

THE LEGAL REGIME OF NATIONAL ASSEMBLY PROBES AND SUSPENSION IN NIGERIA

Written by *Samuel Inyang Akpan*

Senior Lecturer, University of UYO, Nigeria

ABSTRACT

The Nigerian Fourth Republic started in 1999, and the country began another journey into democratic experiment. The 1999 Constitution¹ gives power to the National Assembly to set up probe panels to conduct investigations, examine witnesses, hear evidences on oath and take decisions or make recommendations. These activities in effect affect the citizens' rights and obligations in one way or the other. This process is known as legislative adjudication. Section 88(1) of the 1999 Constitution empowers the National Assembly by resolution published in its Journal or in the official Gazette of Government of the Federation to direct or cause to be directed an investigation into (a) any matter or thing with respect to which it has power to make laws and (b) the conduct of affairs of any person, authority, ministry or government department charged or intended to be charged with the duty or responsibility for: (i) executing or administering laws enacted by the National Assembly, and (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly. Section 89(c) of the 1999 Constitution further provides that the National Assembly shall have power 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. The National Assembly has invoked these provisions on their members, private corporations, public servants, business organizations and its citizens. They are in one way or the other summoned to appear before either the National or State Assemblies for the purposes of any investigation under Section 88 of the Constitution. Moreover, Section 60 of the Constitution has also empowered the National Assembly to regulate its own procedure, including the procedure for summoning. The National Assembly vested with these

¹ Section 88 and 89 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

powers may by resolution delegate any functions exercisable by it to any such committee appointed by the House.² These Committees have been sanctioning its erring members through various terms of suspension or other sanctions. This paper seeks explore the validity or otherwise as to whether, the National Assembly in invoking these provisions have complied with the procedural regularities of natural justice. Secondly, the extent of its powers to summon “any person” under the provisions of the Constitution. It is our finding that, excessive uses of the powers to summon any person have been abused by the legislatures, and has taken a toll on the economy negatively. The paper concludes that, due to the prevailing rate of indiscipline and corruption in the country, sanctions of erring members of the House should be encouraged, but that the Committee should act fairly.

INTRODUCTION

The concept of the supremacy of the Constitution and separation of powers as it extends to the three arms of government in Nigeria is well settled. Each arm of government should act as a check and balance on the other arm of government since there is no strict separation of powers in a constitutional democracy. For example, the executive can check the legislature by exercising its veto powers, the legislature also can use the relevant majority votes to override any Presidential veto. Whilst the judiciary may declare any act of the legislature or executive unconstitutional, null and void.³ The legislature through the concept of delegated powers exercises quasi-judicial powers when it exercises its powers under section 89 of the Constitution, and takes any decision that affects the rights and obligations of any citizen. The Investigative powers of the legislature under the above section are broad, it encompasses the power to carry out Inquiries concerning the administration of existing laws or laws enacted by the legislature, as well as proposed or possibly needed statutes, and (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly and the activities of any person connected thereto. In *Mc Grain v Daughy*⁴, the United States Supreme Court settled the question of the right of the US Congress to conduct investigations when it said that;

² Section 62(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

³ E. Malemi, *The Nigerian Constitutional Law*, (Princeton Pub.Co. Ltd, Ikeja, Lagos. 2010)p.159

⁴ 716 Ed. 590, see also *Watkins v United States* (354 US 178, *Townsend v United States* (95F.2d.352(D.C, Cir. 1938

“The power of Congressional Inquiry with the process to enforce it, is an essential and appropriate auxiliary to the legislative function”

The Supreme Court also in *Watkins v United States*⁵ said that; “The power of Congress to conduct investigations is inherent in the legislative process”

In Nigeria, for the National Assemblies to checkmate the activities of its erring members, and the public as well, the Constitution allows the two Houses of the National Assembly to make regulations concerning their procedures. Section 60 of the 1999 Constitution provides:

Subject to the provisions of the 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.

The above provision gives the National Assembly the power to enact the Legislative Powers and Privileges Act.⁶ Section 4 of the Act makes it clear that a Committee of the House or the House can summon any person to appear before it. The Act also grants members of the Legislative Houses in the National Assembly immunity from litigation for actions taken at plenary or committee proceedings of the House or its Committee.⁷ It authorizes the law makers to summon any person to appear before them for purposes of giving evidence, including power of an officer of the legislative house to arrest any person who commits an offence against the Act. The Act also regulates the conduct of its members and other persons connected with the proceedings thereof and for matters connected therewith.⁸ Section 21(1) and (2) of the Act deals with Contempt of Legislative Houses and states as follows:

21(1) any member of a Legislative House who-

- (a) being a member of a Committee of the House, publishes to any person not being a member of such committee any evidence taken by the committee before it has been reported to the House; or
- (b) assaults or obstruct a member of the Legislative House within the Chamber or precinct of the House or,

⁵ (354) US 178

⁶ Laws of the Federation of Nigeria(LFN) 2004

⁷ R. Egbe, “Who Can Suspend a Lawmaker” The Nation April,24,2018 p.22

⁸ Ibid. p.22

- (c) assaults or obstruct any officer of the Legislative House while in the execution of his duty; or
- (d) Is convicted of any offence under this Act shall be guilty of contempt of the Legislative House.⁹
- (2) Where any member is guilty of contempt of a Legislative House, the House may by resolution reprimand such member or suspend him from the service of the House for such period as it may determine: Provided, that such period shall not extend beyond the last day of the meeting next following that in which the resolution is passed, or of the session in which the resolution is passed, whichever shall first occur.¹⁰
- (3) No salary or allowance payable to a member of a Legislative House for his service as such shall be paid in respect of any period during which he is suspended from the service of the House under the provisions of this section.
- (4) Nothing in this Section contained shall be construed to preclude the bringing of proceedings, civil or criminal against any member in respect of any act or thing done contrary to paragraph (b) or (c) of subsection (1) of this section.

Section 22 further states that; suspended members shall be excluded from Chambers and its precinct.¹¹ A member of a Legislative House who has been suspended from the service of that House shall not enter or remain within the Chamber or precinct while such suspension remains in force, and, if any such member is found within the Chamber or precinct of the House in contravention of this section, he may be forcibly removed therefrom by any officer of the House and no proceedings shall lie in any court against such officer in respect of such removal.¹²

⁹ *Ibid.* p.22

¹⁰ *Ibid.* p.22

¹¹ R. Egbe, "Who Can Suspend a Lawmaker" *The Nation* April,24,2018 p.22

¹² *Ibid.* p 22

DOES THE ACT CONFLICT WITH THE CONSTITUTION?

In section 6(6) (b) specifically states that the judicial powers of the court shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person. Egbe¹³ argued that this provision appears to be in conflict with section 21(2) of the Legislative Houses (Power and Privileges) Act 2004. He maintains that, it is within the province of the court to determine or otherwise the culpability of a member. The setting up of a Committee to perform judicial act violates the concept of separation of powers. He further said that, the Legislators are not at liberty to exercise the power of suspension of a law maker whether his or her constituency likes it or not, for such a period as long as even a whole session of the Senate. Falana¹⁴ also agrees with him when he said, an elected legislator can only be suspended either by the tribunal or court, or by the constituency that elected him. The provision for suspension or removal by the House is unconstitutional. The Court of Appeal is saying you have shut out the constituency from representation and that is not within the contemplation of the Constitution.¹⁵ He submitted that the power of suspension for 14 days or for whatever length of time under the Legislative Houses (Power and Privileges) Act 2004 is contrary to the 1999 Constitution and therefore void. Under the Legislatives Powers and Privileges Act,¹⁶ a legislator has immunity over whatever he says in the parliament. The only avenue for redress where the legislator errs is to proceed against him in the regular court.

We most respectfully submit to the contrary, because section 36(1) and (2) of the Constitution gives power to the administering authority to determine questions arising in the administration of any law that affects or may affect the civil rights and obligations of any person. Section 21 of the Act is in conformity with the Constitution. Therefore, the administering authority in this case is the National Assembly, which can act through its Committee. Thus, the Act does not in the main conflict with the Constitution.

¹³ *Ibid.*

¹⁴ Falana, "How a Legislator ought to be removed", The Nation, April, 24,2018 p.23

¹⁵ In *Bauchi House of Assembly v Dana*, the Court of Appeal held that a legislative house is not competent to suspend a member for a single day, as it is a violation of the democratic rights of members of his/her constituency, culled from the Nation, April 24, 2018 p.23

¹⁶ Section 4 and 5

Secondly, the Constitution of Nigeria¹⁷ grants to every person freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. The above provision is in tandem with section 4 of the Legislative Powers and Privileges Act, which grants members of the Legislative Houses in the National Assembly immunity from litigation for actions taken at plenary, or committee proceedings of the House or its Committee. These include commentaries, debates and any communications made on the floor of the House. The mere breach of these provisions by the National Assembly does not mean that the Act is in conflict with the Constitution. Fred Nzeakor¹⁸ remarks that, for every privilege, there is a responsibility. The Legislative Powers and Privileges Act, guarantees a parliamentarian the right to say anything on the floor of the Parliament, and he is not liable to be prosecuted, or be held accountable. But when he leaves the floor of the parliament where he has legislative immunity, and then goes outside to make some utterances to disparage the very institution he took oath to sustain. Then he is not covered by the immunity provided by the Act. He further maintains that, whatever goes on in the parliament is not in the purview of the court to look into by the doctrine of separation of powers except if a particular aspect of the Constitution is breached, that is when the court will be activated. The Act and the Constitution were observed in the breach when on June 7, 2012, the Bauchi State House of Assembly suspended its member representing Bogoro Constituency, by name Rifkatu Samson Dana. Her case was that, while making her point, she said the unanimous and hurried manner in which the decision of the House was reached, suggested that there must have been a meeting on the matter which she was not privy. That statement was considered derogatory to the House and Dana was made to apologize verbally and in writing. Despite her apologies, a report of the House Committee on Anti- Corruption, Ethics and Privileges found her remarks during a parliamentary session “repugnant, distasteful and quite derogatory”. An investigative House Committee recommended that she should either be suspended indefinitely or be issued with a letter of warning. She sued the House at the Bauchi State High Court which declared her indefinite suspension illegal, unconstitutional and restored her seat. On Appeal, the court affirms the trial court’s judgment. Despite this judgment, there have been series of sanctions against members by both the National and State Assemblies in breach of the Act and the Constitution. In 2016, the House of Representatives suspended Abdulmumin Jibril for 180 days. On March 30, 2017, the Senate suspended Ali Ndume for 90 days. On April 12, 2018, Senator

¹⁷ Section 39(1) of the 1999 Constitution

¹⁸ F. Nzeakor” Why Omo-Agege’s Suspension may be Justified” culled from the Nation Newspaper of April,24,2018 p.23.

Ovie Omo-Agege was suspended during plenary over his remarks that the amendment of the 2010 Electoral Act which attempts to change the sequence of elections set by the Independent National Electoral Commission (INEC) was targeted at President Muhammadu Buhari, the President of Nigeria. The Senate Committee on Ethics recommended that the Senator be suspended for 181 legislative days, but the Chamber reduces it to 90 days.¹⁹ From the above scenarios, it appears that most legislative adjudications have out- stepped their bounds, and the court does not waste time in declaring their actions *ultra vires*, null and void.

It must be noted that the powers of investigation vested in the National Assembly by section 88(1) of the Constitution of Nigeria (as amended) is limited and should be exercised within the confines of Section 88(2)(a) and (b) of the Constitution.²⁰ This played out well in Maina's case,²¹ wherein the Attorney General of the Federation contended that, the National Assembly could not constitute itself into a quasi-appellate court, tribunal or panel with a view to reviewing any administrative or executive actions such as, the employment, attendance at work, disengagement, reinstatement or promotion of a civil servant which are matters outside the exclusive and concurrent list contained in the Constitution of the Federal Republic of Nigeria. The allegations against Maina fell short under any of the items in section 88(2) of the Constitution.

DISCRETIONARY POWERS OF THE COMMITTEE OR PANEL SET UP BY LEGISLATURE

Section 21 of the Legislative Houses Powers and Privileges Act²², empowers the National Assembly to exercise its discretion in imposing sanctions on any of its members who have been found wanting.²³ Quasi-judicial panel or Committees exercise a wide range of discretion in the course of performing their work, since they are masters of their own proceedings. In some circumstances, as is frequently experienced, the concerned individuals or groups that are affected by such powers are not sufficiently protected especially in cases where the basic procedural rules of acting fairly is breached; resulting in mal-administration, arbitrariness,

¹⁹ R. Egbe, "Who can Suspend a Lawmaker" The Nation Tuesday April 24,2018,p22

²⁰ 1999 Constitution of Nigeria(as amended)

²¹ A. Maina, Former Chairman, Presidential Pension Task Force, The Nation, Jan.2018 p.5

²² 2004

²³ A. Philips, "Who can Senate Summon?" Nation, April 4, 2017 p.22

omission or misconduct on the part of the authority. Discretion to a large extent is resorted to by quasi-judicial panels for the sake of speed, economy and expertise while adjudicating on a particular subject. This enables the government to meet up with the exigencies or problems that arose in a particular situation. Unfortunately, most of their decisions involve political and economic considerations which sometimes are left to the domestic forum or internal affairs of the parties or institutions themselves. Most times, the jurisdiction of the court in those areas is ousted.²⁴ To a large extent, most subjective discretionary powers are affected by ulterior motives, improper purpose, and arbitrariness. The practicability of the rule of law suffers disrespect in this country because those who are privileged to exercise discretion seems to lack the wisdom “to discern by the right line of law” resulting in the abuse of discretion.²⁵ However, there is the rebuttable presumption that a valid Congressional investigation has no ulterior motives apart from aiding Congress to enact or improve upon existing legislation. Thus in *Tenney v Brandhove*²⁶ and *Barenblatt v United States*²⁷, the US Supreme Court validated Congressional investigations and threw out arguments that individual members of the Congress had personal and political interest to serve.²⁸ One wonders whether in a fledging democracy such as in Nigeria, personal and political interest can easily be whittled down.

However, in a more conservative approach, it is not open to the Committee of the National Assembly to cloth itself with the aprons of the court and purport to make final decisions on issues of legal rights and liabilities in blatant breach of section 36(2)(b) of the Constitution. The investigative committee of the National Assembly has no power to make judicial decisions with judgmental flavour by means of political resolution or otherwise. The investigative power of the National Assembly resolutions is only recommendatory and does not extend to the grant of judicial relief or redress.²⁹

Ademola Ajaji³⁰ put the matter in a proper perspective when he commented thus; that the Constitution gives the National Assembly only the power “to direct or cause to be directed”

²⁴ PDP v INEC (2001) FWLR (Pt.31) 2735

²⁵ G.O.S, Amadi “ Political Jaywalking and Legal Jiggery-Pokery in the Governance of Nigeria, Wherein lies the Rule of Law” (UNN, Nsukka Senate Ceremonial Committee, 2011) p.53

²⁶ 341 US 367-378 (1951)

²⁷ 360 US 109 (1959) at 132-133

²⁸ Senator O. Agege comment on the floor of the House was regarded as coloured with bad motive.

²⁹ R. Ak injide, “Senate’s declaration of IGP as enemy of democracy” The Nation, May 15,2018 p.28

³⁰ A. Ajaji, ”House of Representatives Investigation and Tax Audit of 180 Companies” The Nation. May, 17,2012, p.17

that such inquiry should be carried out on matters enumerated in section 88(1) of the Constitution. He said that, the correct position should be that, upon receiving the resolution of the Assembly, it became the constitutional duty of the Executive to set up a Judicial Panel of Inquiry into the matter. Such a panel being judicial or quasi-judicial in nature has to be given clear terms of reference, stating clearly the various issues to be examined and reported upon. All persons and organizations likely to be affected by any allegation or statements are made available to the panel, and all persons who may be affected by the outcome of the recommendations of the inquiry must be informed of such allegation and statements in advance of the investigation. Any departure from this is unconstitutional and capable of being challenged in court. This conforms to the time honoured principle for the conduct of judicial and quasi-judicial proceedings which has long been laid down or established in our judicial system. Aside from giving the adverse party the opportunity of fair hearing, the tribunal must not be the accuser and the judge in the same case and at the same time. But the underlining criterion is that the tribunal must act fairly. Acting fairly³¹ and legitimate expectations have been applied liberally by either administrative or legislative adjudications/determinations without necessarily engaging in the more technical application of the phrase natural justice. This was laid down in the celebrated case in *Board of Education v Rice*³²

THE POWERS OF THE NATIONAL TO ISSUE SUMMONS TO ANY PERSON

Most often asked questions have always been whether the Senate or the House of Representatives or State Assemblies have the powers to invite or summon any individual or person to appear before it? The truth of the matter is that, the Constitution and the Legislative Powers and Privileges Act makes provision for this, but the manner of application of these provisions had left much to be desired.³³

³¹ The origin of the word “acting fairly” emanated from the decision of Parker CJ in the celebrated case of Re- H.K (1967) 2 QB 617

³² (1911) AC 179, Consequently, acting fairly has now been applied to control or regulate the proceeding of a variety of administrative agencies such as arbitrators, disciplinary committees of professional bodies and voluntary associations as well as every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences on individuals.

³³ Section 89(2) of the 1999 Constitution (as amended) and section 4 and 5 of the Legislative Powers and Privileges Act 2004 makes provision for summons. If the National Assembly issues any summon

Sebastian Hon (SAN)³⁴ recalled that a similar situation had played out in the case of *Tony Momoh v Senate of the National Assembly*.³⁵ Momoh published in the Daily Times of April 2, 1980 an Article wherein the Senate of the Second Republic found aggressive. A Senate Committee then invited Momoh to appear before it to clarify those press comments. Momoh challenged the invitation in court. The Court of Appeal held *inter alia*, that the provision in 1979 Constitution equivalent of section 88 of the 1999 Constitution enabled either House of the National Assembly to exercise the powers named therein only with respect to “ any matter or thing” it had power to make laws and the conduct of any person, authority, ministry, or government department. In other words, the section did not generally authorize the National Assembly to invite members of the public over statements made by them. Consequently, that the power to expose corruption or inefficiency was limited to government departments and functionaries. In United States, it was held in *McGrain v Daugherty*³⁶ that investigation by the Senate as to whether the Justice Department of the US Federal Government was performing or neglecting its duty was constitutionally proper, because this rightly fell under Congressional Oversight functions. Arguments that the resolution of Congress did not specifically state that the investigation was in aid of legislation, hence was invalid were rejected. The US Supreme Court concluded that a legislative purpose is always to be presumed once the subject matter falls within the legislative jurisdiction of the Congress, because the only legitimate object the Senate could have in ordering the investigation was to aid it in legislating. The principles or rules are that, the powers of the National Assembly to investigate are not general but limited to the execution or administration of laws enacted by the lawmakers and the disbursement and administration of moneys appropriated by it. The National Assembly powers to summon or invite members of the public only extends to when it wants to gather facts for the purpose of enabling it to make laws or amend existing laws. The purport of oversight functions does not vest in the National Assembly the power to scrutinize the conduct of every member of the public.³⁷ This played out during the Senate’s invitation to Professor I, Sagay,(SAN) to appear before it on the allegation that he described the Senate under Bukola Saraki as “the worst since

which does not fulfill the above stated conditions, such summons is incompetent and can be set aside by a competent court.

³⁴ S. Hon, “ Can the Senate summon Sagay” culled from the Nation, Tuesday April 4, 2017 p.21the

³⁵ (1982) 2 FNLR 307

³⁶ 273 US 135(1927)

³⁷ See also *El Rufai v House of Representatives* (2003) FWLR (Pt.173) 162, *Attorney General of Abia State v Attorney General of the Federation* (2006) All FWLR (Pt.338) 604 at 674,

1999 and concluded that the current National Assembly has not performed creditably.”³⁸ Granted that the comments were not salutary; does that warrant him to appear before the Committee of the Upper House? C.A. Philips³⁹ commented that, pursuant to section 88 and 89 of the Constitution, the National Assembly as a whole have oversight functions over government institutions that are the beneficiaries of appropriations approved by it. To that end, they are able to summon public officers who in their capacity are subject to such appropriations. However, what the Senate has summoned Prof Sagay to appear before them for is not within the ambit of their powers under sections 88(2) and 89© of the Constitution. In a democracy, you cannot summon a person for expressing his personal opinion on a matter of national interest. For example, section 39(1) of the 1999 Constitution provides that: “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference” But M. Ozekhome has a different view when he commented thus;⁴⁰ that the National Assembly investigative function under section 88 and 89 of the Constitution covers not only public officials but “all persons who had inputs into matters over which the National Assembly has powers to make laws”. Section 4 of the Legislative Powers and Privileges Act (2004) makes similar provisions that a Committee of the House can summon “any person”. This is distinct from “some persons”. Therefore, we submit most respectfully that, the combined effect of these provisions is that the person so invited by the National Assembly must be material or relevant in aid of legislation making or matters appertaining to it and should not be matters outside the constitutional purview of the legislature. We further submit that, the provision is not be open ended, but must be interpreted to fulfill the legislative intentions. The summons of Prof. Sagay can be distinguished from the summons of the Nigerian Inspector General of Police, Ibrahim Idris requiring him to address the Senate on the killings in some parts of Nigeria, and alleged inhuman treatment of Senator Dino Melaye following his arrest for gun running. The Inspector General of Police under the provisions of the Police Act 2004 is charged with the responsibility of executing or administering laws made by the National Assembly. The United States Supreme Court decision in *McGrain v Daugherty*,⁴¹ which had been adopted in Nigeria, described the extent of the investigative or oversight functions of Congress as encompassing inquiries concerning the

³⁸ A. Oba, “ Re: Sagay v NASS: Facts and Falacies” The Nation, May18,2018 p.19

³⁹ C. A. Philips “Who can Senate Summon” The Nation, April 4,2017 p.22

⁴⁰ M. Ozekhome, “Who can Senate Summon” The Nation, Tuesday April 4,2017 p.22

⁴¹ 273 US 135(1927)

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. It comprehends probes into departments of the Federal government to expose corruption, inefficiency or waste. The phrase “survey of defects in our social, economic or political system” in the above dictum is wide enough to include the Inspector General of Police. Therefore inviting the Inspector General of Police by the Senate is proper and constitutional. The US Supreme Court concluded that a legislative purpose is always to be presumed once the subject matter falls within the legislative jurisdiction of Congress⁴². But however, it must be noted that resolutions must be mature in nature, they must not be borne out of vengeance, overzealousness, legislative rage or personal animosity. Resolutions can only be binding if it has the force of law, but generally, resolutions are not binding as they are advisory in nature.⁴³ Any resolution that tends to undermine the provisions of the Constitution cannot stand.

It must also be noted that, the advantages of oversight functions by the National Assembly cannot be overemphasized, as it tends to control corruption and waste in governance. We also venture to add that uncontrolled and unguarded probes are not healthy to the economy, for example. The Lagos Chamber of Commerce and Industry (LCCI) had urged the National Assembly to be cautious in its oversight and investigative roles to avoid economic disruptions and loss of investor’s confidence.⁴⁴ The body noted that, frequent summons of organizations by the legislature had significant financial implications to organizations not domiciled in the Country in terms of cost of flights, hotels and other logistics for appearing before the National Assembly. The Executive time committed to appearance before Committees of the National Assembly is enormous. There is need to streamline the summons and public hearings to avoid duplications and overlap between the Senate and House of Representatives. There are other bodies that have better competences, capacities and structures for investigation of infringement

⁴² S. Hon, “ National Assembly has Power to summon IGP” *The Nation*, May 15, 2018 p.27

⁴³ The recent face-off between the National Assembly and the Executive due to the latter’s refusal to honour legislative resolutions has taken its toll on governance; it has slowed down the decision making process; it has heightened political tension. There should be regular interaction between the leadership of the Senate and the Executive to smoothen rough edges . The Senate should use the power of summon sparingly. Frequent exercise of this power makes it lose its value.

⁴⁴ The most recent of such public pronouncements was the alleged N30 trillion revenue loss and the allegedly missing 288 Vessels by the Senate Joint Committee on Customs, Excise and Marine Transport. Some 63 firms were accused of complicity in the alleged scam. These are grave allegations that needed to be subjected to proper scrutiny, before making them public issues.

of the law.⁴⁵ This would enable the National Assembly to focus on its core mandate of representation and lawmaking. The economy needs investors to boost job creation and accelerate the economic recovery process of the Federal Government (ERGP).⁴⁶

CONCLUSION

The National and State Assemblies as an institution perform the functions of checks and balances in government. The Constitution also gives them powers to perform some quasi-judicial functions by probing into other arrears of governance through oversight functions, in order to correct any defect in existing law, to 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. In order to effectively carry out these functions, Section 89 of the Constitution provides the criteria to be followed and the powers attached thereto. Since this aspect of legislative function requires determination of people's civil right and obligations, the law requires minimal requirement of procedural formalities of fair hearing as a whole and proper application of the law since the livelihood of most individuals may likely be affected. The fact remains that, the level of indiscipline in both our legislative institutions and the country has assumed an alarming proportion, requiring positive and sustained effort to stem it. The Constitution and the Act gives the National Assembly the powers to impose appropriate sanctions on their erring members as a way of maintaining discipline in their hallowed chambers.⁴⁷ One of such measure is suspension. We had seen diverse views on this. Some have agreed to the fact that, the legislature as an institution should possess some powers of control over its members in order to whip them into line. In actualizing this, section 21(a-d) of the Act should be complied with. It only relates to if a member commits contempt of the House. What constitutes contempt had been expressly stated in the Act. The Committee of the House should confine itself to these offences. Suspending a member for making his/her opinion

⁴⁵ Matters that can be investigated by statutory agencies of government such as the Police, the EFCC, the Independent Corrupt Practices and other Related Offences Commission (ICPC) Federal Inland Revenue Service (FIRS) Nigeria Custom Service (NCS) should be referred to such institutions and for the court for prosecution.

⁴⁶ LCCI to National Assembly: "Summoning Business Chiefs can discourage Investors" The Nation, August, 15, 2017 p.10

⁴⁷ To that extent, section 21 of the Legislative Houses Powers and Privileges Act, 2004, empowers the National Assembly to exercise its discretion in imposing sanctions on any of its members who have been found wanting.

on the floor of the House contravenes the Constitution and Section 4 of the Act which confers immunity on members during plenary⁴⁸. The word suspension was defined in *University of Ilorin v Akinrogunde*, the Court of Appeal defined Suspension as the act of temporarily keeping a person away from performing a function, occupying a job or exercising a right or privilege or to prevent him from being in effect for a time, to stop temporarily. Also the Supreme Court in *Esiaga v University of Calabar*, the court observed that, the verb “suspend” from which the word suspension emanates, means in the context that it was essentially to defer, interfere, interrupt, lay aside, and temporarily hold in abeyance. It means what it says, that is to cause to abate for a while or halt midway but not to bring to an end. It always connotes a state of affairs that should wait until a certain event takes place. The Supreme Court in that case gave an imprimatur to the exercise of that power, holding that it does not derogate or contravene the principles of fair hearing as provided in the Constitution. In the view of the Court, such act as suspension is an administrative act intended to ensure good and stable administration and not necessarily a disciplinary measure. Scholars like Adeogun-Philips relied on section 60 of the Constitution which allows the National Assembly to formulate its own procedures including its ability to regulate the conduct of its own members. To that extent, section 21 of the Legislative Houses Powers and Privileges Act 2004, empowers the National Assembly to exercise its discretion in imposing sanctions on any of its members who have been found wanting.⁴⁹ But other scholars believe that, when suspension is indefinite, it virtually becomes a disciplinary measure in the legislature, which to some extent affects the legal right and interest of the parties involved and their constituency. Some describes such suspension as an act of impunity and the height of serial illegality.⁵⁰ What is happening in the National Assembly can be compared to what was very rampant in our University Institutions. The students in the University were very fast in challenging any action meted out by the University to erring

⁴⁸ Femi Falana is of the view that, the lawmakers have no authority to deprive a constituency of representation either temporarily or permanently according to judicial decisions mentioned above.

⁴⁹ A. Philips, “Who can Senate Summon?” Nation, April 4, 2017 p.22

⁵⁰ In *Bauchi House of Assembly v Dana*, the Court of Appeal held that a legislative house is not competent to suspend a member for a single day, as it is a violation of the democratic rights of members of his/her constituency. In *Dino Melaye v House of Representatives*, the Federal High Court declared the indefinite suspension illegal and unconstitutional on the ground that a legislator could not be suspended for more than 14 days.

students relying on the decision of *Garba v University of Maiduguri*.⁵¹ But the dictum of Pat Acholonu JSC⁵² was very instructive when he declared as follows;

... the aim of suspending the student is to abort any likelihood of threatened disturbing atmosphere snowballing into an uncontrollable situation; His Lordship went further to state that, the celebrated case of Garba v University of Maiduguri is not intended to be a court given license and juridical umbrella to provide students of unbridled, recalcitrant and impetus behaviour in the University system who have no sense of ethics and acceptable level of decency in a civilized society to cause ruination to the educational system by their uncouth and display of primitive characterizations.

Perhaps, one will not be asking for too much if our legislators are advised to learn from other developed democracies and conduct themselves, and moreover rise above personal interest in the conduct of legislative affairs. Suspension as a disciplinary measure should not be indefinite, but its duration should be ascertained.

⁵¹ (1986) ANLR 149

⁵² In *Esiaga v University of Calabar & 2 ors* (2004) 7 NWLR(pt 872) at p.387