



BRIBERY AND MAJOR MISCONDUCT: LIMITS, RESTRICTIONS AND EXERCISE OF POWERS OF THE HOUSE OF REPRESENTATIVES

Introduction:

The National Assembly of the Federal Republic of Nigeria (“NASS”) which is comprised of the Senate and the House of Representatives (“HoR”) is vested with powers to conduct investigations and/or to direct the conduct of investigation into matters in respect of which it is empowered to make law. This investigative power of the NASS derives from **section 88 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** (“the Constitution”) and covers the conduct of affairs of persons, authority, Ministry or government department charged with or intended to be charged with the execution or administration of Acts of the NASS and the disbursement and administration of moneys appropriated by the NASS. However, this power of the HoR is only exercisable within constitutionally defined parameters such that the Constitution sets limits on the powers. Here, we examine the powers of the HoR in relation to its oversight functions in tackling corruption in Nigeria with a keen interest on the limitations set on those powers.

The powers of the HoR to conduct investigations:

The Constitution provides that the NASS shall have power to make laws for the peace, order and good governance of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List.¹ It is general knowledge therefore that the primary function of the NASS is law making, amendment of existing laws and repeal of laws that have become stale or obsolete. The NASS is also vested with the power to, amongst others, conduct investigations² so as to expose corruption and thereby ensure transparency and public accountability.

The Constitution states that each House of the NASS shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed an investigation into:

“(a) any matter or thing with respect to which it has power to make laws; and

(b) the conduct of affairs of any person, authority ministry or government department charged or intended to be charged with the duty of or responsibility for - executing or administering laws enacted by the National Assembly, and disbursing or administering moneys appropriated or to be appropriated by the National Assembly.”

¹ Section 4(1) of the Constitution

² Ibid, Section 88

In the exercise of its investigative powers, the HoR or its committee is authorized to take evidence in the course of which it may issue a summons for the attendance of any person in Nigeria to give evidence at any place or produce any document or other thing in his possession. And where a person fails to honour a summons, the HoR is empowered to issue a warrant which is enforceable by a police officer to compel the attendance of the person summoned at the person's cost.³

Such refusal to attend and to give evidence on a summons without reasonable excuse is an offence and on conviction, the person failing to adhere to such a summons is liable to a fine of fifty naira or to imprisonment for three months or to both such fine and imprisonment.⁴ Similarly, where a person gives false evidence before the HoR or its committee, he would bear criminal responsibility for perjury under section 117 of the Criminal Code Act.⁵

The mechanism for the exercise of the investigative powers of the HoR:

In the exercise of its investigative powers, the HoR is given the constitutional leverage pursuant to **section 62 of the Constitution** to constitute a committee of its members for such purposes. However, the HoR does conventionally set up ad hoc investigation committees from time to time as the need arises as it does not have a standing investigation committee. These ad hoc committees conduct investigations and make reports to the HoR in respect of any complaints or allegations of corruption which the HoR considers necessary to investigate and has referred to its committee.

Limits and restrictions on the exercise of the investigative powers of the HoR:

Where a committee is constituted to investigate corruption allegations, it is only allowed to do so to the extent of the powers conferred on the HoR by the Constitution. Such power is also to be exercised subject to constitutional provisions that vest the power to interpret laws exclusively on the judiciary. Kanu G. Agabi, SAN made this point when he opined that:

“...Section 88 appreciates its own limitations by making itself subject to the provisions of the Constitution. The expressions ‘notwithstanding anything in the Constitution’ used in section 6, when contrasted with the expression ‘subject to the Constitution’ used in section 88, makes the point even more apparent. Whenever and wherever the need arises, section 6 overrides section 88. All judicial power, therefore are vested in the courts...”⁶

³ Section 89 of the Constitution

⁴ Sections 4 and 11 of the Legislative Houses (Powers and Privileges) Act, CAP. L12, LFN, 2004

⁵ CAP. C38, LFN, 2004 (“the Code”) and punishable with a term of imprisonment for 14 years by section 118 of the Code

⁶ K. G. Agabi, *Oversight Powers of the National Assembly: Limit, Myth and Reality* – A paper presented at the Nigerian Bar Association Conference, Calabar, 2001 pages 1 – 15 at 12

Thus, the HoR's power to investigate and expose corruption, whether exercised by the HoR directly or by delegation to its own committee, draws its legitimacy from and is subject to circumscriptions set by the Constitution.

Furthermore, by **section 88(2) of the Constitution**, the investigative power of the HoR is exercisable only for the purpose of enabling the HoR:

“(a) to make laws with respect to any matter within its legislative competence and to correct any defects in existing laws; and

(b) to expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.”

In a couple of cases, our superior courts have held that the HoR's power to investigate and expose corruption and kindred offences as guaranteed by the Constitution is not absolute.⁷ The HoR can do no more than as set out in **section 88(2) of the Constitution**.

A further limitation on the investigative power of the HoR is with regard to the inability of the HoR to enforce the outcome of any investigation conducted by it so as to achieve the purpose of such investigation. The NASS in general and the HoR in particular, is divested of powers to impose punishment and/or sanction on any person indicted by a report of an investigation. The prosecution of persons so indicted is at the discretion of the executive arm of government and it is only the courts that can exercise the judicial powers of convicting and sentencing any person for a crime. Thus, other than correction of defects in existing laws and exposing corruption, inefficiency or waste, the most the HoR may achieve within the purview of the constitution is to recommend to the executive arm of government for prosecution, any person found wanting in their investigation. The executive arm however, is not bound to act on the recommendation of the HoR to prosecute. The implication is that both the investigation and the resources appropriated for its conduct may eventually become a waste of public resources.

The Attorney-General of the Federation who is the chief law officer, vested with powers to institute and undertake, take over and continue as well as to discontinue at any stage before judgment is entered, criminal proceedings against any person before any court of law in Nigeria,⁸ cannot be compelled, even by the HoR or the NASS for that matter, to exercise those powers one way or the other.⁹ General investigation of and prosecution for crimes is an executive function.

⁷ T. Momoh v. Senate of the National Assembly (1982) 3 NCLR 394; Adikwu & Ors v. Federal House of Representatives and Ors (1981) 1 NCLR 105

⁸ Section 174(1) of the Constitution

⁹ Bamaïyi v. Attorney General of the Federation [2000] 6 NWLR (Pt. 661) 421 at 452G-H

Taking a cue from the position maintained by Kanu G. Agabi, SAN as observed earlier, the investigative powers of the HoR pursuant to **section 88 of the Constitution** is subject to every other provisions of the Constitution. Accordingly, a further limitation and/or restriction on the investigative power of the HoR is that that power is exercised subject to the constitutional rights of citizens. These are the rights to life, dignity of human person, personal liberty, fair hearing, private and family life, freedom of thought, conscience and religion, freedom of expression, peaceful assembly and association, freedom of movement, freedom from discrimination, and the right to acquire and own immovable property anywhere in Nigeria.¹⁰ Our law does not recognise legislative immunity as it is the case with executive immunity under **section 308 of the Constitution**. The only immunity statutorily recognised for members of the HoR is in respect of words spoken or written in a report, petition, bill, etc. to the HoR pursuant to **section 3 of the Legislative Houses (Powers and Privileges) Act**.¹¹ There is therefore a possibility of a member of the HoR exercising its investigative powers in an overzealous manner getting exposed to civil liability for infringements of a citizen's rights, even though the conduct of the affairs of the citizen necessitated the investigation by the HoR in the first instance.

Furthermore, it is imperative to state that the powers of the HoR to conduct investigation on allegations of corruption is subject to the jurisdiction of the courts which have powers to review the activities of the HoR to determine their constitutionality or otherwise in order to prevent tyranny and abuse of powers. It is therefore clear that the Constitution does not contemplate an active role for the HoR in the supervision of officers charged with the execution of the laws enacted by it.

A further point worthy of mention is that **section 88(1) (a) of the Constitution** expressly circumscribes the investigative power of the HoR to matters in respect of which it is empowered to make laws. There is no doubt that for the HoR, these are the sixty (68) matters contained in the exclusive legislative list of the NASS in Part I of the Second Schedule and the thirty items in the concurrent legislative list in Part II of the same Schedule of the Constitution. Thus, the HoR is completely incapacitated from exercising its investigative powers with respect to matters not expressly listed in the exclusive and concurrent legislative lists.

Chief Justice Earl Warren summarised the limitations and restrictions on the investigative power of the HoR when he declared thus:

“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. These are the functions of the executive and judiciary department of government. No inquiry is an end in itself; it must be related to, and in furtherance of a legitimate task of the congress. Investigation conducted

¹⁰These rights are generally provided for in Chapter iv of the Constitution

¹¹ CAP. L12, Laws of the Federation of Nigeria, 2004

solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated is indefensible...”¹²

Conclusion:

In the exercise of its investigative powers, the HoR and/or members of its ad hoc investigation committee(s) must be wary of the constitutional limitations placed on those powers as the HoR is not allowed to usurp the adjudicative power of courts on corruption and related issues. In the same vein, the executive arm of government, as represented by the police, is exclusively vested with general investigative power while the prosecution of suspected infractions of the law in Nigeria is undertaken by the Attorney-General of the Federation and the Attorneys-General of the respective States and complemented by the police. The fundamental principle of separation of power upon which any democratic structure must rest remains inviolable except in limited instances permitted by law.

The HoR must also be able at all times, to make a clear distinction between moral, political, and religious issues from issues with legal implications if it must stay above board in the exercise of its investigative powers.

¹² S. S. Ulmer, *Supreme Court, Policy-making and Constitutional Law*: (New York, USA, McGraw-Hill, 1986) pages 277-282