

# The Legal Framework for the Oversight Functions of the National Assembly

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## **Abstract**

*In this article, on the legal framework for the oversight functions mainly dealing with the National Assembly by-cameral legislature. It deals with the Senate and the House of Representatives standing orders, sections 80 – 89 of the constitution of the Federal Republic of Nigeria 1999, dealing mainly on supervisory, monitoring, appropriation and investigating powers of the National Assembly. A deals with the procedure of oversight powers of the National Assembly. The research adopted the doctrinal method of research and made far-researching recommendations to strengthen and oversight functions of the National Assembly.*

## **1. Introduction**

Nigeria has a bicameral legislature, known as the National Assembly, consisting of the House of Representatives and the Senate.<sup>1</sup> The House of Representatives is a 360-member body “representing constituencies of the federation.”<sup>2</sup> The Senate has 109 members consisting of three members from each of the thirty-six states and one member from Abuja, the federal capital.<sup>3</sup> Members of the National Assembly are elected directly by eligible voters in their districts.<sup>4</sup>

The leaders of the House of Representatives (the Speaker and Deputy Speaker) and the Senate (the President and Deputy President) are elected from among the members of the bodies<sup>5</sup>. In addition to the Speaker of the House of Representatives, the President of the Senate, and their deputies, the leadership in the National Assembly, known to as the “principal officers” of the House of Representatives and the Senate include:

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<sup>1</sup> S. 47 1999 CFRN.

<sup>2</sup> S. 49 *ibid*.

<sup>3</sup> S. 48 *ibid*.

<sup>4</sup> S.61 *ibid*.

<sup>5</sup> 50(a) and (b).

1. *the Majority Leader and his deputy,*
2. *the Minority Leader and his deputy,*
3. *the Chief Whip and his deputy, and*
4. *the Minority Whip and his deputy.*<sup>6</sup>

The functions of a Majority Leader, who is nominated to the position by the party with the highest number of seats in the respective house, include leading the businesses of the house, managing legislative schedules, and liaising with committee chairmen and other functionaries.<sup>7</sup> The functions of the Chief Whip, also a person representing the party with the highest number of seats in the respective house, include maintaining order and decorum, organizing party members during debates and managing party business on the floor of the respective house.<sup>8</sup>

Any sitting of the National Assembly - in the case of the Senate, the President of the Senate shall preside, and in his absence the Deputy President shall preside and in the case of the House of Representatives, the Speaker of that House shall preside, and in his absence the Deputy Speaker shall preside<sup>9</sup>.

At any joint sitting of the Senate and House of Representatives - President of Senate shall preside, and in his absence the Speaker of the House of Representatives shall preside<sup>10</sup>; and in the absence of the persons mentioned above the Deputy President of the Senate shall preside, and in his absence the Deputy Speaker of the House of Representatives shall preside<sup>11</sup>. In the absence of the persons mentioned in the foregoing provisions, such member of the Senate or the House of Representatives or of the joint sitting, as the case may be, as the Senate or the House of Representatives or the joint sitting may elect for that purpose shall preside<sup>12</sup>.

The prescribed quorum of either the Senate or of the House of Representatives is one-third of all the members on of the Legislative

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<sup>6</sup> < [Nigerianscholars.com/tutorials/arms-of-government/functions-of-presiding-and-principal-offic](https://nigerianscholars.com/tutorials/arms-of-government/functions-of-presiding-and-principal-offic/)> accessed 12 May, 2023.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*

<sup>9</sup> S. 53(1)(a)&(b) 1999 CFRN.

<sup>10</sup> S.53(2)(a) *ibid.*

<sup>11</sup> S. 53(2)(b) *ibid.*

<sup>12</sup> S. 53(3) *ibid.*

House as the case may be<sup>13</sup>. At a joint sitting of both the Senate or of the House of Representatives the prescribed quorum is one-third of all the members of both Houses<sup>14</sup>. Furthermore, either houses of the national assembly cannot sit without the prescribed quorum. As provided by the provision of S. 54(3)<sup>15</sup>. Which states as follows:

*If objection is taken by any member of the Senate or the House of Representatives present that there are present in the House of which he is a member (besides the person presiding fewer than one-third of all the members of that House and that it is not competent for the House to transact business, and after such interval as may be prescribed in the rules of procedure of the House, the person presiding ascertains that the number of members present is still less than one-third of all the members of the House he shall adjourn the House*

The above provisions<sup>16</sup> apply in relation to joint sitting of both Houses of the National Assembly as they apply in relation to a House of the National Assembly as if references to the Senate or the House of Representatives and a member of either Houses are references to both Houses and to any member of the National Assembly, respectively.

## **2. Senate Standing Order 2015 as Amended**

The constitution of a state specified the legislative procedure and power within a sovereign state. The most salient of the National Assembly is the standing order or standing rules. The standing orders are rules made in line with the constitutional provision for smooth operation of the National Assembly.<sup>17</sup> It is binding on all member of the House to obey it, otherwise, if violated the offender will be severely punished based on its provision. It can be suspended, amended, change and annulled; by majority voting, depending on the

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<sup>13</sup> S. 54(1) *ibid.*

<sup>14</sup> S. 54(2) *ibid.*

<sup>15</sup> 1999 CFRN.

<sup>16</sup> S. 54(4) *ibid.*

<sup>17</sup> S 60 CFRN, 1999.

situation under consideration. Nigeria National Assembly Standing Orders is geared toward the regulations, governing the effecting delivering of the operation of the National Assembly. Pursuant to the constitution, the Senate and the House of Representative shall each stand dissolved at the expiration of four years commencing from the date of the first sitting of the House.<sup>18</sup>

The Senate has 52 standing Committee, while the House of Representatives has 65 standing committee. These committees consider legislation in a wide range of policy areas. Under the US Constitution, the power to legislate is vested in the United States' Congress. Like what is obtainable in Nigeria, the Congress is made up of two bodies: House of Representatives and the Senate. The concurrence of both is required to enact a law. However, subject to the provisions of the Constitution, the Senate or the House of Representatives shall have power to regulate its own procedure.<sup>19</sup> Each committee is staffed by members who work closely with each other in facilitating their legislative agenda. The 1999 Constitution vested the legislative power essentially in the National Assembly. Under the government of separation of powers, legislative power cannot be delegate to any other branch of government, and, although the people are ultimately sovereign in Nigeria, the National Assembly's legislative power cannot be delegated to the public. This is because Nigeria's Constitution makes no provision for popular initiatives and allows only the National Assembly to propose legislation at the federal level. In the absence of a constitutional provision allowing a public referendum, bills passed by the legislative cannot be conditioned upon subsequent voter approval or ratification in a state wide election. The legislative process in Nigeria has some components. First, it is a legal process governed by a host of special rules that specify how legislation will be considered in each house. The rules of procedure are adopted by the respective chambers at the beginning of each house.<sup>20</sup>

The exercise of legislative powers and responsibilities at the Federal and States Level is regulated by both the Constitution and

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<sup>18</sup> S. 64, *ibid*.

<sup>19</sup> S. 60 CFRN, 1999.

<sup>20</sup> Order 1 R1 (a) of the Senate Standing Orders 2015 as Amended.

the Standing Orders of the House. In Nigeria, failure to comply with the requisite provisions relating to procedure will render the outcome of the decision unconstitutional and illegal. In this regard, the case of *Attorney General of Bendel State v Attorney General of Federation*<sup>21</sup> becomes relevant. The case involved the allocation of Revenue (Federal Accounts) Act No. 1 of the 1981 whose constitutionality was challenged by the government of Bendel State on the ground, inter alia, that it had not been passed by the National Assembly in the manner and form required by the constitution. The Supreme Court invalidated the Act subsequently and another Revenue Allocation was duly passed by the National Assembly and signed by the President.

Besides, the proceedings of the National Assembly are governed by the Nigerian Constitution. In particular, the 1999 Constitution<sup>22</sup> provides as follows:

*Subject to the provisions of this constitution, the Senate or the House of Representatives shall have power to regulate its own procedure, including the procedure for summoning and recess of the House.*

In other words, in exercise of the power granted to them each House adopted and modified the rules and regulations made by Parliament under the Constitution Standing Rules (Powers and Procedures) Act.<sup>23</sup> Again, the Assembly's Standing Orders, usages, customs guide the proceedings of the Assembly. Consequently, the Proceedings in the National Assembly shall be conducted in accordance with their Standing Orders.<sup>24</sup> House and Senate Rules of procedure are largely a function of the numbers comprising each chamber. In the House, a structured legislative process and strict adherence to the body's rules and precedents have resulted from the need to manage how the members make decisions. By contrast, the Senate's smaller membership has brought

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<sup>21</sup> (1981) 3 NCLR 1.

<sup>22</sup> S. 60 CFRN, 1999.

<sup>23</sup> *ibid.*

<sup>24</sup> *Ibid.*

about a less formal policy making process and a flexible approach to the chambers standing rules<sup>25</sup>

The Standing Orders stipulate the members of persons to form quorum of the Senate. Quorum is the minimum number of persons who must be present to conduct business either on the floor of the chamber or in a committee. A quorum usually is one more than half of the membership. An essential goal of the quorum apparatus is to prevent a situation in which the determination of policy and legislative activity take place in the presence of an extremely limited number of representatives.

The existence of a quorum ensures the participation of a minimal number of legislators in the Parliamentary activity and the broadening of public responsibility for the participants' activity. This is likely to increase the legitimacy of the decision taken.<sup>26</sup> Legislative proceedings are conducted by legislators sitting in chambers.<sup>27</sup> The Speaker presides over the sitting in the House of Representatives.<sup>28</sup> While in the Senate, the President of the Senate shall preside. However, at any joint sitting of the Senate and House of Representatives, the President of the Senate shall preside and in his absence, the Speaker of the House of Representatives shall preside.

The business of National Assembly shall be conducted where the quorum of the Senate or House of Representatives shall be one-third of the members of the legislative house concerned.<sup>29</sup> The quorum of a joint sitting of both the Senate and House of Representatives shall be one-third of all the members of both Houses.<sup>30</sup> The imperative of this section is that it requires only one-third of the members of either House to transact business in the House. Where however, there is a challenge by any member that a quorum has not been formed, the presiding officer should suspend proceedings for the purpose of ascertaining the number of members

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<sup>25</sup> H.M. Robert, *Parliament Law*, (1923) 23.

<sup>26</sup> *ibid.*

<sup>27</sup> Order 11 Senate Standing Orders 2015 as Amended.

<sup>28</sup> Order 10, *ibid.*

<sup>29</sup> Order 16 R 2 of the House of Representatives and Order 10 R 1 of Senate Standing Order 2015 as Amended.

<sup>30</sup> Order 16 R 3-6 of the Standing Order of the House of Representatives and Order 10 R 1 Senate Standing Order.

present. If the challenge is sustained, then the House must be adjourned. At a joint sitting of both Houses, the quorum is also one-third of both Houses together.

The Constitution does not prescribe any method for determining the presence of a quorum and it is therefore within the competency of the House to prescribe any method to ascertain the fact. If there is no challenge that a quorum has not been formed, there must be presumption that a quorum exists until the contrary is actually proved. This is the presumption of legality, which can be inferred from the constitution itself.

In the United States, the test for the determination of quorum in the House is the competency of the House to prescribe any method which shall be reasonably certain to<sup>31</sup> ascertain the fact. Therefore, the rule of the House is that members present in the chamber but not voting would be counted in determining the present of quorum. The Constitution requires that a quorum that is a simple majority of the membership present for the House is 218 and the Senate, 51 to conduct business. When the House meets in the Committee of the whole, a quorum of 100 members is required. Both chambers typically assume that a quorum is present unless it can be demonstrated otherwise.

In most Parliaments over the world, the absence of quorum leads to the putting off of the debate or vote until a quorum is present. Below is a comparative examination of the requirement for a quorum, the presence of a minimal number of members as a condition for the carrying out of a Parliamentary activity.

The table contains the quorum required in the Parliament plenum and the quorum required in its committees as well as between the quorum required for the holding of a meeting and a quorum required for taking a vote.<sup>32</sup> It must be pointed out that what obtains in Sweden prevails in Nigeria having regards to the prevailing standing orders of the National Assembly. The exception however, is that if, at any time during daily sessions of the National Assembly, it appears that a quorum is not present, the business under

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<sup>31</sup> Robert, (n 326).

<sup>32</sup> Order 10 R 5 Senate standing Orders.

consideration shall stand over until the next sitting.<sup>33</sup> Moreover, motion is the basic building block of parliamentary procedure. It is simply a proposal to the House on which a decision is sought. It is achieved by the process of debate which occurs between the moving of a motion and the final vote upon it.

There are several stages observed in the process of moving on substantive motion through the House. The first is to publicize the motion to the members (giving notice of it) so they are aware of the matter being raised. In most Commonwealth Parliaments, any member can move a motion provided that he or she has absconded or someone who also supports the motion. Procedurally, once a motion is on the Order Paper for a particular day, it cannot be withdrawn unless the member who submitted the motion seeks the agreement of the House to do so. Procedurally, the National Assembly in conducting its business, unless the rules otherwise direct, notice shall be given of any motion<sup>34</sup> or amendment which is proposed to be moved with the exception of the following:

1. A motion or amendment made or offered in Committee;
2. A motion for the adjournment of any debate;
3. A motion that the report of a Select Committee be referred to the committee of the house of the respective Houses;
4. A motion for the withdrawal of strangers;
5. A motion for the suspension of a member

Passage of bills deals with the mode of the National Assembly in exercising Federal Legislative power. For a better understanding, section 58 of the 1999 Constitution provides as follows:

*the power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President.*

- (2) A bill may originate in either the Senate or the House of Representatives and shall not become law unless it has been

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<sup>33</sup> *ibid.*

<sup>34</sup> Order 47 R 1-6, *ibid.*



passed and, except as provided by this section and section 59 of this Constitution, assented to in accordance with the provisions of this section.

- (3) Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.
- (4) Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assents.
- (5) Where the President withholds his assent and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required. In view of the above provisions, it is necessary to give a summary of the legislative maze a bill must navigate before it can become law. Therefore, it is not the intentions of this article to give elaborate discussion on how the National Assembly makes law but to highlight briefly the stages that a bill passes before it becomes a law.

In Nigeria, there are some stages that a bill must go through before it becomes an Act of the National Assembly. These are:

- (a) Bill to be sponsored by the Executive, the Judiciary or the Legislature and also individual/organizations<sup>35</sup>;
- (b) Bill going through first reading-introduction without debate<sup>36</sup>;
- (c) Bill going through the second reading-allows for general debate<sup>37</sup>;
- (d) Bill going through third reading
- (e) The report stage-presentation of the Committee report together with their recommendations;
- (f) Debating of the bill by the House of Representatives-passed if recommendations are accepted;
- (g) Passage of the bill by the Senate<sup>38</sup>; and

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<sup>35</sup> Order 76 of the Senate Standing Orders.

<sup>36</sup> Order 78, *ibid.*

<sup>37</sup> Order 80, *ibid.*

(h) Assent of the President<sup>39</sup>.

Significantly, Chapter XI of the Senate standing orders and Order XII of the House standing orders deal with procedure on Bills. Commenting on this section, Professor Jadesola Akande<sup>40</sup> (of the blessed memory) maintained that legislative power is specifically granted to the two

Houses which they exercised by passing Bills, However, in legislative matters, the National Assembly is expected to be dominant branch of the government, it is not put in a position to arrogate itself all powers. So, the president is given a qualified veto tool to prevent the National Assembly from overstepping its boundaries and to enable him to influence the actual course of legislation.

This study would greatly improve the National Assembly in its law-making power. The study would help in ensuring that the exercise of such powers is properly guided to checkmate the incidences of abuse in order to avoid defeating the whole essence of the power granted.

### **3. Standing Orders of the House of Representatives Ninth Edition, 2016**

In Nigeria, Standing Orders are rules made in line with the constitutional provision for smooth operation of the National Assembly.<sup>41</sup> In the exercise of the power granted to the National Assembly, each House must adopt and modify the rules and regulations made by the parliament under the Constitution Standing Rules (Powers and Procedure) Act. Again, the Assembly's Standing Order, usages, customs guide the proceedings of the Assembly. Consequently, the proceedings in the National Assembly shall be conducted in accordance with their Standing Orders.<sup>42</sup> The constitution empowered the National Assembly to enact laws for the

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<sup>38</sup> Order 77 Rule 1-3, *ibid*.

<sup>39</sup> Order 88, *ibid*.

<sup>40</sup> J.O. Akande, *Introduction to the Constitution of the Federal Republic of Nigeria 1999* (Lagos MIJ Publisher 2000) 150-151.

<sup>41</sup> S. 60 Constitution of the Federal Republic of Nigeria, 1999.

<sup>42</sup> Order 1 R1 of the Standing Orders of the House of Representatives.

good governance of the country however, for such law to be valid it must follow procedure laid down in the standing order. Only a member of either Senate or a House of Representative can introduce legislation or a bill. The process of legislation usually starts with the introduction of a bill to the National Assembly. A bill is a legislative proposal and the first step in creating a new law.<sup>43</sup> The legislative process officially begins when a bill or resolution is assigned a unique number, is referred to a committee and is printed by the Government printing office. Notice of presentation of a Government Bill shall be given by publication of the provisions proposed to be embodied in such Bill in an issue of the official Gazette or House Journal of which a copy shall have been sent to every member<sup>44</sup>

At the House of Representatives, a bill is normally passed through the following stages:

1. *First Reading*: A formal stage only and is done by the clerk reading aloud the short title of the bill on a date fixed for the first reading of that bill. A motion is moved for its presentation by the sponsor (in case of a member's bill) or the majority leader of the House (in case of Government bills)<sup>45</sup>.
2. *Second Reading*: unlike the first reading, the second reading allows for debate on the bill's general merits, imports and principles, and the House decides, at this stage, to give or withhold provisional approval. If it is read the second time, the House is deemed to have approved the bill in principle.<sup>46</sup>
3. *Committal*: the second reading is followed by the committee stage, apparently referred to the appropriate committee which has the jurisdiction on the content of the bill. This is however the prerogative of the presiding officer. Committee referral is stated explicitly in the standing rule of the Senate<sup>47</sup>.
4. *Committee of the Whole House*: this stage could come after the second reading upon a motion moved by a member of the House, but if otherwise the standing committee submits its

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<sup>43</sup> S. Danwanka and U Ibrahim, 'National Institute for Legislative Studies and Democratic Studies (NILDS) (Lecture Note on Bill Process, Analysis and Scrutiny: Drafting Process Abuja 2018) 1.

<sup>44</sup> Order 12 R 1 of the Standing Order of the House of Representatives Ninth Edition, 2016.

<sup>45</sup> Order 12 R 3, *ibid*.

<sup>46</sup> Order 12 R 4 and 6, *ibid*.

<sup>47</sup> Order 12 R 5 (a), *Ibid*.

report to the House at plenary where it dissolves into a committee of the whole.

5. *Third Reading*: when a bill has been reported from a committee of the Whole House, it shall be ordered to be read the third time upon such time as may be appointed by the Rules and Business committee, except where a motion for “recommittal” is moved. Amendments are made at this stage, howbeit, minor ones. The bill invariably passes the third reading.<sup>48</sup>
6. *Clean Bill*: for the bill to become law, it must be passed in identical form by both Houses of a bicameral legislature and then assented to by the President. The originating House sends a clean bill signed by its clerk to the other chamber for its concurrence where the bill passes through similar stages. Where disagreements exist, a conference committee is formed to iron out such grey areas. The conference report is laid in each House for consideration and adoption.
7. *Presidential Assent*: a clean copy of the bill is sent to the president for assent. Section 58 (1999, Constitution as amended) is clear on veto and override of same<sup>49</sup>

Where the president withholds his assent to a bill or does not communicate his assent within 30 days from the date the Bill was sent to him for assent, the house shall again deliberate on the Bill.<sup>50</sup> If the House rejects the President’s amendment and agrees to overrides the President’s veto, then the Bill shall become law if it is again passed by the House and the Senate by Two-thirds Majority, and the assent to the President will not be required.<sup>51</sup>

The Standing orders of the House of the Representative just like Constitution contained a provision for the alteration of the Constitution. Order 13 Rule 1 provides that the first and second reading of any Bill for altering the provision of the Constitution shall be considered and proceeded with in accordance with the procedure

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<sup>48</sup> Order 12 R 10, *ibid*.

<sup>49</sup> Order 12 R 12 (a), *ibid*.

<sup>50</sup> Order 12 R 12 (b), *ibid*.

<sup>51</sup> Order 12 R 12 (c).

on Bill in the House Standing orders. During the deliberation for alteration of the Constitution, every member of the House will be allowed to contribute and after deliberation, the House will vote either in support or against the supposed motion for alteration or amendment. The Bill will be validly passed if it be supported by positive vote two thirds majority of the members of the House.<sup>52</sup> The question as to the amendment or alteration of the section 8 and 9 of the Constitution will not be done unless four- fifth majority of the House Vote in Favour of the amendment.<sup>53</sup>

The House of the Representatives will then send it to the Senate for concurrence. The two-third majority of the State Houses of Assembly shall be compiled and if passed by a concurrent resolution of the National Assembly, shall thereafter be transmitted to the President for assent.<sup>54</sup> In the event the President withholds his assent, and the Bill if passed again by two-third majority of members of the House, as required by under section 58 of the Constitution, such a Bill will automatically become a law.<sup>55</sup>

As required under section 12 of the Constitution, a treaty must be domesticated to be valid in Nigeria. Order 14 of the Standing Orders of the House of Representatives provides that where a treaty is laid before the House of Representatives for ratification, it shall be read a first time, and shall thereafter be subjected to the procedure on Bill as stated in Order 12 of the Standing Orders. The requirement for ratification of treaties the same as a new to be passed into law under the standing Orders of the House of Representatives.

The President has the power to issue a proclamation of state emergency in any part of the country,<sup>56</sup> such a proclamation is subject to the power of the House of Representatives to either approve or rejects the proclamation made by the President. The House of Representatives must have to vote in support or against. The House by two-third majority of members present shall then forthwith resolve into a committee of the whole for the consideration of the proclamation and on reporting progress, the House shall

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<sup>52</sup> Order 13 R 4 (a), *ibid.*

<sup>53</sup> Order 13 R 4 (b), *ibid.*

<sup>54</sup> Order 13 R 5 and 9, *ibid.*

<sup>55</sup> Order 13 R 10, *ibid.*

<sup>56</sup> Order 14 R 1, *ibid.*

decide, in accordance with the provisions of the Constitution, approving or rejecting the proclamation.<sup>57</sup>

## **1. Processes and Procedure of Oversight Functions of the National Assembly**

In the National Assembly, there are standing, adhoc, special and standing committees. Most often the standing committees handle oversight functions. Members of the committees, meet in their meetings and discuss how they handle oversight issues.

A letter is written to any department or agency or ministry or individuals for invitation or summon to the National Assembly to come with certain requirements or that the committee may visit such MDAs to inspect them or investigate certain matters or that the MDAs should come to the National Assembly for questioning and or investigation.

It is in this meeting that parliamentarians ask questions and scrutinize documents on oversight issues. Most often these matters are resolved with specific directives from the committees to MDAs to comply. Where there is no resolution of the matter, the committee through the chairman who presides over the meeting, prepares and raise a motion during plenary upon the approval of the speaker before the meeting for proper investigation.

If the matter is raised and debated upon during the sitting of the House or Senate it is put to question immediately and if approved, the matter goes for investigation for public hearing.

Whatever outcome emerges from the public hearing, the committee reports back to the House for consideration and if approved by the House, then the clerk of the House cause letters to be written to the MDAs for compliance.

## **2. Oversight Powers of the National Assembly** ***Deployment of Armed Forces***

In Nigeria, the president is the commander in chief of the Armed Forces (GCFR)<sup>58</sup>. As a head of the executive arm of

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<sup>57</sup> Order 14 R 4, *ibid*.

<sup>58</sup> S. 130 of the Constitution of the Federal Republic of Nigeria, 1999 CAP. C23 L.F.N. 2004.

government in Nigeria, the constitution<sup>59</sup>, vests in him certain powers to be exercised exclusively for the peace and well-being of the people of Nigeria.

This shows that the president has a duty to protect the sovereignty of Nigeria against any form of external aggression on the offensive and also the use of force on the defensive and offensive where applicable. However, this duty is subject to confirmation to the National Assembly.<sup>60</sup>

Section 5 (4) of the Constitution provides that notwithstanding the foregoing provisions of this section:-

- (a) The President shall not declare a state of war between the Federation and another country except with the sanction of a resolution of both Houses of the National Assembly, sitting in a joint session; and
- (b) Except with the prior approval of the Senate, no member of the Armed Forces of the Federation shall be deployed on combat duty outside Nigeria.

The first paragraph of the subsection deals with the issue of the declaration of war between the Federation and any other country. According to the wordings of the constitution, such declaration is to be done with a resolution by the National Assembly. Paragraph b, on the other hand, states to the effect that a prior approval of the senate is needed before any member of the Armed Forces of Nigeria is deployed outside Nigeria. The provision of the Law is crystal clear on this case with respect to the limitation of the power of the president to declare war or to deploy the Nigerian Military. However, an exception lies in the wordings of Section 5(5) which states as follows:

Notwithstanding the provisions of subsection (4) of this section, the President, in consultation with the National Defence Council, may deploy members of the armed forces of the Federation on a limited combat duty outside Nigeria if he is satisfied that the national security is under imminent threat or danger. (Emphasis mine)

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<sup>59</sup> S. 5 of the CFRN.

<sup>60</sup> S. 5 (4) *ibid.*

Provided that the President shall, within seven days of actual combat engagement, seek the consent of the Senate and the Senate shall thereafter give or refuse the said consent within 14 days. The above stated provision is to the effect that the president can deploy the Nigerian Military outside Nigeria without the approval of the Senate in so far as there is due consultation with the National Defence Council. However, this can only be, when there is a threat to Nigerian national security. This deals with a matter of urgency, strictosensu, as stated above 'if he is satisfied that the national security is under imminent threat or danger'

Following the refusal of president Jammeh to step down for Barrow, the newly elected president of Gambia, Nigeria, under President Buhari and other countries of the Economic Community of West Africa States, such as Senegal and Ghana alongside other forces have deployed soldiers to Gambia to forcefully remove Jammeh. The deployment of the Nigerian Army was without senate's approval contrary to Section 5 of the Constitution. President Buhari can never be excused by the exception in Section 5 because the crisis in the Gambia does not in any way affect the national Security of Nigeria.

The scope of the President's powers to deploy our Armed Forces, as provided for in Sections 217 and 218 of the Constitution. Section 218 is not an independent section. It is qualified by Section 217, which clearly lays out the circumstances and conditions under which our Armed Forces can be deployed. These are:

1. For the defense of Nigeria from external aggression.
2. for the maintenance of the territorial integrity and securing the borders of Nigeria from violation on land, sea and air,
3. for suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President; subject to such conditions as may be prescribed by an Act of the National Assembly.

The powers of the President as provided in Section 218(1) are qualified and limited by Section 217(2). In other words, the power of the President to determine the operational use of the Armed Forces under Section 218 is limited to deployment of troops for the defense



of Nigeria from external aggression, protecting our territorial integrity and for suppressing internal insurrection in aid of civil authorities. In this last case, that is, suppression of insurrection and assistance to civil authorities, the President's powers can only be deployed on terms and conditions prescribed by an Act of the National Assembly. To this extent, this third use of the President's powers is subject to conditions laid down by the National Assembly.

Section 218 is not an independent provision. The recent pronouncement of the Supreme Court decision that the use of troops for electoral purposes is illegal and unconstitutional is not new. This issue came up in the election petitions and judgments of the 2003 elections and such deployment for direct election duties was declared illegal and unconstitutional. In *Buhari v. Obasanjo*<sup>61</sup>, Nsofor, JCA, stated as follows:

Evidence is galore which I accepted that the 1st respondent President Obasanjo as Commander-in-Chief of the Armed Forces of Nigeria called out the military and the mobile policemen armed, to almost every Local Government Area in Akwa Ibom (See D.W.4). In Benue, see D.W. 72 (Colonel Emmanuel Clement Samuel Ifon), and in Enugu State, Ebonyi, indeed in each of the States above enumerated. And there was no state of war in any of those States, no emergency declared therein. On the other hand, there was peace and calm and tranquility.

The Power of the parliament in determining the declaration of war is more than important as it checks and balances the power of the executives. This has been recognized in most countries of the world. Similar matter was brought before the *US Court in the US case of Crockett et al v. President Ronald w. Reagan*<sup>62</sup>, when the US congress sued the President claiming among other things, the Executive failure to allow Congress dispense with its duty to declare war, thus violating Article 1, Section 8, Clause 11 of the Constitution of the US, as implemented by the War Power Resolution. Although President Reagan won in the aforementioned case, the fact remains that the power of the parliament in determining the declaration of war is of outmost importance, though in the case of Nigeria, it is the

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<sup>61</sup> (2005) 2 NWLR (Pt. 910) 24, at 520 – 521.

<sup>62</sup> (1982) 558 F. Supp. 893 Civ. A. No. 81-1034. (USDC-DOK).

President that can declare, however, subject to the consultation of the senate as stated above.

The constitution of the Federal Republic of Nigeria is supreme and binding on every person and authority in Nigeria, so is the provision of S. 1(1). Subsection 2 is to the effect that any Law or Act that is inconsistent with the provision of the constitution is null and void to the extent of its inconsistency. This includes even an act of the Nigerian President contrary to the provision of the Constitution.

This was affirmed in the case of *A.G. Lagos v. A.G. Federation*<sup>63</sup>, where an act of the president was declared unconstitutional for violating the provision of the constitution. The Supremacy of the Constitution has been affirmed in plethora of cases such as *Inakoju v. Adeleke*<sup>64</sup> and *Abacha v. Gani Fawehinmi*.<sup>65</sup> The Act of President Buhari is unconstitutional hence a matter of gross violation. Although, it has been argued that a careful reading of Paragraph a and b of Subsection 4 of Section 5 shows that such approval can only be sought for when there is an armed conflict between the Federal Republic of Nigeria and another nation.

The argument put forward is not correct owing to the fact that the mischief behind the provision is to checkmate the power of the commander in chief with respect to matters of declaration of war, same as the war power resolution US congress. Thus, where the Nigerian President can deploy the military without the approval of the senate at any time in so far as it is not an armed conflict between Nigeria and another nation, the essence of the law would seem to be defeated.

Although, it can be argued that by virtue of s. 12(1) of CFRN, Nigeria having entered into Treaties such as that of the ECOWAS and the AU that have been signed, ratified and domesticated in Nigeria, Nigeria is under obligation to deploy her Military for the contribution to the peace and security of other member states. It should be brought to the fore that the Constitution does not prohibit the president from deploying in line with the Treaty, only that from the reading of s. 5 (4) (b), the approval of the senate is needed.

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<sup>63</sup> (2004) S.C. 70.

<sup>64</sup> (2007) 4 NWLR (pt 1025) 423.

<sup>65</sup> (2000) 4. S.C (pt II) 1.3, etc.

On this note, the seven (7) days as provided in the Constitutional exception need not elapse for an approval from the Senate in line with S. 5 of the Constitution being that the deployment of the Nigerian Army was done outside the exception stated in the said section.

## **6. Removal of Judicial Officers**

The 1999 Constitution of the Federal Republic of Nigeria, being the apex law which other laws, rules and regulation are subject to provides for the removal of judicial officers. A judicial officer is a public officer chosen to preside over and to administer the law in a court of justice, he is one who controls the proceedings in a courtroom and decides questions of law or discretion. A judge is a court officer authorized to decide legal cases. Judicial officer is not specifically defined in the CFRN 1999, however, it provides that reference to a 'judicial officer is a reference to the holder of a judicial office as mentioned in the Constitution. Judicial officer means:

*The office of the Chief Justice of Nigeria, a Justice of Supreme Court, the President Justice of Court of Appeal, the office of the Chief Judge or a Judge of the Federal High Court, the office of the President or judge of the National Industry Court, the office of the Chief Judge or Judge of the High Court of Federal Capital Territory Abuja, the office of the Chief Judge of a State and Judge of the High Court of a State, a Grand Kadi or Kadi of the Sharia Court of Appeal of the Federal Capital Territory or State, Abuja, a President or Judge of the Customary Court of Appeal of Federal Capital Territory, Abuja and of state.*

In Nigeria, there are mainly two categories of judicial officers namely, Federal Judicial officers, State Judicial Officers. Generally, the removal or disciplines of a judicial officer follow the relevant

steps or procedure provided in the CFRN 1999.<sup>66</sup> The position of the law is that a judicial officer shall not be removed from his office or appointment before his age of retirement except in the circumstances provided in the constitution<sup>67</sup> The constitution under section 292 (1) (a) provides thus:

*Chief Justice of Nigeria, president of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President Customary Court of Appeal of the Federal Capital Territory, Abuja, by the president acting on an address supported by two-third majority of the Senate*

Nevertheless, it also provides that:

*In any case, other than those to which paragraph (a) of this subsection applies, the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the Judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.*<sup>68</sup>

From the foregoing, the above provisions in the CFRN, it is evident that the removal of a Federal Judicial Officer is exercisable by the President acting on the address supported by the two-thirds majority of the National Assembly, praying that he be so removed for his inability to discharge the function of his office.<sup>69</sup>

<sup>66</sup> S. 318 (1) CFRN, 1999 (Third Alteration) Act 2010, S, 13 (a); Reviewed Code of Conduct for Judicial Officers in the Federal Republic of Nigeria 2016 Explanatory note.

<sup>67</sup> S. 292 CFRN, 1999.

<sup>68</sup> S. 292 (1) (b), *ibid*.

<sup>69</sup> P.A.O. Oluyede, *Constitutional Law in Nigeria (Evan Brothers (Nigeria Publishers) Limited 1992)*.

The removal of a Federal Judicial Officer or State Judicial Officer by the President or Governor cannot be constitutional without an address supported by two-third majority of the National Assembly in the case of Federal Judicial Officer and a prior support from the State House of Assembly in the case of State Judicial Officer. In other words, the Executive and Legislative arms of government work together in the removal judicial officer for the removal to be constitutional and valid. The exercise of combined powers here acts as a check on the power of the Executive arm of government. Although Osipitan<sup>70</sup> deprecated this practice in the following word ‘The involvement of the legislative arm of government in the removal of the Chief Justice of Nigeria and Heads of other Courts undermine judicial independence’

However, it is important that we understand whose power is exercised first. From the understanding of the above provisions, the legislative arm of government is expected to firstly make an address supported by a two-third majority before the Governor can act. The address for removal of a federal or state judicial officer is not given as a matter of course but is or should be predicated on any of the grounds listed under section 292 (1) (b) of the constitution.

In view of the priceless value attached to judicial office, removal of a judicial officer is not done peremptorily, the two-third majority required to support an address for removal of a judicial officer must be strictly observed. Where any of the legislative seat is vacant as such that a two-third majority cannot be reached, the law is that the vacant seat must first be filled through so bye-election so that the required number necessary for the removal of a judicial officer under the provision of the law can be attained. It is instructive from the provisions of the CFRN 1999 that a President or Governor can remove a judicial officer acting on the address supported by two-third majority National Assembly or State House of Assembly as the case may be.

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<sup>70</sup> T. Osipitan, *Safeguarding Judicial Independence under the 1999 Constitution* in Y. Akinseyi George and Gbamdamosi (eds), *The Pursuit of Justice and Development Essay in Honour of Honourable Justice Omotayo Onulaja*, OFR (RTD) (Diamond Publisher 2004) 23.

## 7. Supervisory and Monitoring Powers of the National Assembly

The Black's Law Dictionary defines Surveillance as the observation and collection of data to provide evidence for a purpose of scrutinizing a particular conduct. The National Assembly is empowered to supervise the activities of the executive in the policy implementation and strategies. The purpose of this power of the National Assembly is to ensure that executive sustain the principles of good governance through committee system.<sup>71</sup>

In order to carry out its functions effectively, the National Assembly usually divided into standing or ad hoc committees.<sup>72</sup> The Constitution empowers the legislature to create committees as may seem appropriate to it for the purpose of supervising the activities of the executive. However, they cannot directly delegate the power of legislation to these committees<sup>73</sup>. The purpose of these committees is to facilitate the carrying out of oversight functions of the legislature. The purpose of oversight functions is to ensure that acts of the national assembly are well implemented. This includes the supervisory of surveillance power of the National Assembly.

The parliamentary function of monitoring the executive branch derives from the principle that government is politically accountable to the National Assembly. The Fundamental Law provides that government shall be answerable to Parliament. It is the principle of the executive being answerable to Parliament that grants the National Assembly the power to withdraw confidence from the government if it disagrees with its policies.

Within the constitutional framework of legislative, supervision of budget is one of the key oversight powers and responsibilities of the National Assembly as enshrined under sections 88 and 89 of the 1999 Constitution. Specifically, section 88(1) stipulates that, subject to other provisions of the 1999 Constitution, each house of the National Assembly shall have the power, by passing resolutions, to direct, or cause to be directed, an investigation into any matter or

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<sup>71</sup> M.A. Nwosu, Committee system in the Nigerian legislature. (Abuja: National Library of Nigeria 2014).

<sup>72</sup> S. 62 CFRN 1999.

<sup>73</sup> *AG Bendel vs AG federation*; S.62(4) CFRN 1999.

thing with respect to which the has power to make laws, and into 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 executing or administering laws enacted by the National Assembly and for disbursing or administering moneys appropriated, or to be appropriated, by the National Assembly.<sup>74</sup>

The 1999 Constitution<sup>75</sup> stipulates that the powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to expose corruption, inefficiency in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

It is argued in some quarters that the source of this power of oversight is contained in S.88 of the constitution. This is the section of the constitution that confers investigative powers on the legislature.<sup>76</sup> However opposing this view is the opinion that the powers of oversight are broader than just investigation. Even if they are not stated in the constitution they will be inherent. This is due to the fact that pursuant to S.80 and S.81, it is the legislature that is in custody of the revenue of the federation and they are the ones to approve the budget of the federation. Therefore, since they are the custodian of revenue, it is inherent on them to ensure that the money is well utilised.

Monitoring the executive represents another key function of the National Assembly in addition to legislation. This monitoring is ultimately aimed at verifying whether or not the legislative will is being enforced and government operations actually comply with laws. Overseeing the executive requires a determined and strong legislative institution committed to its constitutional responsibility.<sup>77</sup>

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<sup>74</sup> S.R. Oloruntoba and C.O. Gbemigun, Accountability and public sector performance in the third world country: A case study of Nigeria. *International Journal of Trends in Scientific Research and Development*, 3(3): 2019  
<https://www.researchgate.net/publication/333701427AccountabilityandPublicSector> 13 August 2023.

<sup>75</sup> S. 88(2)(b).

<sup>76</sup> J. Omejec, Principle of the separation of powers and the constitutional justice system (2015) Retrieved from <<https://bib.irb.hr/datoteka/785200.Omejec>> 13 August 2023.

<sup>77</sup> O. Fagbadedo, Four Priorities for Nigeria's Newly Elected National Assembly (Durban University of Technology 2023) accessed <[www.google.com](http://www.google.com)> 10 August 2023.

The above is self-evident. Although executive power resides with the president, that power is not absolute. The president cannot play God. The president is subject to the constitution and to the laws made by the National Assembly. The National Assembly is the arm of government constitutionally empowered to oversee that is, to supervise and monitor executive in the execution of the governance of the land.<sup>78</sup>

The plenary, committees and individual Members of Parliament may also exercise other forms of parliamentary control. Monitoring may also take place through specialized institutions reporting to Parliament such as the State Audit Office and the Commissioner (Ombudsman) for Fundamental Rights.

Constitutionally obligated to make laws for the peace, order and good government of the Federation of Nigeria, the National Assembly between 1999 and 2007 performed dismally.

S4(3) with respect to any matter excluded in the exclusive legislative list to the exclusion of the House of Assembly of States and also on any matter in the concurrent legislative list and any matter which is inconsistent with it with the State House of Assembly shall be rendered a void.

In *Oil Palm V. AG Bendel State*<sup>79</sup>. It was held that the former Bendel State House of Assembly who attempted to investigate the functions of a limited liability company, Oil Palm Company Limited has no power to make such investigation as it is only the National Assembly that can make laws in reference to companies.

In addition to lawmaking the upper chamber in (senate) of the National Assembly is given a confirmatory role in certain appointments made by the President such as those of the Chief Justice of Nigeria and other senior judicial officers, Ministers, former Ambassadors, Chairmen and members of certain executive bodies created for the federation in Section 153, requiring confirmation in Section 154, of the constitution.

A State House of Assembly has a similar confirmatory role with respect to the appointment by the State Governor of the Chief judge of the State, State commissioners, Chairmen and other

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<sup>78</sup> O. Nwakanma, The Powers Of The National Assembly (Vanguard News 2016).

<sup>79</sup> 1985 6 NCLR 344.



members of certain bodies created for the State in section 197 of the constitution, requiring confirmation in Section 198.

A Declaration of War by Nigeria or of an emergency, whether in one state or in the Federation as a whole, also requires confirmation by the Senate Section 5(4).

## **8. Appropriation Powers**

This relates to power of the legislature to consider, scrutinize and approve the budget. This form of oversight enjoys both constitutional and statutory flavor. The committee on Appropriation is usually the lead committee while other standing committees become sub committees for the purpose of consideration of the Appropriation Bill. This is one of the most important form of oversight as it empowers legislative committees to subject estimates of MDAs to critical scrutiny to facilitate further consideration and approval of the Appropriation Bill.

This form is conducted at the time of enacting the law which gives committees the opportunity of checking excesses and abuse through misallocation of funds. It is also conducted during the implementation phase of the budget cycle. The success of a budget depends to a great extent on ability of a legislature to carry out oversight effectively. In particular, the legislature will be expected to ensure:

1. Timely submission of the Appropriation Bill to the legislature.  
This however depends on the time line for submission / presentation provided by the Constitution. This area is one of the challenges that affects the timeliness of approval and extends also to affect implementation and outcome;
2. Diligent and meticulous scrutiny;
3. Compliance with rules of practice and procedure in the conduct of budget defence and other components of the consideration process;
4. Timely and comprehensive reporting to the Appropriation committee and committee of supply or committee of ways and means depending on jurisdiction;
5. Utilization of relevant apparatus such as Public Account Committee (PAC) reports in scrutinizing estimates timely;

6. Effective and efficient oversight to monitor implementation; and,
7. Timely and comprehensive submission of oversight functions.

The Appropriation bill passed by the National Assembly every year in Nigeria always provide for how monies is to be released and how projects is to be implemented. The bill always authorizes how monies is received and expended through consolidated fund. Supplementary budget in case of unforeseen need for expenditure is also provide in the Bill that until the National Assembly passed a supplementary bill, such money cannot be expended by the Executive or judiciary. In *A.G. Bendel state vs A.G. Federation*<sup>80</sup> it was held that the National Assembly has to pass budget in strict compliance with the provision of the constitution. In 2013, the National Assembly received the budget and pass the estimate call Appropriation Act in that Act, like other Appropriation Act there are provisions like Section 2, 3, and 4 which provides for the monitoring, supervision and implementation of the Act.

## 9. Investigative Powers of the National Assembly

The National Assembly has many functions, the main of which is law making.<sup>81</sup> Aside its traditional law making function,<sup>82</sup> it is also saddled with the powers to conduct investigation into any matter or thing with respect to which it has power to make law;<sup>83</sup> and 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 executing or administering the laws enacted by the National Assembly, and disbursing or administering moneys appropriated or to be appropriated by the National Assembly.<sup>84</sup>

The resolution of the National Assembly that commands an investigation must be published in its journal or in the Official

<sup>80</sup> (1983) LPELR-3153(SC) P.23, paras D-F.

<sup>81</sup> S. CFRN, 1999.

<sup>82</sup> A. Uzoechi *The Scope and Limitations of the Investigative Powers of the National Assembly of the Federal Republic of Nigeria: An Appraisal* Reginald (2018).

<sup>83</sup> S. 88 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>84</sup> s. 88 (1) (b) (i) and (ii), *ibid*.

Gazette of the Government of the Federation.<sup>85</sup> That way, it would be notifying the general public and the person(s) affected<sup>86</sup> that an investigation has been initiated into the subject-matter indicated thereon. Without that it would be deemed that no investigation has been sanctioned.<sup>87</sup>

The powers to conduct investigation is specifically granted and exercisable, not only for the purposes of enabling the National Assembly to make laws with respect to any matter within its legislative competence and to correct any defects in existing laws;<sup>88</sup> but to further 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.<sup>89</sup> It was therefore wrong when a renowned legal analyst and public commentator, Jiti Ogunye<sup>90</sup> posited that the Senate that can only invite any member of the public to its investigative proceedings 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 a witness in a properly constituted inquiry under section 82 (1) (b).<sup>91</sup>*

The powers to conduct investigation and summon person(s) for that purpose<sup>92</sup> are broad powers, which are no doubts, inherent in the legislative process. These powers like every other public power are not at large, but limited by the enabling statutes,<sup>93</sup> public policy and

<sup>85</sup> s. 88, *ibid*.

<sup>86</sup> Who also must be issued a summons in compliance with s. 89 (1) (c) of the 1999 Constitution of Nigeria and s. 4 of the Legislative Houses (Powers and Privileges) Act.

<sup>87</sup> *Abdulkasheed Maina v the Senate of the Federal Republic of Nigeria &Ors* (Unreported) Suit No. FHC/CS/65/2013, Ruling delivered by Hon Justice Adamu Bello of the Federal High Court, Abuja on the 27th March, 2013.

<sup>88</sup> S. 88 (2) (a) CFRN, 1999.

<sup>89</sup> S. 88 (2) (b), *IBID*.

<sup>90</sup> O. Jiti, "Limits to National Assembly's Investigative Powers under the Constitution," *Premium Times* (May 17, 2016). Available online at <<https://opinion/premiumtimesng.com/2016/05/07/limits-national-assemblys-investigative-powers-constitution-jiti-ogunye>> accessed on July 9, 2018.

<sup>91</sup> More on this will be taking up subsequently under the subtopic: "Power of the National Assembly to Summon Person(s) to its Investigative Proceedings."

<sup>92</sup> S. 89 (c) CFRN, 1999.

<sup>93</sup> *Sanusi v Ayoola &Ors*. (1992) NWLR (Pt. 265) 275.

constitutional rights of citizens and must not be abused or exercised in bad faith.<sup>94</sup>

The scope and limitations of the investigative powers of the legislature is aptly captured by a learned Law Lord, Warren, C.J. in the case of *Walkins v United State*<sup>18</sup> thus:

*The power of the congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the congress to remedy them... But, broad as this power of inquiry is, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress... Nor is the Congress a law enforcement or trial agency... No inquiry is an end in itself; it must be related to, and in furtherance of a legitimate task of the congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible.*<sup>95</sup>

The powers of the National Assembly to conduct investigation are strictly subject to the provisions of the 1999 Constitution of Nigeria and where the exercise of such power exceeds its constitutional bounds the Courts are always on the guard to declare it null and void.<sup>96</sup>

In achieving the purpose of its investigative powers as conferred by sections 88 and 89 of the 1999 Constitution of Nigeria, the National Assembly usually adopts two major methods of

<sup>94</sup> *Amasike v. Registrar-General, Corporate Affairs Commission* (2010) 13 NWLR (Pt. 1211) 337.

<sup>95</sup> W. Rotimi, "Nigerian National Assembly and their Powers," *Daily Trust Newspapers*, Tuesday, April 12, 2005, p. 40.

<sup>96</sup> *Adikwu & Ors. v Federal House of Representatives and Ors.* (1982) 3 NCLR 394; *Tony Momoh v The Senate of the National Assembly & Ors.* (1983) 4 NCLR 269; and *El-Rufai v House of Representatives* (2003) FWLR (pt. 173) 162.

proceedings viz: Committee Investigation<sup>97</sup> and Public (Investigative) Hearing.<sup>98</sup> It must be noted that the legislative investigation being typical legislative function, it could either be plenary or delegated.<sup>99</sup>

For effective execution of its investigative functions, the National Assembly is armed with the powers to 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;<sup>100</sup> and require such evidence to be given on oath.<sup>101</sup>

Pursuant to the above, the National Assembly or any of its committee empowered to carry out investigative functions under section 88 of the 1999 Constitution of Nigeria are also empowered to 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.<sup>102</sup>

A person summoned to the investigative proceedings of the National Assembly is under a constitutional obligation to answer the summons by attending the investigative proceedings in person.<sup>103</sup> Where the person so summoned 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, the National Assembly can issue a warrant to compel the attendance of such recalcitrant person.<sup>104</sup>

For such summons to be deemed as having been validly issued, the decision/resolution of the National Assembly to direct or cause to

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<sup>97</sup> M. Tony, "The Powers and Functions of the Legislature: The Role of Media" a paper presented at the seminar for members of National Assembly, Abuja on May 21, 1999, p 15.

<sup>98</sup> Policy and Legal Advocacy Centre (PLAC), *Guide to Legislative Oversight in the National Assembly*, (Abuja, PLAC, 2016) p. 14.

<sup>99</sup> A. A. Emiko, *The Theory and Practice of Constitution Law in Nigeria*, (Benin: Mufti, 2001) p. 5.

<sup>100</sup> S. 89 (1) CFRN, 1999; and Legislative Houses (Powers and Privileges) Act, s. 4 (a).

<sup>101</sup> S. 89 (1) (b); *ibid*; s. 7, *ibid*.

<sup>102</sup> S. 89 (1) (c); *Ibid*; Ss. 4 (b) and (5), *ibid*.

<sup>103</sup> A. A. Emiko, *The Theory and Practice of Constitution Law in Nigeria*, (Benin: Mufti Press, 2001) p. 5.

<sup>104</sup> *Ibid*, s. 89 (1) (d); *Ibid*, s. 6.

be directed an investigation under section 88 of the 1999 Constitution of Nigeria ought to be published in its journal or in the Official Gazette of the Government of the Federation;<sup>105</sup> else it would be deemed that no such investigation has been ordered or directed in the first place.<sup>106</sup>

The power of the National Assembly to summon person(s) to its investigative proceedings has been a subject of controversy in recent time, on whom, under what circumstances and the reasons the National Assembly could summon any individual. One among such controversies is the summons the Senate of the Federal Republic of Nigeria issued to the Inspector-General of Police (IGP), Ibrahim Kpotum Idris, on three occasions and the IGP trice failed, refused and neglected to answer the summons. In the latest of these summonses, the IGP was summoned by the Senate for two reasons. The first reason was for him to address the Senate and answer questions on the travails of Senator Dino Melaye in the hands of the Police and the second reason was for the IGP brief the Senate and answer questions on the spate of killings (especially by herdsmen) across the country.

## **10. Conclusion/ Recommendations**

This article was set out to investigate legislative oversight functions of the National Assembly and good governance in Nigeria. The study confirmed that the National Assembly performed its constitutional responsibility of legislative oversight even though The article observed that the oversight power of investigation given to the National Assembly is not in full. The power is only limited to areas the National Assembly have power to make laws. Where the National Assembly has no power to make law, they cannot invite anybody for investigation. The very essence of the National Assembly oversight powers is to ensure that each and every arm of government is accountable and to ensure transparency by checkmating other arms of government and governmental department in discharging their constitutional obligation. The investigative power of the National Assembly did not extend to all

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<sup>105</sup> S 88, *ibid.*

<sup>106</sup> *Abdulasheed Maina v the Senate of the Federal Republic of Nigeria & Ors*(supra).

national activities where the interest of the country will be best protected and not to be limited to where the National Assembly has power to make laws.

The article recommends that section 88 of the 1999 Constitution should be amended in order to gives power to the National Assembly to conduct investigation in all areas of national interest not only in areas it has powers to make laws. The investigative power of the National Assembly should extend to all national activities where the interest of the country will be best protected and not to be limited to where the National Assembly has power to make laws.