

ACCESS TO JUSTICE: IMPLICATIONS OF LEGISLATIVE OVERSIGHT FUNCTIONS IN NIGERIA*

Abstract

The 1999 Constitution of Nigeria provides for separation of powers. Hence, government is compartmentalized into three basic arms- the Legislature, the Executive and the Judiciary. The three arms are distinct, separate and independent of one another in terms of personnel and functions. There exists a system of checks and balances between them in the performance of their respective functions. The Legislature makes laws for peace and order in the country. The Executive mainly executes the laws, rules and regulations, while the Judiciary interprets the law and the legality of the actions or inactions of the other arms. The Legislature is also empowered to oversight the functions of the government and its agencies. This oversight functions and its access to justice implications is the core of this essay. The doctrine research method is adopted and is contended that apart from its effect on governance, it indirectly constitutes an avenue, for accessing justice in Nigeria.

Keywords: Access to Justice, Implications, Legislative oversight functions, Nigeria.

1. Introduction.

The 1979 and indeed the 1999 Constitution of the Federal Republic of Nigeria is patterned after the American's variety of presidential system with its fairly, clearly defined divisions of powers among the arms of government, and complex system of checks and balances.¹ Under the system, power is shared between the Federal, State and Local Governments on the one hand and between the Legislative, Executive and the Judiciary (which acts as a check upon the excesses of the legislative and executive powers) on the other. The division of powers and functions among the legislative, executive and the judiciary is a critical component of the doctrine of separation of powers.² This doctrine is closely associated with the political philosophy of Montesquieu and the United States' Constitution. The doctrine has since been adopted explicitly or implicitly in a majority of the World's constitutional regimes.³ The necessity to curb despotic tendencies of human natures and ensure good governance is the core of the doctrine of separation of powers.⁴ The 1999 Constitution (as amended) is the groundnorm of Nigeria legal system and all other laws and institutions derive their validity and powers from its provisions. Consequently, any law, acts or omissions of government that is inconsistent with its provisions is void to the extent of its inconsistency.⁵

The Legislature is the third arm of the tripod that constitutes the three arms of government of the Federation. Since 1979 and under the 1999 Constitution (as amended) the legislative power of government of the Federation is vested in a bicameral National Assembly, made up of the Senate and the House of Representatives. While at the State level, it is vested in the Houses of Assembly for each State by virtue of section 4(1) and 4(6) of the 1999 Constitution respectively⁶. In other words, section

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¹ M Tahir and O Chibueze, 'Nurturing Democracy through Constitutional Adjudication: The contribution of Nigeria Courts' *Justice Journal*, Abuja, 2012, vol 4, 40.

² See Ikenga K.E. Oraegbunam, 'Separation of Powers and Nigerian Constitutional Democracy'. Available at <http://www.dawodu.com/oraegbunam1.htm,9/3/2005>; See also Ikenga K.E. Oraegbunam, 'Separation of Powers in Nigerian Democracy: Need for Constitutional Reform', *Legislative Practice Review: Nigerian Journal of Law, Practice and Procedure of Legislature*, Vol. 2, No. 1, March 2010, pp.15- 48. Available at <http://www.marymartin.com/web/mmbs/country...>

³ M R Anderson, 'Access to Justice and legal process: Making legal Institutions responsive to poor people in LDCS', IDS Working paper 178, Brighton, Sussex BNI 9 RE (February 2003)6.

⁴ F O motosho and O Oladeje 'Legislative oversight in the Nigerian Fourth Republic', available online <[researchgate.net/pub lic](http://researchgate.net/public)> accessed 20 June, 2020.

⁵ This is the combined effect of the provisions of section 1(1) and (3) of the Constitution (as amended), which makes its provisions superior to that of any other law in Nigeria.

⁶ Before the 1979 and 1999 Constitutions, under the 1960 and 1963 Constitutions, there was Parliamentary Supremacy and the Parliament was subordinate only to the Constitution. See K M Mowoe, *Constitutional Law in Nigeria*, Matthouse Press Ltd., Lagos (2008) 93.

4(1) provides, that the legislative power of the Federal Republic of Nigeria, shall be vested in the National Assembly for the Federation which shall consist of a Senate and a House of Representatives; while, section 4(6) states that the legislative powers of a State of the Federation shall be vested in the House of Assembly of the State⁷.

2. Access to Justice.

In the context of this paper, ‘ Access to Justice’ simply means the opportunity available to an individual or persons (natural or artificial) to approach or access the machinery of justice (in this case the legislature) to seek redress for the violation or threatened violation of his/her right and obtain an adequate and effective result in the circumstances.

3. Powers and functions of the Legislature.

The National Assembly has power to make laws for peace, order and good government of the Federation under section 4(2), (3) and (4) with respect to those matters in the Exclusive Legislative List set out in Part I of Second Schedule to the Constitution and those in the Concurrent Legislative List set out in Part II of the Second Schedule to the Constitution. While a State House of Assembly have concurrent powers with the National Assembly to make laws for the peace, order and good government of the State under section 4(7) of the Constitution in respect of matters not included in the Exclusive Legislative List, but contained in the Concurrent Legislative List. A House of Assembly of a state is also empowered to make law in respect of any other matter with respect to which it is empowered to make laws under the Constitution which is usually referred to as the Residual List⁸. Conflicts between the State and Federal laws are normally resolved in favour of the Federal Law. Put differently, where there is a conflict between an Act of the National Assembly and the law of a State, the provisions of the Act shall prevail and the law of the State shall be void to the extent of the inconsistency. Apart from the fact that the exercise of the powers of the National Assembly or by a House of Assembly of a State is subject to the jurisdiction of the Courts of law and of judicial Tribunals established by law, the National Assembly or a House of Assembly of a State shall not, in the exercise of their powers to make laws, enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law⁹. Furthermore, in the exercise of their power to make laws, the National Assembly or a House of Assembly shall not in relation to any criminal offence whatsoever, make any law which shall have retrospective or retroactive effect. It is therefore evident from the above that, the exercise of the powers of the Legislature to make laws either for the Federation or for a State have a significant bearing on access to justice. They are under the law precluded from making laws that will oust the jurisdiction of the courts to hear and determine matters brought before it. In which case they cannot make laws precluding courts or tribunals from according persons, government or organizations access to them for the determination of their rights and obligations. Furthermore, in relation to criminal offence, the National Assembly or a House of Assembly of a State are prohibited from making any law with retrospective effect.

4. Legislative oversight functions and its access to justice implications

Quite apart from the above, is the power of the National Assembly (the Senate or the House of Representatives as the case may be) or a House of Assembly of a State to by resolution direct or cause to be directed any investigation or inquiry into any matter or thing over which it has power to make laws; and the conduct of the affairs of any person, authority, ministry or government department, charged or intended to be charged with the duty of or responsibility for executing or administering laws enacted by it or disbursing or administering moneys appropriated or to be appropriated by it¹⁰. This is

⁷For details of the legislative power of the Federation and of the States and the extent or ambit of such powers as between the Federation and the States. See Section 4(1), (2), (3), (4), (5), (6), (7), (8) and (9) of the 1999 Constitution (as amended).

⁸ The expression “Residual list” is not stated in the Constitution. It is a coinage of the judiciary in the exercise of its interpretative jurisdiction – See N Tobi, *The Exercise of Legislative Powers in Nigeria*, Nigerian Institute of Advance Legal Studies, Lagos, 2002, 27 and *A.G. of Abia State v A.G. of the Federation* (2000) 6 NWLR (pt. 763) 264.

⁹ This is the purport of Section 4(8) of the 1999 Constitution and the cases of *CBN v Kaito* (1994)4NWLR (pt.339)446; *Eyo v Chief of Staff supreme Headquarters* (1977)2 ALL NLR 169 among others, are illustrative of this principle of law.

¹⁰ See Sections 88 and 128 of the 1999 Constitution with respect to each of the two arms of the National Assembly and a House of Assembly of a State respectively.

one of the functions of the legislature. It entails the power of the legislature to review, monitor and supervise government agencies, programmes, activities and policy implementation strategies of the executive arm of government.¹¹ The purpose is to provide a powerful check on the executive authority, enhancing accountability where a dominant executive branch might operate with impunity.¹² It is to ensure that all government policies, programmes and budgets are implemented in an effective, efficient, responsive, transparent and accountable manner.¹³ In the exercise of this power by any of the two arms of the National Assembly under section 88 (which is in *pari materia* with section 82 of the 1979 Constitution), or a House of Assembly of a State under section 128 of the 1999 Constitution (which is similar to section 120 of the 1979 Constitution), the Assembly, whether National or of a State, are bound to apply the procedure set out under sections 89 and 129 of the Constitution respectively. Thus, by virtue of sections 88 and 89 of the Constitution, the National Assembly (either by the Senate or House of Representatives) and by sections 128 and 129 of the said Constitution, a House of Assembly of a State can look into the affairs of the executive or its agencies in relation to duties or responsibilities vested or intended to be vested on them under laws made or to be made by the Legislative Assembly concerned¹⁴. The purpose of such investigation or inquiry by the Legislative Assembly concerned is stated respectively under sections 88(2) and 128(2); that is, to make laws with respect to any matter within its legislative competence and correct any defect in existing law; and to expose corruption, inefficiency or waste in the execution or administration of laws within their legislative competence and in the disbursement or administration of fund appropriated by them. This is what is popularly referred to as ‘oversight functions’ of the Legislative Assemblies. Legislative oversight is a robust mechanism institutionalized to checkmate the excesses of the executive arm of government and government agencies to curb waste in governance, corruption and absolutism in the exercise of political power¹⁵.

Consequently, whenever there is allegation of corruption or waste against a government department, authority, ministry or government official, an investigation or inquiry can be set up by the appropriate Legislative Assembly to look into it. The procedure requires that any person or authority against whom any allegation is made, or whose interest may be adversely affected by such allegation or by any statement made, must be clearly and fully informed of such allegation or statement in advance of the investigation or inquiry. The person or authority must be given a fair hearing in defence of the allegation or statement.¹⁶ In other words, where there is an allegation against a person or authority, before the person or authority is required to make defence, certain conditions must be complied with. First, the person or authority must be told the details of all the allegations or statement made against him or it. Second, the person or authority must be afforded reasonable time and opportunity to prepare his or its defence effectively in respect of all the matters in issue. Third, the person or authority must be able to confront and challenge his or its accuser(s).¹⁷ The requirement of fair hearing in our jurisprudence apply in all situations and to all proceedings involving any form of trial or investigation, no matter who conducts the trial or carries out the investigation and for whatever purpose.¹⁸ Thus, it also apply to legislative oversight functions. One is in agreement with Mowoe, that this oversight function is a very potent weapon in the hands of the legislature, which needs the vigilance of the courts to be held in check; so that it should not be wielded in such a way as to derogate from the rights granted by the

¹¹ I Ndoma-Egba, ‘Legislative Oversight and Public Accountability’ available on line at <<http://www.unn.edu.ng/news/legislative-oversight-and-public-accountability>> accessed 21st May, 2020.

¹² O Obayuwana, ‘Legislative oversight: The Executive arm at Cross Road’, available at <www.nigerdeltacongress.com/k/articles/legislative-oversight-htm> accessed 30th May, 2020, also referred to by G A Arowolo, ‘Oversight functions of the Legislature: An Instrument for Nation Building’, available at <<https://www.afal.info>> accessed 2nd June 2020.

¹³ M Mange, ‘The Crucial contribution of Parliament to post-conflict economic Recovery (including PRSP and MDGs) Tmor-Laste as case study’ available at <www.parcip.undp.org/docs/conference/mange.pdf> accessed 25 May, 2020. See also Arowolo Ibid.

¹⁴ See Mowoe (n 5) 111.

¹⁵ E J Nwagwu, ‘Legislative oversight in Nigeria: a Watchdog or a Hunting Dog?’ *Journal of law, Policy and Globalization*, Vol.22, 2014, 16-24 at 17.

¹⁶ Ndoma-Egba (n 10).

¹⁷ Editorial opinion, *The Nations Newspaper*, March 21, 2012, 2; quoted in *extenso* by Ndoma-Egba *ibid*.

¹⁸ *Ibid*. Also germane to this issue is the provisions of section 36 (1), (2) (a) and (b), and (6) (a) and (b) of the Constitution (as amended).

Constitution. Thus, in *Adikwu and others v. National Assembly*¹⁹, and *Tony Momoh v. Senate*²⁰, the court refused to allow the legislature to wield its investigative authority in such a way as to derogate from the fundamental right to freedom of speech and expression. Specifically, the court held in both cases that the legislature could not use its investigative powers under the Constitution for purposes other than those specifically provided for under the enabling provisions; and that the persons sought to be sanctioned were not members of the executive arm of government or its agents.

For the purpose of exercising the powers under section 88 by the National Assembly (that is, each of the house) or under Section 128 of the Constitution by a House of Assembly of a State, any of the arm of the House under Section 89 with respect to the National Assembly and under section 129 with reference to a House of Assembly of a State, may procure any evidence thought desirable and relevant, examine all persons whose evidence may be material or relevant on oath, and may summon and examine persons to give evidence of, or produce documents or other things in their possession or under their authority except where excused by law²¹.

Furthermore, they have powers to issue warrants to compel attendance and could in appropriate cases impose costs or fines for refusals. It is obvious, that in exercise of its powers under the relevant sections and the procedures to be adopted in the investigation or inquiry, the Legislature functions in the circumstances, in a quasi-judicial manner. It is then expected to behave responsibly and confine itself strictly to the express provisions of the enabling sections of the Constitutions. Otherwise, the courts are bound to struck down its decisions as ultra vires its powers because as stated above, the enabling sections of the Constitution does not enable them to usurp the role of the courts²². To the extent that they can take evidence in the exercise of their said powers, summons witnesses, issue warrants and could impose sanction of cost or fine in deserving cases, they are bound to observe the rule of fair hearing. That is, the person, authority or agency of government that is the subject of such investigation or inquiry should as stated above be afforded a fair hearing in the matter. Most of the time, except where the House seats as a Committee of the whole House, this function is usually carried out by the House Committee on Public Petitions or an *ad-hoc* committee, set up for a specific purpose on behalf of the House. Thus, the committee structure of the Legislative Assembly is among other functions being used to execute oversight functions, through supervision, watchfulness, to curtail excesses, review of executive actions and activities in order to put the executive and its agencies under constant surveillance and scrutiny by the Legislature.²³ Hence, through oversight functions, the legislature ensure that the actions and spending of the executive and its agencies are in line with constitutional provisions.²⁴

The oversight functions provisions have created an avenue for accessing justice, as it is now common for persons or government officials aggrieved by actions or inactions of government which affects them adversely to complain by way of petition to the legislature for review of such actions or inactions. Examples abound where the legislature has in exercise of its said powers recommended to the executive arm of government a review of some of its decisions in appropriate cases. Sometime ago, the House Committee on Public Petitions investigated the petition of Mr. Nelson Okugie over his arbitrary

¹⁹ (1982), 3 NCLR 399

²⁰(1981) 2 NCLR 105. See also *El-Rufai v House of Representatives and others* (2003) 46 WRN 70, where the Plaintiff was summoned to appear before the Ethics and Privileges Committee of the House of Representatives to answer questions concerning alleged defamatory statements made by him before the House *ad hoc* committee investigating the privatization of NITEL. The statement was considered to be contemptuous of the House. The Court of Appeal held *inter alia*, that the House of Representatives acted outside its investigative powers under section 88 of the 1999 Constitution, which provided the basis for the exercise of the power. That even where the Plaintiff is found to have committed the offence, the House must inform the Attorney-General of the Federation who can prosecute the Plaintiff; and that the section is not designed to enable the Legislative Assembly to usurp the role of the courts.

²¹ The Sections referred to herein are all sections of the 1999 Constitution.

²² *El Rufai v House of Representatives and other* (2003)46 NRN 70

²³ Ndoma-Egba (n 10). Also see, generally A Haywood, *Politics*, (3rd) Palgrave, Macmillan Publishers Ltd, J Cosmeus, 'The Primary role of the legislature in Public Policy Process is to ...'. <<http://brainy.com/question/2237164>> accessed 13th May, 2020, where the authors made the point that oversight function enables the legislature to scrutinize the government and its agencies actions in order to hold them accountable to the people (that is, the electorate).

²⁴ N Nwogwugwu, and A Ishola, 'Legislators and their oversight Functions in policy Implementation in Nigeria', in *International Journal of Humanities, Social science and Education (JHSSE)* vol 6, issue 3, March, 2019, 93-102.

dismissal by Nigeria Postal Service (NIPOST). After investigation the Committee recommended that the Petitioner be recalled to the service of NIPOST as no case of fraud or embezzlement was established against him²⁵. Not long thereafter, the House also considered the complaint by Olugbobiri Tedibabo and Igbomataru communities of Bayelsa state against Nigerian Agip Oil Company (NAOC). After investigation, the House directed that as part of its social responsibility, the NAOC and its contractor Daewoo Engineering and Construction Company should take measures to implement “local content contract” by involving the indigenes at least 40% on the pipeline project at Tebida community as nominated by Agon Trust Limited and its representatives²⁶.

Furthermore, in the petition of 47 disengaged staff of the National Orthopedic Hospital Enugu, against their dismissal from service without compliance with due process, after investigation, the House directed that they be recalled to service. But in Dr. Osayande V.E., petition against the Federal Medical Centre, Asaba, where the Petitioner complained of premature and unconstitutional retirement from service, the House, after investigation, resolved that instead of automatic dismissal of the Petitioner, he should be demoted by one grade²⁷. Based on its said powers/functions and as seen in the few examples given, persons, especially those in government service who have grievance, instead of approaching the regular courts, have by way of petition brought their complaints before any arm of the National Assembly where the other party is a Federal Authority or Agency, and to the House of Assembly of a State where the other party is a State Authority or Agency. The Legislative House has after due investigation/inquiry (which could include the taking and recording of evidence from witnesses) handed down its decision one way or the other. The Legislative Houses have therefore become another route for accessing administrative justice. The procedure which is free and devoid of legal technicalities markedly favours access to justice and had also put the Executive in check in the performance of its functions. Despite this, its adequacy and effectiveness in increasing access to justice is severely limited by the absence of enforcement mechanism. The enforcement of its decision still depends on the good will of the Executive or respondent, which they may withhold. Another snag is that legislative oversight functions ends with the investigation or inquiry. The findings or decisions are referred to the appropriate arm of government for further necessary action in order to address the issue raised therein.²⁸ Unfortunately the appropriate government arm hardly enforces the findings or decisions of the legislature. Also, despite the constitutional power of the legislature to undertake oversight functions, it lacks the political will to use this tools and powers effectively for sundry reasons.²⁹ Fashugba argues with some merit that the Nigeria Legislature has been incapable of effectively performing its oversight role. According to the author, this is because in addition to constraints like executive interference, crippling internal conflicts, inexperience and high rate of members’ turnover hampering legislative efficiency, the legislature has compromised its role.³⁰ Nwagwu, attested to this sordid state of affair when he stated that, Legislative oversight, a critical aspect of the functions of the legislature other than law making, have been severally compromised and often misused as a hunting dog.³¹ The writer contended rightly, in our view that oversight functions have been reduced to mere alarm mechanism being used to blackmail or witch hunt political opponents, extortion of money from parastatals and ministries under its supervision for selfish or personal aggrandizement.³² Be that as it may, legislative oversight functions encourage checks and balances, enthrone fiscal discipline, good governance,

²⁵ See 20th Annual Report, Public Complaint Commission, 4.

²⁶ *Ibid.*

²⁷ See *Journal of the Committee on Public Petitions, House of Representatives*, Vol.1. No.1, 6. Other cases abound in this Journal where the House also take decisions after investigation.

²⁸ Ndoma-Egba (n 10).

²⁹ R Staphenust, K Jacobs and O Olaore, ‘Legislative oversight in Nigeria: an empirical review and assessment’, *Journal of Legislative studies*, vol 22, 2016- issue 1.

³⁰ J Y Fasugba, ‘Legislative oversight under the Nigerian Presidential System’ in *Journal of Legislative Studies*, vol 15, 2009-issue 4.

³¹ E N Nwagwu (n 14).

³² *Ibid.* The allegation of corruptly receiving the sum of US \$500,000 from Zenon Oil and Gas, Chairman, Mr Femi Otedola, by Hon. Farouk Lawan, and US \$120,--- by Hon. Boniface Emenalo from the same Otedola as bribes to facilitate the removal of Zenon Oil and Gas Company’s name from the List of Oil Marketers who bought foreign exchange from the Central Bank of Nigeria without Importing fuel products, which case is still pending in court against Hon. Faruouk and Emenalo, who were chairman and secretary respectively of the House of Representative Ad-Hoc Committee on monitory of fuel subsidy laid credence to the contention.

accountability and transparency in public offices.³³ More significantly, legislative oversight functions constitute a useful tool for accessing administrative justice among others.

5. Conclusion

Clearly, legislative oversight is to a limited extent a potent pillar in the institutional framework for accessing justice in Nigeria as exemplified in the cases some of which were discussed in this article. A proper and more effective use of the powers will indisputably engender increased access to justice. It is suggested that laws should be enacted to provide for enforcement mechanism of the findings or decisions reached arising from oversight functions carried out by the legislature. The current position, where the enforcement of such decisions is left to the whims and caprices' of the executive or its agency or authority concerned is not good enough. In the circumstances, the legislature should make law or laws to overrule or override agency's decisions or narrow the agency's jurisdiction and regulatory authority, where it failed to comply with the findings or decisions of the legislature. It can also use its power of appropriation to restrict the agency's funding until the agency enforces the decision of the legislature or its committee arising from its oversight functions.

³³ Ibid.