-at-arms began around the middle of 13th century and by the 16<sup>th</sup> and 17<sup>th</sup> century, the mace has developed into pretty projecting scroll-brackets and other ornaments and the process continues until 1650 when large maces came into general use. The maces were used by bishops, Roman soldiers and magistrates as weapons.<sup>18</sup> As new weapons replaced the mace, it became as symbol of legislative authority and power rather than a weapon. In England, the mace was used a powers of arrest given to the sergeant-at-arms and this formed the basis of enforcement of parliamentary privilege and the mace was seen as the authority of the speaker. The mace is generally seen today as the authority of the parliament all over the world and that is why it is argued that there cannot be a house without a mace making the mace priceless to the house. In Nigeria, much importance is attached to the mace both at the National Assembly down to the local government legislative council. When there is no mace, there is no house. The mace has been in use since independence and its official use as symbol of authority in the different legislative houses in Nigeria have been recognized. In other jurisdictions, particularly, in United Kingdom, in the Houses of Lords and Commons which constitute the UK parliament, ceremonial maces represent the authority of the sovereign, currently Queen Elizabeth II. The sovereign in UK is regarded as the third part of the parliament and signs in bills voted on in parliament. In UK the houses of parliament cannot meet without the mace. The Scottish parliament has a silver mace designed in 1999 that incorporates a gold wedding ring presented to it by Her Majesty the Queen at her opening ceremony in July 1999. The words wisdom, justice, compassion, integrity are woven into the head of the mace to represent the aspirations of the Scottish people for their members of the parliament.<sup>19</sup>

In the Wales, their National Assembly mace has a gold laced with silver in the head of the mace, the mace was presented by parliament of New South Wales in 2006 in Candiff during celebration

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<sup>16</sup> Fact Sheet No 25 of the National Assembly of Kenya

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

of St David's day. The mace of the Irish parliament is silver and has been operating since 1803. For the Australian parliament, the sergeant at arms is the custodian of the mace and initially, the house did not prepare warrant of arrests and the sergeant-at-arms is the custodian of the mace and initially, the house did not prepare warrant of the arrests and the sergeant-at-arms used the mace as authority to arrest people and the common practice is that once the speaker takes the chair, the mace is placed at a rest until time for adjournment when speaker is expected to leave.

The mace is also used as tradition in the parliament of Canada, Philippines, New Zealand, Srilanka Kenya (first in 1958) and by the congress of United States of America. The mace no doubt is used globally in legislative practice as a symbol of authority and there is no house without a mace.

### **Senate Invasion on The 19<sup>th</sup> Of April 2018 and Its Implications.**

The Senate of the Federal Republic of Nigeria is the upper Chamber of the National Assembly of the Country. The Senate is constituted constitutionally by membership of three senators from each of the thirty six States of Nigeria. It performs its duties and arrives at decisions by votes and has its rules and standing orders which guide its plenary or Committee sessions. It also use motions and resolutions to resolve issues as a House and as a Committee and by law, the senators are bound by such resolutions and decisions once it has received the majority vote of the senate. The Senate and indeed the National Assembly on a proper assessment has done relatively very well of late and this has led to enactment and passage of many bills that affect the lives of the masses, these includes the National Health Act, Violence Against Persons Prohibition Act, EFCC Act, Freedom of Information Act, the ICPC Act, and National Human Commission Act etc. Other bills are still begging for the attention of the Senate like the Petroleum Industry Bill, the Gender and Equal Opportunity Bill, Protection of Persons with Disabilities Bill, Electoral Act Amended Bill etc. The passage of the Not Too Young to Run Bill by the National Assembly is a welcome development and we urge the president to urgently give his assent or return it to National Assembly for further legislative work on it.

Recently, politics has entered the hallowed chambers of the Nigerian Senate and there is now serious conflict with personal and political interest of the distinguished senators and that of their legislative duties. This menace played out at the floor of the Nigerian Senate on the 19<sup>th</sup> day of April 2018 when some suspected thugs alleged to be loyal to certain "senator or senators" openly invaded the senate in plenary and took away the mace undisturbed by the heavy security presence in the National Assembly. The act has been condemned locally and internationally as the worst form of brigandry and grave impunity. The invasion has raised the questions below:

1. Who are these thugs?
2. Who are the thugs working for?
3. Are they working for Senator Omo Agege (a serving Senator from Delta State)?
4. Is senator Ndume also involved having been accused that he tactically muted a word to the sergeant-at-arms who rose in attempt to challenge the thugs which made him to withdraw?

5. If the two senators are involved, is it true to say that they have become too powerful to disarm the entire security architecture in the National Assembly or is there an outside force working against the Senate whose music Omo Agege and Ndume are dancing and if it is so, is this third force from the presidency?
6. Is it also true that this outside force demobilized the entire security machinery in the National Assembly such that instead of arresting Senator Omo Agege, he was seen in the video footage being shielded and protected by the police and indeed escorted out of Senate like a war lord?

The above questions are fundamental and only time will tell. However, the genesis of the crisis was the Amendment of the Electoral Act by the Senate in the reordering of the 2019 general elections sequence by the National Assembly where some senators saw the amendment as targeted to the president of Nigeria. Senator Omo Agege is one of the front line opponents of the amendment and he did not mince his words. Nigerians became shocked with the drama of invasion following the suspension of Omo Agege by his colleagues. It is noted that the job of legislation by Senate includes amendment of laws already made where necessary. If the senate or perhaps the National Assembly resolved to amend any law wholly or partly, our view is that the house is constitutionally allowed to do so and if they have exercised such power, any citizen including the senators themselves who is aggrieved over such act of the house can go to court and not to recourse to self-help. The event of 19<sup>th</sup> April 2018 is recourse to self-help which in our view is not only unconstitutional but void as it is also unlawful. A look at the invasion suggests in our reasoned view that many high forces were out to take over the leadership of the Senate. The Senate arrives at its decisions by motions and resolutions, the due process was followed to arrive at the amendment of the Electoral Act, similarly, before Omo Asege was suspended for 90 days, a motion was dully moved and seconded and resolution made from the majority vote and support of senators. The resolutions of the senate once made is binding on its members, this is because before the resolutions is made, discussion and deliberations are made on the issue and at the close of such discussions, the leader of the senate i.e. the President of Senate or whoever is presiding calls for vote. Our view is that a resolution of a Senate or a House of Representatives is the formal position or stand or opinion of the house on the issue. The Senator involved cannot tell the people that he has not participated in arriving at a resolution in his service as a Senator in the Senate and he cannot also tell Nigerians that he is the first Senator to be suspended for a given legislative period in the Senate and all this makes his action in his own case quite complex and shocking.

It is interesting to note that the incident of 19th April 2018 is not the first time the mace got missing in the Nigerian National Assembly. Sometime 18 years ago, during the reign of Olusegun Obasanjo, most of the distinguished Senators rooted for Dr. Chuba Okadigbo to be the President of the Senate while Obasanjo wanted Evans Enwerem but failed because Evans Enwerem could not survive the “certificate” saga and as a result of this, Okadigbo won and became the Senate President. The former Senate President entered the trap dug for him and suspecting that he will be impeached, Okadigbo took the mace as alleged and it was said that he brought it and kept it at “Ogbunike cave” in Anambra State. The police traced the mace and picked it from Ogbunike and

shortly thereafter, Okadigbo was impeached.<sup>20</sup> The invasion of the Senate has raised more controversies around the mace and its relevance in the legislative houses in Nigeria. While some maintain that a house can sit without a mace, others believe a house cannot sit without a mace, while others reason that a house can replace a mace once stolen if leadership and membership of the house recognize and acknowledge the new one replaced.<sup>21</sup>

In support of the position, many revered senior lawyers of the Inner Bar like Chief Femi Falana has argued that the much ado about the mace and its replacement with another mace by senate shortly after removal of the original mace by thugs suspected to be loyal to Omo Agege was unnecessary and stated that the legislative body (the senate) had no need for the mace before they can sit and carry out their legislative duties. According to him, there is no provision under the 1999 Constitution where mention was made or reference made to the mace. He further contended that out of the 320 Sections of the Constitution of Nigeria, there is no where the mace is mentioned. He argued that the much respect and authority placed on the mace is as a result of the historical tradition of the House of Lords and House of Commons in England and hence he concluded that mace has no Constitutional value or requirement for sitting of a legislative house in Nigeria.<sup>22</sup> Other Senior Advocates who support the contention that there is no provision over mace in Nigerian constitution are Sabastine T. Hon (SAN), Mike Ahamba (SAN), Ahmed Raji (SAN). All the lawyers agreed that the absence of the mace will not invalidate the proceedings of the house. However, Norrison Ibinabo Quakers disagreed with Falana and his other silks contending that though there is no provision in the Constitution about mace, since the standing rules of the house recognizes the mace, the mace must be present for the house to sit. But is the rules superior to the Constitution? Malam Yusuf Ali SAN also argue that though not in the Constitution, the mace has been an age long tradition that cannot be wished away, it is now domestic and convention and cannot be wished away. Whatever the case maybe, our candid view is that even though the mace is not provided in the Constitution, since by tradition it has endured for years, it is now accepted, it should be accepted as so for orderliness in the house and for the authority of the house to be maintained.

Outside Nigeria, there are profile cases involving the mace in other jurisdictions where the mace is either stolen or unlawfully seized to frustrate the proceedings of the parliament.<sup>23</sup> In the House of Commons of the United Kingdom, in 1930, John Beckett a member of the house and member of labour party was suspended from the house for intentional disrespect to the mace by trying to leave the chamber with it while protesting the suspension of another member. It was wrestled away from him at the door.<sup>24</sup> Similarly, in 1976, Michaele Hesel Tine, member of the Conservative party seized the mace and brandished it at the opposing labour party members during a heated debate.

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<sup>20</sup> Onwuka Nzeghi, Vanguard online news "National Assembly and Missing Mace" (accessed 28/5/2018)

<sup>21</sup> Inibihe Effiong "Lawyer Reacts to Invasion of Senate and Missing of Mace"  
inibiheeffiong.comonlinekemibusari.com (accessed 28/5/2018)

<sup>22</sup> Femi Falana "Nass, State Assemblies can sit without the mace" <http://leadership2018/04/23/nass-states-assemblies-can-sit-without-mace-lawyers>

<sup>23</sup> Fact sheet "The mace" Kenya parliament pg 28

<sup>24</sup> Ibid

There were cases involving other house members like Ron Brown, John Mc Donnel which led to suspension.<sup>25</sup>

In 2002, Keith Martins a Federal member of parliament in the parliament of Canada seized the ceremonial mace of House of Commons from clerk's table, the speaker ruled that a prima facie breach of the privilege of the house has occurred and contempt of the house. Martin was not permitted to resume his seat until he had issued a formal apology from the bar of the house pursuant to a motion in response to the incident.<sup>26</sup> In the same respect, the mace of the parliament of Victoria (a state in Australia) disappeared from its locked case in parliament house in Melbourne in 1891 (Oct 18th) and despite extensive search, its whereabouts remained a mystery. The only thing that happened was that a man was seen from the parliament house moving and carrying a long metal string that looked like a mace but was covered but he dashed into a moving train and since then, the trace of the mace is yet unknown and a reward of 50,000 dollars placed in favour of who ever finds it.<sup>27</sup>

In 2014, the Speaker of the National Assembly of Guyana made a public press statement that the mace of the assembly has been stolen. A formal report was lodged to the police. There was war of words between the officer who claim he took the mace for safe keep and the speaker who insisted he did not know about the clerk's decision to remove the mace. The tension over the mace was high as the assembly was to reconvene after its recess.<sup>28</sup>

Also in Kenya, in 1997, some opposition members in the house attempted to grab the mace in order to disrupt the budget presentation by the then Finance Minister Musalia Mudavadi, the speaker ordered them out one by one.<sup>29</sup> In the same house in 2014 during debate on the Security Law Amendment Bill, a member of Kenyan parliament representing Nyando, Hon Fred Outa was wrestled down when he attempted to seize the mace to curtail the voting following a division.<sup>30</sup>

An incident relating to the mace occurred in 2014 in the parliament of Lesotho when a legislator Hon Chalane Phori seized the ceremonial mace in the national assembly and walked out forcing adjournment of business.<sup>31</sup> Even in Sri Lanka in 2014, two Buddhists are members of the Sri Lanka's parliament were hospitalized after being beaten up inside the National Assembly following heated argument for President Chandrika Kumaratunga's government's struggle to get simple majority in parliament failed and members of the assembly in the ruling party ran away with the mace to stop the assembly from having further sessions.<sup>32</sup>

In most of the considered jurisdictions, the mace is seen as a weapon and as a symbol too and once it is not in the parliament, no meaningful undertaking or business can be carried out by the house. This is whether or not, any position is made of the mace in the Constitution. From the above,

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<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

our firm view is that, even though the mace is not seen anywhere in any provision of our Constitution, the mace should be seen “as mandatory” for any business of the National Assembly to be legitimate owing to age long tradition which we have collectively accepted as a custom and convention in Nigeria. In Nigeria, incidents of seizure of mace and use as a weapon are many in our State Assemblies. During the first republic, one Mr. Ebubedike representing Badagry East in the Western Nigeria parliament seized the mace when fight broke out among members.<sup>33</sup> In 2013, chaos broke out in the River State House of Assembly, as some of the members loyal to the then Governor and others loyal to the then Minister for Education engaged in a tussle over leadership of the house. Some of the members were injured in the process using the mace as weapon. The same 2013 witnessed a similar incident in Ogun state House of Assembly when the mace was smashed and damaged during the commotion. The damaged mace was later repaired.<sup>34</sup> The incident about the mace in the National Assembly will take time to stop until such a time Nigerian legislators imbibe spirit of sportsmanship in politics and detach their personal interest from their duties.

It is evident that Nigerian parliament has adopted internal approaches in handling the issues related to the mace as is the case in other jurisdictions and prosecution is least emphasized. However, looking at the invasion of the senate on 19<sup>th</sup> April 2018, it is our considered view that the act is indeed a crime and is unlawful and ought to be treated as so. This being the case, the loyal thugs and those who aided them “the alleged senators” should be seen as culprits and ought to be prosecuted within the provisions of Section 7 of our Criminal code, they are parties to the “crime or offence” and “conspirators” and the law must take its course. Although every citizen has a right to institute an action before a court of law, such actions should be discouraged if it is or they are intended to shield the plaintiff or the applicant from prosecution for any or all his or their criminal acts. This is our candid opinion. The quick rush to the court by the “alleged senator” in our view is devoid of integrity, he ought to submit and surrender himself for investigation and be honourable enough to avail himself for trial so that if after trial by competent court and no case is established, then Nigerians and the world will see that he has been vindicated. But a situation where a culprit uses the machinery of the court to cover his wrong doing in our strong view is unacceptable and does not speak good for the image of “Nigerian legislator” in the global legislative best practice.

The speed with which the injunction was granted by Hon. Justice I.U Bello “exparte” restraining all security agencies over “arrest” of the senator involved should be another issue of concern to Nigerians. The principles of law is clear that in cases of such nature where many issues abound in which the response of the respondents is necessary, court are enjoined for justice sake to refuse granting such application but rather direct the applicant to put them on notice, this gives the whole parties the opportunity to be in court and court will hear them and decide on making the order or not. The court is never allowed to take away the responsibility of prosecution of offenders from the state authorities nor is the court permitted to divest the legislature of its powers to discharge its constitutional duties. Nobody is above the law including government, its agencies, senators and indeed all principalities and powers. Recourse to the court to absolve oneself from prosecution of

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<sup>33</sup> Ibid

<sup>34</sup> Ibid

ones alleged crime is strange in our national criminal justice system and is also alien in the international criminal jurisprudence.

## **Conclusion**

From this research, a line has been drawn which is the point that in Nigeria as is the case in many other jurisdictions, the mace is recognized as a symbol of authority of the parliament. Though the Constitution of states do not make provisions for the mace, the different countries including Nigeria owing to the interval of period for which the mace has been used in the parliament for every of its business to be valid and legitimate see the mace as very valuable. In addition, it is also our conclusion that the cases of incidents of seizure, damage and stealing of the mace or attempted stealing of the mace is not peculiar to one state like Nigeria but is an experience worldwide and more often, it is done for a politically motivated objective either by the opposition against the ruling party or by the ruling party against some of its members and at other times as a stiff resistance against the passage of a certain bill as is perceived that the incident of removal of mace at the senate by loyal thugs was intended to frustrate the planned passage of the Amended Electoral Act which reordered the sequence of elections in the “General Election of 2019” allegedly against “a powerful force” outside the senate. Our conclusion is that the senate has powers to suspend any of its members who is found wanting in any of his acts in the Senate and can do so via a motion giving rise to a resolution arrived at by majority vote of members present and voting. The resolution of 19<sup>th</sup> April 2018 over the incident was made pursuant to a motion dully moved and seconded, and by this, the senate did what it is required of it to be done. This is our opinion. The act of 19<sup>th</sup> April 2018 in the Senate is a crime and all the agencies authorized to detect, prevent and prosecute persons have the legal powers to bring the culprits to book without delay. This is our take on this.

## **Recommendations:**

Having highlighted the above issues and the conclusion reached, it is imperative to make some suggestions and recommendations to address this issue in the future.

- (a) Impunity is a threat in Nigeria and must be addressed. Impunity is becoming a contagious disease in Nigeria and it is engulfing every facet of our national life. The recent incident in the Senate is a clear form of naked impunity and must be collectively fought by Nigerians.
- (b) The rule of Law must be strengthened. Rule of law is collapsing. This is because impunity is encouraged, our leaders no longer obey the law, fairness and justice are dead. Justice is now for the rich, the poor is at receiving end always.
- (c) Corruption has found its way into the National Assembly. The minds of our legislators have been corrupted by greed and personal interest and most of them have no concern for what will benefit the masses but what should be done to consolidate their selfish interest and gains.

- (d) There is need for legislative Advocacy and mobilization to create awareness among our legislators so that the core international legislative best practice can be imbibed in them which include the value of self-discipline, transparency and integrity in matters and issues of public interest and orientation towards enacting laws that will promote the interest of the poor and the most disadvantaged persons.
- (e) The security architecture in the National Assembly must be revisited and treated as national emergency.
- (f) The judiciary must resist all efforts geared towards compromising their constitutional authority by being the defender and last hope of the common citizens. The courts should resist being used to shield offenders and encourage prosecution of those who want to use the courts to benefit from their own wrong doing by turning its eyes against such persons and rather do justice even if that will make the heavens to fall. “Exparte orders” when granted in certain circumstances creates the impression that the court has been compromised, it is most honourable devoid of suspicion that in such situation, the court should allow both parties to come before it even if the orders must be made.
- (g) There is poor and inept leadership among our leaders at various levels of governance. This must be addressed because it incubates corruption.