Economics, Law and Policy
ISSN 2576-2060 (Print) ISSN 2576-2052 (Online)
Vol. 4, No. 2, 2021
www.scholink.org/ojs/index.php/elp

Original Paper

Developing an Effective Strategy for the Enforcement of the Constitutional Mandate of the Senate Committee on Ethics, Code of Conduct and Public Petitions

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Received: October 24, 2021 Accepted: November 9, 2021 Online Published: January 4, 2022

doi:10.22158/elp.v4n2p40 URL: http://dx.doi.org/10.22158/elp.v4n2p40

Abstract

The Senate Committee on Ethics, Code of Conduct and Public Petitions (ECCPP) is one of the committees of the Senate of Nigeria's National Assembly. The Committee was one of the earliest Special committees established under Order XIII of the Senate Standing Orders 2015, as amended (SSO 2015). It is one of the committees through which the Senate conducts legislative investigations in fulfilment of its constitutional and statutory role under section 88 of the 1999 Constitution, as altered. The major challenge of the ECCPP Committee in the exercise of its investigation power is the refusal by some chief executives of government agencies and corporate organisations to honour its invitation. This study finds that among the reasons for this are the absence of ethical prescriptions in the SSO 2015 to guide the conduct of honourable members against unethical conduct that undermine their integrity, and absence of prescribed fine for failure to honour the Committee's summons. To strengthen the enforcement capacity of the Committee, the study recommends, among others, that members of the Committee eschew unethical tendencies that undermine their integrity and conduct the business of the Committee in a manner that avoids conflicts of interest or its appearances.

Keywords

senate committee, separation of powers, 1999 constitution, legislative houses, senate standing orders

1. Introduction

Among the most conspicuous features of the Constitution of the Federal Republic of Nigeria 1999 (as altered) (Note 1) are federalism and separation of powers. Federalism is essentially a constitutional device by which powers within a country are shared among tiers of government, rather than among geographical entities comprising different peoples (Note 2). Separation of powers is the division of the powers of the tiers of government among the arms of government established under the Constitution.

At the federal level, the 1999 Constitution provides for the division of the powers of government into three distinct types, to be exercised by three arms of government—an executive with the power to implement and enforce laws (Note 3), a bicameral legislature consisting of Senate and House of Representatives with the power to make laws (Note 4), and a judiciary with the power to interpret and apply the law (Note 5). The concept of structure requires separation of powers among separate arms of government, operating with separate personnel and procedure so that none of the arms exercises the whole or part of another's power.

Besides the traditional law-making function of the legislature, there are non-traditional functions, which it also performs. These include conduct of investigation, control and surveillance over the financial affairs of the Executive, and control and supervision of Government's general business through oversight (Note 6), and representative services to the constituencies of honourable members (Note 7). The Senate's power of investigation is provided for in section 88 of the 1999 Constitution (Note 8). The Senate may exercise any of its functions, including the power to conduct investigation, through special, standing or joint committees of its members appointed by it (Note 9). One of such committees is the Senate Committee on Ethics, Code of Conduct and Public Petitions (Note 10). Like every other committee of the Senate, it has a mandate to conduct legislative investigations for the purpose of effectively achieving its constitutional and statutory role.

The major challenge the Committee on ECCPP has faced in the course of exercising its investigation power is the refusal by some chief executives of government agencies and corporate organisations to honour its invitation. For instance, the Interim Administrator, Niger Delta Development Commission, Effiong Akwa, repeatedly shunned the summons of the Senate Committee on ECCPP asking him to respond to an allegation that the Commission diverted N6.28bn meant to procure COVID-19 palliatives approved by President Muhammadu Buhari for the Niger Delta region (Note 11). In March 2021, the management of the Nigeria Petroleum Development Company Limited, Benin City, and the National Petroleum Investment Management Service in Lagos shunned the Committee's invitation to defend allegations of funds misappropriation and impunity levelled against them (Note 12).

Incidentally, it is not only invitations of the Senate Committee on ECCPP that have been shunned by some heads of government agencies and chief executives of private corporate organisations. There have been other cases where government officials and corporate executives were invited by the Senate or its other committees to respond to allegations levelled against them or their organisations and they refused to honour the invitations or, at best, sent their representatives (Note 13). Occasionally, in order to ensure

that their invitations are honoured, the committees of the Senate had resorted to issuing summons under the Legislative Houses (Powers and Privileges) Act 2017 (Note 14) to compel invited ministers, heads of government agencies, and chief executives of oil companies to honour their invitation. Notwithstanding, most of the summons were still not honoured (Note 15).

This article aims at contributing to the discourse on how to develop a strategy that will enable the Senate Committee on ECCPP to deliver on its constitutional mandate of investigation and, in so doing, promote good governance, democratic development and citizens' trust in the political system of Nigeria. The need to develop such strategy is predicated on the fact that the weak enforcement regime available to the Senate Committee on ECCPP will continue to hinder it from carrying out its mandate of investigation, including enforcing compliance with its order. Structure-wise, after this introduction, part two of this article discusses the doctrine of separation of powers. Part three examines the operation of committee system in the Senate. Part four analyses the constitutionality of the investigation power of Senate and its Committees on ECCPP while part five examines the establishment, jurisdiction and rules of procedure of the Committee on ECCPP under the SSO 2015 (Note 16). Part six analyses the constitutional basis for enforcement of the investigation powers of Senate Committee on ECCPP, its establishment and jurisdiction, procedure for its business, how it has fared so far, and limitations or challenges to its success. It concludes with recommendations on how to enhance the strategy for ensuring that the Committee on ECCPP delivers on its constitutional mandate.

2. The Doctrine of Separation of Powers

The concept of separation of powers, as espoused by Baron de Montesquieu (Note 17) and John Locke (Note 18), is enshrined in various forms in our Constitution (Note 19). This concept finds support in Madison's declaration that "It will not be denied that power is of an encroaching nature and that it ought to be effectually restrained from passing the limits assigned to it. After distinguishing, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others' (Note 20). In *AG Oyo State & Ors v L.O. Adeyemi (Alafin of Oyo) & 5 Ors* (Note 21), Akanbi JCA held thus,

> There is no doubting the fact that the doctrine implies that ideally subject to what other checks and balances the constitution may provide for, the doctrine of separation of powers presupposes that the operative constitution ensures that-(a) each of the three organs of government is in the hands of different persons. (b) That no one organ has control of the others (c) No one organ performs the function of another (Note 22).

Indeed, the dictum of Uche Omo, JCA, in this case further enhances the understanding of what separation of powers entails. In his words, "Basically, what the doctrine provides is that the Legislature, the Executive and Judiciary are independent arms of government with their respective functions. Each arm must not encroach on the functions of the others, and any such invasion of the other's turf must be regarded as a breach of this doctrine and consequently unconstitutional" (Note 23).

The principle of separation of powers ensures that all arms of government operate within legal and constitutional boundaries to check arbitrariness, not only in respect of individual liberties, but also in governance, law-making and interpretation. Such measure safeguards constitutionalism, which "requires for its efficiency a differentiation of governmental functions and a separation of its agencies, which exercise them" (Note 24). Thus, to avoid arbitrariness and absolutism as well as promote good governance, development, and political liberty in government and society, the Constitution creates a relationship of checks and balances between and among the organs of government with a view to balancing their powers (Note 25). Of course, modifications of the concept of separation powers by either the express or implied provisions of the Constitution (Note 26) in the form of checks neither subordinates the organ checked to the authority of the one exercising the check nor does it make exercising constitutional powers a joint responsibility (Note 27). Rather, checks superimpose a power of limited interference by another organ so as to ensure that the checked organ exercises its power based on the rule of law and constitutionally too (Note 28).

The legislature, in exercising its checks and balances functions, goes beyond its traditional or ordinary legislative role of law making, whereby it expresses the will of the people in legislation (Note 29), to reviewing how the executive and its agencies exercise their executive powers. The major purpose of such checks is to ascertain the constitutionality and prudence of executive powers. In effect, such checks help to expose corruption, inefficiency or waste in the execution or administration of laws within the legislative competence of the legislature and in the disbursement or administration of funds appropriated by it (Note 30).

Interestingly, the exercise of constitutional checks by the legislature on the executive and vice versa, albeit, the veto power of the President to withhold his assent to bills (Note 31), is common in Nigeria's presidential democracy. Under the 8th National Assembly, for instance, out of the bills transmitted to President Muhammadu Buhari for assent, he assented to about 35 and declined assent to over 60, including some critical ones like the Electoral Act (Amendment) Bill 2010, the Constitution (4th Alteration) Bill No 20, which seeks to strengthen the Judiciary for a speedy dispensation of justice and the Petroleum Industry Governance Bill 2018 (PIGB) (note 32). It was only when the last two bills were further reviewed by the National Assembly that President Muhammadu Buhari assented to them in 2017 and 2021 respectively.

Also common is judicial checks on the legislative organ which are, in most cases, by voiding Acts of the National Assembly that are inconsistent with the Constitution (Note 33) or by interpreting Acts of the National Assembly principally in line with the purpose of the Constitution and to promote the living nature of the Constitution (Note 34). On its part, legislative checks on the judiciary has always been very subtle through amendment of the Constitution and Acts of the National Assembly or by enacting new legislation with the implied aim of rendering nugatory judgments of courts (Note 35). Because the National Assembly has the power to enact laws, it can change them, if it does not like the way they are interpreted. The amended or new Act will govern the decisions of courts in future cases (Note 36). In the

past decade, this has played out more in the area of electoral legislation (Note 37).

This, in effect, creates a complex relationship between the three arms of government, in which a balance of governmental powers must be realised for the purpose of good governance and avoidance of chaos (Note 38). The operation of this doctrine is often more visible, though, in the relationship between the legislature and the executive with the former wielding enormous constitutional oversight powers over the latter than it is between either of these arms and the judiciary (Note 39).

Executives, worldwide, however, prefer flexible legislatures that would rubber stamp their policy programmes without question (Note 40). Because executives in democratic systems assume power with a popular mandate, they tend to feel frustrated when they have to argue with, appeal to, convince and cajole legislatures before their programmes can be approved. Consequently, there is always a tension between the two arms of government such that legislatures often have to struggle to carry out their legislative mandate (Note 41). Not surprisingly then, at the advent of Nigeria's current democracy, between 1999 and 2007, an unhealthy and unhelpful relationship, characterised by suspicions, conflicts and threats, existed between the executive and the legislature (Note 42). Legislators seemed determined to assert their prerogatives and resist the arbitrary dominance of President Obasanjo, a strong personality with a military background (Note 43).

While acknowledging that Nigeria's first Assembly in the Fourth Republic exhibited familiar elements of neo-patrimonial politics, as struggles for patronage and personal aggrandisement occupied the attentions of many legislators, Lewis (Note 44) notes that members of the Assembly, also made pronounced efforts to assert the constitutional separation of powers and build the capacity of the institution. He asserts that, despite many shortcomings, the First Assembly revealed an unprecedented vigour in balancing the power of the executive and attempted to address some of the critical issues facing the country. Indeed, legislators were more frankly assertive toward the executive, and key committees, including the Committee on ECCPP, played a prominent role in challenging the administration (Note 45). One outstanding and commendable action of the NASS at this time was its ability to resist efforts by "third term" supporters of President Obasanjo to manipulate the Assembly's procedures and intimidate legislators into accepting the proposal (Note 46).

Since after Obasanjo's presidency, however, what has been witnessed is more of a marriage between the Executive and the Legislature at the national level that there is seemingly not much difference between them except the distinction of the arms. Save on a few occasions, as manifested by the House of Representatives debate and motion for the Federal Government to reverse its decision on the removal of subsidies on 8 January 2012; NASS' demand for the removal of Aruma Oteh as the Director-General of SEC and the dismissal of Abdulrasheed Maina, Chairman, Pension Fund Task Team, for their recalcitrant attitude towards the NASS (Note 47), the unhealthy rancour that ensued, more out of the personality clash between President Muhammadu Buhari and the 8th National Assembly under the immediate past Senate President, Olubukola Saraki, among other self-serving interests (Note 48), the legislature, on many occasions, concur with the executive and vice versa. The present 9th

Assembly under the Senate Presidency of Ahmed Ibrahim Lawan and Speakership of Femi Gbajabiamila has a more cordial relationship with the executive arm. This trend may not be unconnected with the fact that majority of the Assembly members belong to the ruling party. More so, contemporary Nigerian politicians and their parties are not ideologically based so that there are hardly any issues of principle on which to disagree. Notwithstanding, though a measure of cooperation is necessary for an effective running of government, a marriage between the arms is not helpful as it erodes the principle of checks and balances necessary for a healthy development of the democratic culture. Such overstretched political party allegiance definitely impacts negatively on the independence of the committees and their investigative activities.

3. The Operation of the Committee System in the Senate

The committee system of operation in the legislature entails dividing the membership of the legislature into specialised groups, mainly around policy issues for purposes of holding hearings, preparing bills for consideration of the legislature and regulating the procedure of the legislature (Note 49). The committee system is a feature of both the presidential and parliamentary systems of governance. It underpins the operation of legislative houses in all jurisdictions. Committees are useful for the orderly, competent and prompt discharge of the duties of the legislature.

The numbers and types of committees vary in different countries, depending on the need. Their compositions also vary, but are often balanced on party lines. Indeed, the structures and powers given to committees are principally viewed from the standpoint of a cross-party model of decision-making and opposition strength (Note 50). Consequently, the less control a single party is able to exercise over committee deliberations, the more effectively the system works (Note 51). Historically, the oldest known committee in the United States Congress—a select committee, assigned to report standing rules and order for House proceedings—was established by the First Congress on 2 April 1789 (Note 52).

In Nigeria, making committees the power houses of the legislative arm of government dates back to the First Republic, although the Parliament did not establish a committee for every issue of national importance (Note 53). Under the 1999 Constitution, the Federal and States legislature conduct much of their activities through committees established for almost all issues of national and state importance. Incidentally, the Constitution does not specifically define the word “committee”, but section 25 of the Legislative Houses Powers and Privileges (LHPP) Act 2017 defines “committee” as the committee set up by the leadership of a legislative house. This definition has a broad scope that incorporates committees appointed for special or general purpose under section 62(1) of the Constitution and the joint committee on finance or any other joint committee appointed by the Senate and the House of Representatives by virtue of section 62(3) of the Constitution.

Section 62(1) of the Constitution provides to the effect that the Senate may appoint a committee of its members for such special and general purpose as in its opinion would be better regulated and managed by means of such a committee and may, by resolution, regulation or otherwise, as it thinks fit, delegate any

functions exercisable by it to any such committee (Note 54). Accordingly, the Senate is mandated to appoint joint committee on finance with the House of Representatives consisting of an equal number of persons appointed by each House and may appoint any other joint committees (Note 55).

As provided for in the SSO 2015, the Senate currently has 5 special and 51 standing committees (Note 56). In addition, the Senate can create ad hoc committees on any special matters brought before it (Note 57). Order 95 rule 2 of the SSO 2015 prohibits any Senator from serving in more than three Committees while rule 3 of the same order provides that no Committee Chairman shall serve in more than two other Committees (Note 58).

Exercising legislative powers of the Senate through specific and general committees dealing with matters which in the opinion of the Senate would be better regulated and managed by means of such a committee promotes efficiency in the performance of the senators' duties. Since the inception of the present democratic era, the Senate committees, including the Committee on ECCPP have been very active. Their functions include conduct of investigation, control and surveillance over the financial affairs of the Executive, and control and supervision of Government's general business through oversight (Note 59), as well as examine proposals for primary and secondary legislation within their respective assigned areas. The committee system provides the venue for various probes into the affairs of the executive as well as the legislature itself. The most assiduous and capable are those focused on public finance and legislative affairs, including those on the budget, fiscal affairs, external debt, and assembly rules and procedures. Many others are thin on competence and more than half meet infrequently (Note 60). Though Committee activity is goaded by misconduct in various departments of government, it is also partly spurred by political ambition. Also, the payments and other perks for committee membership encourage participation (Note 61).

Generally, the Constitution mandates the Senate to fix the terms of office and quorum of any committee appointed by it and this includes the Committee on ECCPP (Note 62). Importantly also, the Constitution allows the Senate to regulate its own procedure, including the procedure for summoning and recess of the House (Note 63). Chapter XIV of the SSO 2015 which contains elaborate provisions on quorum, calling and interrogation of witness, and investigative hearing proceedings is discussed in details in this article under the part that examines the establishment, jurisdiction and Rules of Procedure of the Committee on ECCPP.

While the proliferating committee system has its advantage, it also has its downside. Though an important source of information and pressure, it is an uncertain mechanism of accountability and, as would be seen later in this article, has limited enforcement capacities. The problem is worsened by the self-seeking and grabbing tendencies of some senators and overlapping oversight jurisdictions among some committees (Note 64). The enormity of the last challenge is evidenced in the confession of Senator Suleiman Kwari, representing the Senate President, Ahmad Lawan, at a two-day National Summit on Diminishing Corruption in the Public Sector, organised by the Independent Corrupt Practices and Other Related Offences Commission in collaboration with the Office of the Secretary to

the Government of the Federation on Tuesday, 19 November 2020 in Abuja that "For us in Parliament, one of the four challenges of this senate is how to forge a strong collaborating linkage with at least six standing committees of the Senate with overlapping oversight jurisdictions" (Note 65). The probable counter and conflicting positions arising from the activities of these committees and the impact on their productivity can only be imagined.

4. Constitutionality of the Investigation Power of Senate and its Committees on ECCPP

With regards to the investigative power of the Senate, section 88(1) of the Constitution provides to the effect that the Senate, being part of the National Assembly shall, subject to the provisions of the Constitution, have power by resolution published in its journal and in the 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

(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.

The expansive scope of this power is clearly articulated by Chief Justice Earl Warren in the United State case of *Watkins v United States* (Note 66) thus:

> The power of 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, economy, or political system for the purpose of enabling Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste (Note 67).

The implication of section 88(1), however, is that the investigation power of the Senate is limited to any matter or thing over which it has power to make laws as listed on the exclusive legislative list (Note 68) and the concurrent legislative list (Note 69). As regards matters or things listed on the concurrent legislative list, the National Assembly investigation power is limited only to those matters or things for which it has decided to enact laws. Where such laws cover the field on the legislated item or subject, the National Assembly will have investigative powers over them to the exclusion of all state governments (Note 70). The restriction on the investigation power of the National Assembly and, by implication, the Senate is the basis of courts deciding that

> The resolution setting up a legislative investigative body under sections 88 and 89 must be construed strictly in order to determine the scope of the powers of such a body and whether or not it has been constituted for a permissible purpose (Note 71).

From the provisions of section 88(1) of the Constitution, a restrictive interpretation must be given to the phrase "any matter" used in Order 103 of the SSO 2015 on the powers to conduct investigation by the Senate. The Order provides:

> In exercise of the powers conferred on the National Assembly by Section(sic) 88 and 89 of the Constitution of the Federal Republic of Nigeria, the Senate shall have power to direct or cause to be directed an investigation into any matter.

Without applying a restrictive interpretation to the phrase "any matter" the Senate or its committees may either tactfully or inadvertently want to investigate matters that are outside its legislative powers. The aim of the publication of the resolution of the Senate to investigate any person in its journal and in the Federal Government's official Gazette is to notify the general public and the persons affected that the Senate has adopted a resolution to investigate them concerning the subject in question.

Also, the Senate can investigate the conduct of affairs of any person, authority, ministry or government department that has the responsibility for executing or administering Acts of the National Assembly as well as disbursing and administering moneys appropriated or to be appropriated by the National Assembly (Note 72). The phrase "any person, authority, ministry or government department" should be read in line with the provisions of section 5 of the Constitution, which vests in the President the executive powers of the Federation and, subject to the Constitution or an Act of the National Assembly, may exercise such powers, either directly or through the Vice President or Minister of Government of the Federation or other officers in the public service of the Federation. Indeed, section 5(1)(b) of the Constitution clearly provides to the effect that the executive powers of the Federation shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.

Literally, "any person" as used in sections 88(1)(b)(i) and (ii) of the Constitution targets public officers, but where a private person is involved in the execution of public project(s) or any law integrates a private person into its implementation regime (Note 73) and corruption of the private person either individually or with a public officer, within the context of execution of the project or the implementation regime of the law, is the subject of investigation, then the courts will interpret "any person" to include such private person(s). It is trite rule of constitutional interpretation that a constitutional provision should not be construed so as to defeat its evident purpose (Note 74) and words of the Constitution are, therefore, not to be read with stultifying narrowness (Note 75). If private persons, who engaged in execution of public projects collaborated with public officers to engage in corrupt practice, are exempted from being investigated by the Senate, the legislative investigative power of the Senate will be rendered useless and the purpose of section 88 of the Constitution will be defeated. The same argument goes for a corrupt private person integrated into a law enforcement regime.

Aduba and Oguche are of the view that since section 88(1) of the Constitution starts with the phrase "subject to the provisions of this constitution", it means that persons exempted from judicial process by the Constitution cannot be summoned or compelled to appear before the Senate or its committee (Note

76). This view is not totally correct. Section 308 of the 1999 Constitution provides for restriction on legal proceedings against a person holding the office of the President, Vice President, Governor and Deputy Governor. More specifically, the section prohibits instituting or continuing civil or criminal proceedings against persons holding the mentioned offices. More so, a person holding any of these offices shall not be arrested or imprisoned during the period of his or her tenure.

Of course, section 308 does not apply to civil proceedings against a person holding the mentioned offices in an official capacity or to civil or criminal proceedings in which such a person is only a nominal party (Note 77). From the foregoing core provisions of section 308 of the 1999 Constitution, the President, Vice President, Governor and Deputy Governor may be summoned or invited by Senate or any of its committees to appear before it only for the purpose of assisting the Senate or its committee in investigation of a matter that is within its power. Certainly, by virtue of the constitutional prohibition against the arrest of the four public officers, the Senate or any of its committee cannot issue a warrant of arrest to either a police officer or Sergeant-At-Arms to apprehend any of them for the purpose of compelling their appearance before the Senate or any of its committees. It is only on this note that the perspective of Aduba and Oguche is correct.

By virtue of section 88(2)(a) of the Constitution, the purpose of the investigation power of the Senate is to enable it make laws within its legislative competence and correct any defects in existing laws. In order to make good laws, the investigation power of the Senate for the purpose of making laws will involve the Senate gathering information on proposed bills (Note 78). It is on these bases that the Court of Appeal held in *Chevron (Nig) Ltd* v *Imo State House of Assembly & Ors* (Note 79) that legislative investigation is part of law making; an adjunct of legislative process (Note 80). Another purpose for the investigation power of the Senate as listed in section 88(2)(b) of the Constitution is to enable it expose corruption, inefficiency or waste in the execution and administration of laws within its competency as well as in the disbursement or payment and management of funds appropriated by it.

Section 89(1) of the Constitution extends the investigation power of the Senate to the committees appointed by it in accordance with section 62 of the Constitution. While the Senate may delegate any of its functions, including investigation into any matter, to any of its committees (Note 81), including the Committee on ECCPP, the Constitution expressly prohibits it from delegating its power to decide whether a bill shall be passed into law or determine any matter which it is empowered to determine by resolution under the provisions of the Constitution (Note 82). These provisions are the bases of Order 104 of the SSO 2015 on limitation on the jurisdiction of committees of the Senate. Indeed, the Supreme Court had long ago held as one of the cannons of interpretation of the Constitution in *Attorney-General of Bendel State* v *Attorney-General of the Federation* (Note 83) that delegation by the National Assembly of its essential legislative functions is precluded by the Constitution (Note 84). Doubtlessly, both the Constitution and the SSO 2015 provide that the Senate may authorise any of its committees, including the Committee on ECCPP, to make recommendations to it on any matter it has power to make law on or determine by resolution (Note 85). This is likely to be the case if the matter which the Senate is

addressing is within the jurisdiction of such committee. The adjunct nature of the investigative functions of the Senate means that the investigative functions of the Committee on ECCPP are not at large and as such they must be exercised within the provisions of the Constitution (Note 86).

5. Establishment, Jurisdiction and Rules of Procedure of the Committee on ECCPP under the SSO 2015

The Committee on ECCPP is among the Special committees established within the first fourteen legislative days following the first sitting of the Senate under Chapter XIII of the SSO 2015 (Note 87). Order 97(iv) of the SSO 2015 provides that there shall be a committee to be known as the Committee on ECCPP appointed at the commencement of the life of the Senate. Sub-rule 4(a-c) of Order 97 lists the jurisdiction of the Committee on ECCPP as follows:

> (a) Consideration of the subject matter of all petitions referred to it by the Senate and shall report from time to time to the Senate its opinion on the action to be taken thereon together with such observations on petition and the signatures attached thereof, as the Committee may think fit;
>
> (b) The Committee shall recommend to the Senate from time to time such administrative actions as it may deem appropriate to establish and enforce standards of official conduct for the senators; and
>
> (c) The Committee shall oversee and monitor the activities of the Code of Conduct Bureau.

In addition to the above functions, Order 15 under Chapter IV of the SSO 2015, to a great extent, vests in the Committee on ECCPP the power to deal with privileges matters.

The SSO 2015 defines privileges as rights enjoyed by the Senate, collectively, and by the members of the Senate, individually, conferred by the LHPP Act 2017 and other statutes, or by practice, precedent usage and custom (Note 88). Regrettably, Order 97 rule 4 does not define ethics and what constitutes unethical behaviour of members of the Senate. Also, the Order does not explain what public petition is and what should be the content of a public petition. The Black's Law Dictionary defines ethics as "a system of moral tenets or principles: the collective doctrines relating to the ideals of human conduct and character" (Note 89). It has been observed that legislative ethics is a set of standards governing the conduct of members of a legislative body and a system to administer those standards (Note 90). The primary purpose of such standards is not to punish erring legislators, but to serve as guidelines for fostering an environment that encourages proper behaviour (Note 91). Again, the Black's Law Dictionary defines petition as "a formal written request presented to a court or other official body" (Note 92) and public as "relating to or involving an entire community, state or country" (Note 93). Within the context of this presentation, public petition means petition emanating from the public and not from a Senator.

In a situation where the jurisdiction of the Committee of the ECCPP deals extensively with the major themes (ethic, privilege, code of conduct, and public petition) constituting the name of the Committee, it is necessary to apply the organic rule of interpretation which sees a statutory instrument or the Constitution as an organic scheme of government to be dealt with as an entity, hence a particular provision should not be severed from the rest (Note 94). The organic rule requires reading through the whole SSO 2015 and the LHPP Act 2017 in order to identify the privileges the Senate and its members should enjoy, the prohibited unethical behaviour of members of the Senate, and the content of a public petition since these issues are the major areas on which the Committee on ECCPP should focus its investigation.

Due to the lack of comprehensive nature of Order 97 rule 4, members of the Committee on ECCPP must look at Chapter VIII of the SSO 2015 which deals with rules of debate, particularly the aspect on the behaviour of senators in the Senate, to be able to identify prohibited behaviour of senators that may trigger referral to the Committee on ECCPP for its recommendation on administrative actions appropriate enough to establish and enforce standards of official conduct for the senators. Some of the prohibited unethical behaviour include not maintaining decorum in chambers, failure to pay obeisance to the Chair, crossing the floor of the Senate unnecessarily, sitting in a place allotted to another member, reading newspaper or magazine in the chambers unless connected with the debate, interrupting another Senator or making noise or disturbance to interrupt him, and smoking, chewing or drinking on the floor of the Senate (Note 95).

Of course, as public officers, the senators are also bound by the Code of Conduct for Public Officers in the Fifth Schedule to the Constitution (Note 96). Of extreme importance is the fact that the senators must avoid conflict of their personal interest with their work (Note 97); they must not maintain a foreign account (Note 98); they must not accept gifts from commercial firms, business enterprises or persons who are government contractors or have business connection with the government (Note 99); they have to refrain from accepting or giving bribe (Note 100), abuse of power or belonging to a society which membership is incompatible with the functions and dignity of the office of a Senator (Note 101); and they must timely make a written declaration of all their properties, assets and liability, including those of their unmarried children under the age of eighteen years (Note 102). Paragraph 14(a) of the Code of Conduct for Public Officers exempts legislative officers from paragraph 4 of the Code (Note 103).

The problem with the Code of Conduct for Public Officers is the general nature of its provisions, which do not specifically address some issues relating to the peculiar circumstances of legislators, including the senators. Besides, due to its general nature, it is not likely to invoke more special allegiance from the members of the Senate, especially when the general attitude of other public officers to the Code of Conduct for Public Officers is one of disregard for its standards and values. Evidence of this is seen in the confession of the former Chairperson of the Code of Conduct Bureau, Mr. Sam Saba, that if the Bureau is to strictly comply with the provisions of the Code of Conduct for Public Officers, more

prisons would need to be built because of the very high non-compliance rate of public officers with the provisions of the Code (Note 104).

The responsibility of the Committee on ECCPP to oversee and monitor the activities of Code of Conduct Bureau extends its investigation power to issues covered under Part 1 of the Fifth Schedule of the Constitution, which prescribes Code of Conduct for Public Officers. All the prohibited conduct in the Code of Conduct for Public Officers have been incorporated into the Code of Conduct Bureau and Tribunal Act (Note 105). The Code of Conduct Bureau is established under section 153 of the Constitution. Its main functions are to receive declaration of all properties, assets and liability of public officers; examine the declaration in accordance with the Code of Conduct Bureau and Tribunal Act; retain custody of the declarations and make them available for public inspection; and receive, investigate and refer complaints about non-compliance with provisions of the Code of Conduct Bureau and Tribunal Act to the Code of Conduct Tribunal (Note 106).

Again, one has to look at Chapter VII of the SSO 2015 which deals with the arrangement of business to know that: only a Senator can present a petition to the Senate; a petition must be signed by the parties (the public) it came from as no Senator is permitted to present petition signed by himself; a petition must be properly addressed to the Senate in respectful, decorous and temperate language; a petition must be in English language or in any other language, but translated and duly certified to be correct by the Senator who presents it; a petition must set forth the material allegations and end with a prayer setting forth the relief sought by the petitioner(s); a petition must not ask for a grant of public funds unless the recommendation of the President of the Federal Republic of Nigeria has been signified thereto, provided that petition for legislation to this effect may be received; a petition shall not be for a matter for which there is a judicial remedy; and only the Senate shall refer a petition to the Committee on ECCPP.

Lastly, Chapter IV of the SSO 2015 on privileges gives priority to matters concerning privileges. Such matters must be taken up immediately and at any time (Note 107). A senator may rise at any time to speak on a matter of privilege suddenly arising and must be prepared to move a motion without notice declaring that a contempt or breach of the privilege has been committed. Privilege matter shall be referred to the Committee on ECCPP, if it was not raised in the Committee of the Whole House (Note 108). Once a matter on privilege arises, the President of Senate must suspend consideration and decision on other matters until the privilege matter is disposed of or unless the debate on a motion on the privilege matter is adjourned. However, there shall be no precedence of such motion over other business if, in the opinion of the President of Senate, a prima facie case of breach of privilege has not been made out or the matter has not been raised at the earliest opportunity (Note 109).

Order 17 rule 1 prohibits admission of any person to the floor of the Senate during session, except by the consent of the Senate. The Senate Chamber shall not be used for any purpose other than that of the Senate (Note 110). A Senator complaining of a breach of the Senate privilege by any publication shall furnish the name of the printer or publisher (Note 111). Privilege matters that arise during vacation of

the Senate which a member proposes should be referred to the Committee on ECCPP shall be brought to the attention of the Senate President. If the Senate President is satisfied that there is a prima facie case of breach of privilege and it requires urgent action, he shall refer it to the Committee on ECCPP. The President of Senate shall report such referral to the Senate in its next meeting and the member who alleged the breach shall, without notice, move a motion for the endorsement of the referral by the Senate. If the motion fails, then the Committee on ECCPP shall take no further action concerning the matter (Note 112).

Some of the privileges of the Senate and its members contained in the LHPP Act 2017 are immunity from litigation (Note 113); a person who has a cause of action against a legislative house shall serve a three months' notice to the Office of the Clerk of a legislative house disclosing the cause of action and relief sought (Note 114); where a member of legislative house is arrested or detained by order of a court, the court must immediately notify the President or Speaker of a legislative house (Note 115); notice of processes of court shall not to be served or executed in the chamber or precincts of a legislative houses (Note 116); and a member of a legislative house shall not be arrested in the chamber or precincts of a legislative house (Note 117). The LHPP Act 2017 also prohibits the senators from getting involve in a number of unethical behaviours. For example, section 13 of the LHPP Act 2017 prohibits a member of a legislative house from accepting or agreeing to accept bribe, fee, compensation, reward or benefit for engaging in any aspect of the legislative process. Also, section 14(2) of the LHPP Act prohibits a member of a legislative house from committing contempt of legislative house.

As earlier mentioned, Order 103 of the SSO 2015 allows the Senate, in exercising the powers conferred on the National Assembly by sections 88 and 89 of the Constitution, to direct or cause to be directed an investigation into any matter. Chapter XIV of the SSO 2015 which applies to all committees of the Senate, including the Committee on ECCPP, provides that the quorum for taking testimony and receiving evidence during investigation by a committee shall not be less than two (Note 118). The order calls for interrogation of witness by the minority party members on the committee upon request to the Chairman of the Committee before completion of hearing (Note 119). It is mandatory at an investigative hearing for the Chairman to announce in the opening statement the subject of the investigation (Note 120).

Witnesses may be accompanied by their lawyers for the purpose of guiding them on their constitutional rights (Note 121). When evidence at an investigatory hearing tend to defame, degrade or incriminate any persons, it may be presented in executive session, if by the Committee's rule the quorum taking testimony and receiving evidence is met and majority of those present determines that such evidence or testimony may tend to defame, degrade or incriminate any person (Note 122). If the quorum requirement is met and the majority of those present determines that such evidence or testimony will not tend to defame, degrade or incriminate any person, the Committee will proceed to receive such testimony or evidence in open session (Note 123). Evidence and testimony taken in executive session may not be released or used in public session without the consent of the Committee (Note 124). The

approval of the Committee is also required for any witness to get transcript copies of the testimonies he gave in executive session (Note 125). Witnesses may, subject to the discretion of the Committee, submit brief and pertinent sworn statement in writing for inclusion in the Committee's record. The pertinence of testimony and evidence is determined solely by the Committee (Note 126).

6. Constitutional Basis for Enforcement of Investigation Powers of Senate Committee on ECCPP

To ensure the effectiveness of the investigation power of the Senate, section 89(1)(a) of the Constitution vests certain quasi-judicial powers in the Senate or its committee appointed in accordance with section 62 of the Constitution and, in this case, the Committee on ECCPP. The Committee on ECCPP can procure evidence, written or oral, direct or circumstantial, as it may think necessary or desirable. It may examine all persons as witnesses whose evidence may be material or relevant to the subject under investigation. Such evidence may be required to be taken on oath (Note 127). The Committee on ECCPP has the power to summon any person in Nigeria to give evidence at any place or to produce any document or other thing in his possession or under his control, subject to all just exceptions (Note 128).

Section 89(1)(d) of the Constitution takes into consideration persons who may fail, refuse or neglect to attend to properly served summons by the Committee on ECCPP without giving excuse to the satisfaction of the Committee. This subsection mandates the Committee on ECCPP to issue a warrant to compel the attendance of such a person. A summons or warrant issued by the Committee on ECCPP may be served or executed by a member of the Nigeria Police Force or any other person authorised by the President of the Senate (Note 129). The Constitution, therefore, makes a clear distinction between the power to summon or issue a warrant by the Senate or any of its committee, including the Committee on ECCPP, and the power to authorise service or execution of the summon or warrant, which is vested only on the Senate President (Note 130).

Section 4(1) of the LHPP Act 2017 is in consonance with section 89(1)(d) of the Constitution as it vests similar power in the President of Senate, upon being satisfied that the summon was duly served (Note 131). Section 4(2) of the LHPP Act 2017 gives the President of Senate the discretion of endorsing on the warrant that the person named on the warrant be released on entering into recognisance before the issuing authority (Note 132). This implies that where no such endorsement is made, the person has to be kept in the custody of the Nigerian Police Force or any person authorised by the Senate President to make the arrest, until the reasons for the summons are met. Section 18(1) of the interpretation Act defines a "person" to include any body of persons corporate and incorporate. However, it is necessary that where any person, other than a police officer, is authorised by the President of Senate to serve or execute a warrant of arrest, the person must have facility to custody the arrested person who may not be able to meet conditions for entering into recognisance before the issuing authority. The same applies where the Senate President did not endorse on the warrant that the person named on the warrant be released on entering into recognisance before the issuing authority.

The Committee on ECCPP is also vested with the power to order such a person to pay all costs which may have been occasioned in compelling his attendance or by reason of his failure, refusal or neglect to obey the summons. In addition, the Committee shall impose such fine as may be prescribed against the person and any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law (Note 133). Abba Aji, JCA, in ***Abdullahi* v *Kano State*** (Note 134) defined fine as a payment of money ordered by a court from a person who has been found guilty of violating a law. It may be specified as the punishment for an offender; usually a minor offence, but could be specified and used as an option to imprisonment for major crimes or a complement to other punishment specified for such crimes (Note 135).

The provision of section 89(1)(d) of the Constitution, particularly its last part which read thus "any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law" settles the contention that fine must not always be ordered or imposed by a court. This constitutional provision is like an exception to the decision of the Court of Appeal in *NOSDRA* v *ExxonMobil* (Note 136). Here Adah, JCA, held that awarding a fine is a judicial act and it is the sole prerogative of the court under section 6 of the Constitution (Note 137). It provides one instance that a body other than a court, in this case the Committee on ECCPP, can order fine. However, the Committee on ECCPP can only impose fine if it is prescribed. Cambridge Dictionary defines the verb "prescribe" as "to make a rule of something or to give as a rule" while the *Black's Law Dictionary* (Note 138) defines the same word as "to establish authoritatively as a rule or guideline". In *Kwara State INEC & Ors* v *PDP* (Note 139), Onnoghen, JCA, (as he then was) reiterated the meaning of prescribed as entrenched in section 318(1) of the Constitution thus "prescribed means prescribed by or under this constitution or any other law" (Note 140).

It is not in doubt that the word "may" used in section 89(1)(d) of the Constitution would ordinarily connote permissive and so the authority which has the power to do an act has an option either to do it or not to do it (Note 141). However, the **word "may" may acquire a mandatory meaning from the context or circumstances in which it is used. For instance, w**here, as in the instant case, the word "may" is used **to impose a duty upon a public functionary or the Committee on ECCPP to be carried out in a particular form or way for the benefit of a private citizen, then it would be interpreted as mandatory** (Note 142). Section 89(1)(d) of the Constitution allows the Committee on ECCPP to fine any person who fails, refuses or neglects to obey its summon, but imposes a duty on the Senate or its Committee on ECCPP to prescribe such fine. Since section 89(1)(d) only gives the Senate or its Committee on ECCPP the power to impose fine without prescribing the specific fines, adherence to the interpretation of the word "prescribed" in section 318(1) of the Constitution will require prescribing such fines in any other law. This perspective is in consonance with section 36(12) of the Constitution which provides to the effect that no person shall be convicted of a criminal offence that is not defined and the penalty prescribed in a written law (Note 143).

Within the context of section 36(12) of the Constitution, a written law refers to an Act of the National Assembly, a Law of a state, any subsidiary legislation or instrument under the provisions of a law. Under section 89(1)(d) of the Constitution, the offence of failure, refusal and neglect to obey the Committee on ECCPP's summon is defined by the specific use of the words "failure, refusal and neglect". The specific sum the Committee on ECCPP should fine any person who fails, refuses or neglects to obey its summons is not stated. The inchoate nature of the punishment of fine under section 89(1)(d) of the Constitution is the same reason why the section imposed a duty on the Senate or its Committee on ECCPP that fine must be prescribed and by virtue of section 36(12) of the Constitution prescribing the specific fine can only be done in a written law.

Certainly, the SSO 2015 does not clearly prescribe any fine for payment by any person who fails, refuses or neglects to obey summons issued by the Senate or its committees, including the Committee on ECCPP. There is no doubt that section 14(3) of the LHPP Act 2017 provides that "Where a person who commits a contempt of Legislative House, under subsection 12 of this Act is liable on conviction to a fine of N500,000.00 or imprisonment for a term of two years or both". Unfortunately, reading this provision with subsections 1 and 2 of section 14 of the LHPP Act 2017, which respectively deals with contempt of Legislative House by any other person and a member of the Legislative House reveals that the offence of failing, refusing or neglecting to obey the summons of the Senate or its committees, including the Committee on ECCPP is not covered. As the law stands today, there is no prescribed fine against any person who fails, refuses or neglects to obey or attend to the summons of the Senate or any of its committees.

7. How Does the Committee on ECCPP Fare?

Going by the testimony of Hon. Senator Ayo Akinyelure, FCA, the Chairman of the Committee on ECCPP in his brief remarks during the 2019 Retreat on Ethics, Privileges and Public Petitions organised for members of his Committee,

> The Committee received a total of 644 petition[s], out of which the Committee resolved 152 with about 300 other[s] still undergoing processing when the life of the last Senate ended. This is unprecedented. It has never happened that way since the Nigeria[n] Senate began to set up Committee on Ethics. That was a great feat for one Committee to lay 152 reports which were all considered in a tenure (Note 144).

One would have largely agreed with this testimony and commended the Senate for this "great feat" if the only mandate of the Committee on ECCPP was to attend to public petitions. As earlier indicated, however, its mandate is three-fold. Attending to public petitions is the first. It cannot, therefore, be judged based on its performance in only one aspect. Besides, that there were as many as 644 petitions against the Members of the Senate in one tenure does not appear to be a favourable indication of the Senate's good standing in the eyes of the public.

The second mandate of the Committee on ECCPP is to recommend "to the Senate from time to time on such administrative action as it may deem appropriate to establish and enforce standards of official conduct for the senators". This mandate is futuristic in nature. The Committee on ECCPP is required to make such recommendation from time to time as it deems appropriate. This provision evidences the fact that the Senate lacks an established serious standard of official conduct. The Senate rules contain no prescriptions of specific standards of conduct mandated or acts prohibited by the rules. They merely refer to the standards of conduct of members and the Code of Conduct without specifying what constitutes those standards. How has the Committee on ECCPP, over the years, helped the Senate through such recommendations to establish necessary standards? There is no available evidence to indicate that the Committee on ECCPP has made any such recommendation or that the entire Senate, has, over the many years of its existence, taken this responsibility to heart as there has been no improvement in the standards of official conduct of the Senate since the inception of the present democratic era in 1999.

The third mandate of the Committee is to oversee and monitor the activities of the Code of Conduct Bureau. The Senate seems more interested in carrying out this mandate than in shoring up the standard of conduct of its members. Indeed, in October 2016, the NASS hurriedly amended the Code of Conduct Bureau and Tribunal Act in controversial circumstances, bringing the Bureau under the control of the NASS and whittling down the powers of the Bureau and Tribunal (Note 145). This move has been widely criticised as unconstitutional and an attempt to witch hunt the Bureau due to the then ongoing trial of the immediate past Senate President, Olubukola Saraki, at the Tribunal (Note 146).

8. Constitutional Limitations to the Investigative Powers of the Committee of the ECCPP

8.1 Constitutional Provisions

By virtue of section 88(1) of the Constitution, the investigative powers of the Senate and any of its Committee, including the Committee on ECCPP, is limited to the law making powers of the Senate and has no application where the issues involved bear no relevance to law making (Note 148). An attempt to exercise legislative investigative power contrary to the constitutional provisions will be declared void by the court. In *Tony Momoh* v *The Senate & Ors* (Note 147) the Court held to the effect that section 82(2) of the 1979 Nigerian Constitution did not grant to the Senate the power of general investigation, nor can the investigative power of the Senate be used for aggrandisement of the House. Interestingly, the Court of Appeal also held in Chevron (Nig) Ltd v Imo State House of Assembly & Ors (Note 149) that "Each Legislative body, in common with all branches of government, is obliged under the Constitution to exercise its Legislative **powers, including its investigative powers in aid of legislation, subject to the limitations placed by the Constitution on government action"** (Note 150).

8.2 Exemption of Certain Political Offices from Full Investigation Power of the Committee of ECCPP

The full enforcement power of the Committee on ECCPP is limited by section 308 of the Constitution which prohibits the Senate President or the Committee from issuing warrant of arrest against persons occupying the offices of the President of the Federation, Vice President, Governor and Deputy Governor. All the Committee can do is to issue summons to the persons occupying these offices. If they fail, refuse or neglect to obey or attend to the summons, neither the Committee on ECCPP nor the Senate President can take the course of issuing warrant of arrest nor authorise service or execution of such warrant.

8.3 Fundamental Human Rights

Fundamental human rights are enshrined in Chapter IV of the Constitution. In Chevron (Nig) Ltd v Imo State House of Assembly & Ors (Note 151), the Court of Appeal held that "Accordingly, any Legislative Investigation carried out in exercise of those powers is subject to the Constitutional requirements of Chapter IV of the Constitution which guarantees to every person fundamental rights to life, to dignity of the human person …" (Note 152). The fundamental human rights that are most likely to act as limitation on legislative investigative power of the Committee on ECCPP are:

8.3.1 Right to Fair Hearing Provided for in Section 36(1) of the Constitution, Stating that

> In the determination of his civil rights and obligations, including any question of determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

The principle or doctrine of fair hearing in its statutory and constitutional sense is derived from the principles of natural justice and the twin pillars of fair hearing right—*audi alterem partem* and *nemo judex in causa sua*. **The two simply mean that no person shall be a judge in his own cause and that both sides to a dispute should enjoy equal opportunity to present their case. Fair hearing encompasses the plenitude of natural justice in the narrow technical sense of the twin pillars of justice – *audi alteram partem* and *nemo judex in causa sua* – as well as in the broad sense of what is not only right and fair to all concerned, but also seems to be so. Very recently, in *Melrose General Services Ltd v EFCC & Ors* (Note 153) the Court of Appeal held that it is equally trite that where the principle of natural justice is violated, it does not matter whether if the proper thing had been done, the decision would have been the same, the proceedings would still be null and void** (Note 154).

8.3.2 Right Against Self-incrimination

Of course, the rule against self-incrimination, which is still an aspect of human rights, if violated, will render the Committee's proceedings void. In *State* v *Masiga* (Note 155), Eko, JSC, held that the right to fair trial guaranteed by section 36 of the Constitution includes the right of the accused to be presumed innocent until proved guilty and because he enjoys a right against self-incrimination, the accused cannot, even at the trial, be compelled to give evidence at his own trial (Note 156).

8.3.3 Right to Be Represented by a Counsel of One's Choice

The right of a witness appearing before a Committee to be represented by a counsel of his choice as enshrined in section 36(6)(c) of the Constitution is another reason the recommendations of the Committee on ECCPP can be rendered void. The SSO 2015 in Chapter XIV 3(b) has specifically addressed this point by providing that "witnesses at investigative hearing may be accompanied by their own counsel for the purpose of guiding them concerning their constitutional rights". In *Adigwe* v *FRN* (Note 157), Muhammad, JSC, held that section 36(6)(c) entitles the appellant to select a counsel of his choice to "defend" him or conduct his case for and on his behalf.

8.3.4 Freedom of Expression

The last fundamental right which limits the legislative investigative power of the senate and all its committees is the right to freedom of expression enshrined in section 39(1) of the Constitution. The cases of *Innocent Adikwu & Ors. v Federal House of Representatives and Ors* (Note 158), and *Tony Momoh v The Senate & Ors* (Note 159) already cited in this article are good examples of how the courts have upheld this right.

8.3.5 Where Investigation Has Criminal Element

Section 36(4) of the Constitution provides that if any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. Certainly, the investigation power of the Committee on ECCPP is limited to generally the gathering of evidence to enable it make law or expose corruption, inefficiency in the disbursement or administration of funds appropriated by it. Importantly too, its power to impose prescribed fine is specifically limited to where a person fails, refuses or neglects to obey its summons without any justification. None of these powers confers prosecutorial or wide enforcement powers on the Senate or its Committee on ECCPP. Such powers fall within the realm of the executive and the judiciary (Note 160). There is no doubt that most of the matters the Committee on ECCPP investigates may have criminal elements. Arguably, section 36(4) of the Constitution does not limit the investigation power of the Committee so long as the Committee carefully limits itself, within the context of section 88(1)(a) and (b) and (2)(a) and (b) of the 1999 Constitution, to fact finding~~s~~ and transfers any crime related fact~~s~~ finding~~s~~ and relevant evidence to the Attorney General of the Federation to prosecute the person(s) involved. Otherwise, the court will declare any act of encroachment by it into the turf of other arms of government as unconstitutional and, therefore, void.

8.3.6 Failure of LHPP Act 2017 to Prescribe Fine for the Offence of Failure, Refusal or Neglect to Obey Summons

Section 89(1)(d) of the Constitution permits the Senate or any of its committees, including the Committee on ECCPP, to fine any person who fails, refuses or neglects to obey summons issued against the person in the course of performing its investigation function. By virtue of the same constitutional provision, this power can only be exercised if the fine is prescribed in a written law. Unfortunately, the LHPP Act 2017 does not prescribe the fine.

9. Strategy for Enhancing Effectiveness of the Committee on ECCPP's Constitutional Role

As has been seen in the foregoing parts of this article, some of the factors that militate against the effectiveness of the Committee on ECCPP are the proliferation of committees with overlapping oversight jurisdiction, resulting in counter and conflicting position on issues, rent seeking on the part of the ECCPP Committee members and the Senate, generally, absence of prescribed fine for failure, refusal or neglect on the part of any witness to honour the Committee's summons, among others. In view of this, the following strategies will enhance the effectiveness of the investigative powers of the Senate Committee on ECCPP:

9.1 Streamlining of Senate Committees

One of the militating factors against compliance with the summons of the Committee on ECCPP is the self-seeking and grabbing tendencies of many senators resulting in proliferation of Senate committees and overlapping oversight jurisdictions among some of them (Note 161). The Senate should, therefore, streamline its committees that have overlapping jurisdictions so as to avoid conflicting activities and decisions that result in undue summoning of witnesses before the committees, including the ECCPP Committee. This way, the irritation caused by what may be considered as unnecessary distractions by the witnesses will be minimised and they will be more amenable to honouring the Committee's summons.

9.2 Amendment of the LHPP Act

The LHPP Act of 2017 should be amended to prescribe fine for failure, refusal or neglect by witnesses to respond to the summons of Senate Committees, including the Committee on ECCPP, in line with the provision of section 89(1)(d) of the 1999 Constitution. The absence of such penalty has so far constrained the committee's ability to sanction erring witnesses and contributed in festering the rate of non-compliance with the Committee on ECCPP's summons. Impunity naturally thrives when there is no sanction for infraction.

9.3 Avoidance of Rent Seeking Tendencies by Committee Members

Part of the reason for the failure, refusal or neglect by chief executive officers of ministries and agencies of government being oversighted to honour the summons from Senate committees is the rent seeking tendency in form of contracts and other pecuniary benefits by committee members from these officers or their representatives (Note 162). Committee members of the ECCPP should, therefore eschew such tendencies and strive to conduct the business of the Committee in a manner that preserves the integrity of the legislature and avoids conflicts of interest or even appearances of conflicts of interest. One way to achieve this is for the Committee to take seriously its second mandate to recommend "to the Senate from time to time on such administrative action as it may deem appropriate to establish and enforce standards of official conduct for the Senators" (Note 163). Clearly, this provision shows that the Senate lacks an established serious standard of official conduct. Besides, there are no prescribed standards of conduct or prohibited acts for senators in the Senate rules. Such standards will serve as guidelines for fostering an environment that encourages proper behaviour by the senators.

9.4 Avoidance of Breach of Constitutional Limitations and Rights of Witnesses

The Committee on ECCPP should endeavour to confine its activities within the constitutional limitations placed on its power. Its investigations should be limited to activities of government over which the National Assembly has made laws. Other constitutional limitations relating to the human rights of witnesses summoned by the Committee must equally be observed. This will minimise the allegations of overbearing tendencies against Committee members and improve the level of compliance with their summons.

9.5 Freedom from Political Party Allegiance

The Committee on ECCPP should endeavour to eschew undue political party allegiance by asserting its independence and carrying out its investigative responsibilities in a transparent and objective manner.

10. Conclusion and Recommendations

It is not in doubt that a plethora of scholarly and non-academic works done on legislative investigation and oversight have identified legal, socio-economic and technology factors as the limitations or challenges that hinder effective exercise of investigation power of the Senate and its committees, including the Committee on ECCPP. One issue that has been ignored in existing literature on legislative investigation is how the sanction regime in the LHPP Act influences the compliance behaviour of the relevant stakeholders.

Although other laws like the Corrupt Practices and Other Related Offences Act and the Criminal Code/Penal Code may be relied on to ensure compliance with some of the legislative investigation provisions in the 1999 Constitution, the SSO 2015 as amended and the LHPP Act, strategies that should be adopted should include amendment of the relevant sanction provisions in the LHPP Act. It is imperative that specific fines are prescribed in the Act against any person who fails, refuses or neglects to obey summons issued by the Senate or its committees, including the Committee on ECCPP. What is more, applying the strategies discussed in the penultimate part of this article will enhance the effectiveness of the Committee on ECCPP in achieving its constitutional role. Lastly, independence of the Committee from the influence of major political parties is necessary to free its decisions from being guided by party political allegiance. Objective assessment in the best interest of the country is key to its effectiveness.

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Notes

Note 1. Cap C23 Laws of the Federation of Nigeria 2010. Hereinafter referred to as 1999 Constitution or the Constitution.

Note 2. See ibid, s 2(2) which states that "Nigeria shall be a federation consisting of States and the Federal Capital Territory, Abuja"; *AG Federation v AG Lagos State* (2013) LPELR—20974(SC) Per Muhammad JSC [A-F] 96-103; BO Nwabueze, Federalism in Nigeria under the Presidential Constitution, (Sweet & Maxwell 1983) 39; BO Nwabueze, Presidential Constitution of Nigeria (C Hurst & Company) 37.

Note 3. 1999 Constitution, s 5.

Note 4. 1999 Constitution, s 4(1); J Nnamdi Aduba & Sam Oguche, Key Issues in Nigerian Constitutional Law (NIALS 2014) 275-276; Jacqueline R Kanovitz, *Constitutional Law* (13th ed., Anderson, 2012); DA Guobadia, "The Legislature and Good Governance under the 1999 Constitution" in: IA Ayua, DA Guobadia and AO Adekunle, eds. *Nigeria: Issues in the 1999 Constitution* (Nigerian Institute of Advanced Legal Studies 2000) 45. The concept of separation of powers was first expounded by John Locke, an English political thinker in 1690, and fully proposed and popularised by a French jurist, Monsieur Montesquieu. See *Governor, Ekiti State & Ors v Olayemi* (2014) LPELR-23477(CA) per Lokulo Sodipe JCA [E-C] 43-53; Ben Igwenyi, *Modern Constitutional Law in Nigeria* (Nwamazi Printing & Publication Co Ltd) 50-51. This principle has been recognised in a plethora of cases by all courts in Nigeria, including the Supreme Court. See *Oni & Anor v Fayemi & Ors* (2013) LPELR-20671

(SC) Per Ngwuta JSC [A-C] 31; *Ugba & Anor v Suswam & Ors* (2014) LPELR-22882 (SC) Per Rhodes Vivour JSC [D-F] 79.

Note 5. 1999 Constitution, s 6.

Note 6. *Chevron (Nig) Ltd v Imo State House of Assembly & Ors* (2016) LpELR-41563(CA) per Agube JCA [D-E] 71.

Note 7. DA Guobadia (n 4) 45.

Note 8. With regard to exercising similar power by a State House of Assembly see section 128 of the 1999 Constitution.

Note 9. Constitution 1999, s. 62(1).

Note 10. Hereafter referred to as the Committee on ECCPP. Incidentally, the Senate Standing Orders 2015, as amended (SSO 2015) while listing the Committee as one of the special committees under Order XIII, rule 96(iv) as well as on the marginal note and text of rule 97(4), titled it as "Committee on Ethics, Code of Conduct and Public Petitions" instead of the "Committee on Ethics, Privileges and Public Petitions" used in the table of content of the SSO 2015. The inconsistency in the name of the committee is further evidenced by reference to it as the Committee on Ethics and Privilege (Order 15) as well as the Committee on Ethics and Public Petition (Order 102 rule 2(f)(iii)(b)). For consistency, this article has chosen the Committee on ECCPP as the name of the Committee.

Note 11. Ismail Mudashir and Others, Probes: Real Reasons Heads of MDAs, Firms Shun N/Assembly Summons, Daily Trust, Saturday April 10, 2021 <https://dailytrust.com/probes-real-reasons-heads-of-mdas-firms-shun-n-assembly-summons>accessed 12 September 2021.

Note 12. ibid.

Note 13. For instance, in 2018, the Inspector-General of Police (IGP), Idris Ibrahim, refused to respond to the invitation of the Senate. In April 2020, Managing Directors of oil companies shunned invitations by the Senate Committee on Local Contents, instead sent only their representatives. Similarly, members of the executive arm of government have refused to honour invitations from the House of Representatives or its committees. For example, in 2020, President Muhammadu Buhari shunned invitation by the House of Representatives. Interestingly, Ismail Mudashir and Others have catalogued numerous other instances of invitation of the committees of Senate and House of Representatives that were not honoured. See generally Ismail Mudashir and Others, ibid.

Note 14. Hereinafter referred to as LHPP Act 2017.

Note 15. Ismail Mudashir and Others (n 11).

Note 16. Hereinafter refer to as SSO 2015.

Note 17. B de Montesquieu, *The Spirit of the Laws* Vol. 1, Thomas Nugent trans. (J Nourse 1777).

Note 18. ibid 1632-1704.

Note 19. The 1999 Constitution vests legislative powers in the National Assembly and Houses of Assembly of the States (s 4). The executive powers of the Federation is vested in the President and extends to the execution and maintenance of the Constitution, all laws made by the National Assembly, and matters in respect of which the National Assembly has the powers to make laws (s 5). The judicial powers of the Federation are vested in the courts established under the Constitution (s 6).

Note 20. J Madison, *the Federalist 48* <http://www.scribd.com/doc/36715824/How-to-Read-Federalist-Papers-Book> accessed 5 October 2021.

Note 21. (1982) 2 NCLR 846.

Note 22. ibid 847-848.

Note 23. ibid 848.

Note 24. L I Uzoukwu, "Constitutionalism, Human Rights and the Judiciary in Nigeria", A Doctoral Thesis at the University of South Africa <http://uir.unisa.ac.za/bitstream/handle/10500/3561/thesisozoukwuI.pdf?sequence=1> accessed 22 May 2021. Cf W Waluchow "Constitutionalism", *The Stanford Encyclopedia of Philosophy*, (Winter 2012 Edition) Edward N. Zalta (ed) available at <http://plato.stanford.edu/archives/win2012/entries/constitutionalism/>, accessed 22 May 2021. (arguing that although in modern times, *Madbury v Madison* settled the issue of necessity of an independent judiciary interpreting and enforcing the constitutional limits on a legislative body like Parliament/the Duma/Congress or executive body like the President or his/her cabinet and most nations follow Madbury and Montesquieu in accepting the practical necessity of such arrangement, it is uncertain that is a *sine qua non* of the doctrine of separation of powers. There are constitutional arrangements such as that in New Zealand where the courts are forbidden from striking down legislation on the ground that it exceeds constitutional limits. Observance and enforcement of these limits are left to legislative bodies whose powers are nonetheless recognized as constitutionally limited (and subject to whatever pressures might be imposed politically when state actions are generally believed to violate the constitution). Also, that constitutional limits can sometimes be avoided or interpreted so as to avoid their effects, and no recourse be available to correct mistaken interpretations and abuses of power, does not, then, imply the absence of constitutional limitation. But does it imply the absence of effective limitation? Perhaps so, but, even here, there is reason to be cautious in drawing general conclusions. Once again, we should remember the long-standing traditions within British Parliamentary systems (including New Zealand's) according to which Parliament alone possesses final authority to create, interpret and implement its own constitutional limits. And whatever its faults, there is little doubt that Parliaments modelled on the British system typically act responsibly in observing their own constitutional limits.

Note 25. *His Highness Lamide Olayiwola Adeyemi (Alaafin of Oyo) v AG Oyo State* (1984) LPELR-196(SC) per Uwais JSC (as he then was); B O Nwabueze (n 1) 32-33.

Note 26. *AG Bendel State v AG Federation & Ors* (1983) 6 SC 32, 51, 95, 117 and 147.

Note 27. B O Nwabueze (n 2) 32-33.

Note 28. ibid 156.

Note 29. D A Guobadia (n 4) 45.

Note 30. ibid.

Note 31. 1999 Constitution, s 58(4).

Note 32. Abubakar Jimoh, "The 8th National Assembly from A Critical Assessment" <https://cislacnigeria.net/the-8th-national-assembly-from-a-critical-assessment/> accessed 22 June 2021.

Note 33. Unongu v Aku (1983) LPELR—3422(SC) per Uwais JSC where the Supreme Court declared as unconstitutional, null and void sections 129(3) and 140(2) in the then applicable Electoral Act which stipulate the time frame within which hearing of election petition was to be concluded by Election Petition Tribunals. This is because the provisions in question were found to have infringed on section 258 of the 1979 Constitution.

Note 34. *Saraki* v *Federal Republic of Nigeria* (2016) LPELR-40013 (SC) per Ngwuta JSC [D-C] 130-132; See *Attorney-General of Bendel State* v *Attorney-General of the Federation* (1981) LPELR-605 (SC) per Obaseki JSC [D-E] 123.

Note 35. Lokulo-Sodipe, JCA, in *Governor, Ekiti State & Ors v Olayemi* LPELR-23477(CA) illustrated an instance of this by referring to the imposition of time frame within which election petitions and appeals arising therefrom has, however, now been achieved by the amendment introduced into the amended 1999 Constitution. [E-C] 43-53 See, generally, s 9 of the 1999 Constitution (Second Alteration) Act, Act No 2 which substituted section 29 of the 1999 Constitution (First Alteration) Act, Act No 1 and section 258 of the 1999 Constitution. See also section 141 of the Electoral (Amendment) Act (No. 2) 2011 and section 285(13) of the 1999 Constitution which was introduced by the 1999 Constitution (Fourth Alteration. No 21) Act 2017. These provisions emphasised the effect of non-participation in an election which was the crux of the Supreme Court of Nigeria's judgment in *Amaechi* v *INEC* (2008) 5 NWLR (Pt 1080) 227. See, generally, Musdapher D, *The Nigerian Judiciary: Towards Reform of Bastion of Constitutional Democracy*, (Nigerian Institute of Advanced Legal Studies 2011); Jacqueline R. Kanovitz (n 4) 9.

Note 36. Jacqueline R. Kanovitz (n 4) 9.

Note 37. See generally n. 27 above. See also *Adigun v AG Oyo State* (No. 2) (1987) LPELR-40648 (SC) Per Eso JSC [C] 28; *Obioha v Ibero* (1994) LPELR-2180 (SC) Per Belgore JSC [C-D] 9.

Note 38. *Military Government of Lagos State v Ojukwu* (1986)1 NWLR (Pt.18) 621, 633, per Kayode Eso, JSC; also *Kadiya v. Lar* (1983) 2 SCNLR 268.

Note 39. Kola Abayomi "A Critical Analysis of the Legislative Process in Nigeria" <http://nigerdeltacongress.com/articles/a_critical_analysis_of_the_legis.htm> accessed 21 July 2021 (observing that "The Executive and Legislature are, by nature, loud and aggressive. They enjoy the limelight. It is natural because they came in through loudness, sometimes empty but sometimes

logistical, articulate and well-reasoned. The judiciary by their training shun public ovation, rarely seen but often heard through powerful and innovating judgments. Even when they are changing accepted norms through judicial legislating, they do this unobtrusively. Their manner is as sober as their conservative mode of dressing, but they are powerful…".

Note 40. J K Johnson and R T Nakamura, "A Concept Paper on Legislatures and Good Governance" <http://www.pogar.org/publications/other/undp/legis/conceptpaper.pdf> accessed 6 June 2021, gives an overview of different models of legislatures with their various characteristics. These include the highly complex Transformative legislature epitomised by the United States Congress; the complex Arena legislatures epitomised by the British Parliament; the evolving Emerging legislatures such as the Colombian Congress; and the little internal structure legislatures such as the old USSR.

Note 41. Jibrin Ibrahim, "Saving the Legislature from Reputational Erosion", *Daily Trust* (Monday, 18 June 2012) Deepening Democracy Column.

Note 42. Y Y Dadem, "Issues in Strategic Planning and Management for the Legislature in Nigeria" (Keynote Address, *Intensive Training Course on Legislative Strategic Planning and Management*, Nigerian Institute of Advanced Legal Studies, May 2013) 5.

Note 43. Ademola Adegbamigbe, "Jitters in the House", *the News* (2 August 1999). Lewis attributes this state of affairs to the fact that Obasanjo was a familiar figure in Nigeria, and his imperious style provoked reactions among many legislators. Ethnic rivalries also contributed, since Obasanjo personified a negotiated power shift to the Southwest of the country though many politicians from the North and East resented his role. At a point there was concerted attempt by the legislature to impeach him but for the intervention of two former heads of state, Yakubu Gowon and Shehu Shagari and Obasanjo's open apology to the legislators for his haughty and imprudent behaviour and a promise of a more consultative and transparent approach to governing, PM Lewis, "Rules and Rents: Legislative Politics in Nigeria" Annual Meeting of the American Political Science Association, Washington, 3 September 2010, 12-13.

Note 44. ibid 14.

Note 45. ibid 16.

Note 46. ibid.

Note 47. Soni Daniel and Kingsley Omonobi, "Pension fund scam: Embattled Maina flees Nigeria" Vanguard Online, February 18, 2013, <http://www.vanguardngr.com/2013/02/pension-fund-scam-embattled-maina-flees-nigeria/> accessed 14 October 2021, Soni Daniel, "Nigeria: Pension Fraud Row—Why NASS Can't Win Battle Against Maina" <https://allafrica.com/stories/201302110301.html> accessed 14 October 2021,

Note 48. Edward T Dibiana, "National Assembly and challenge of morality" <https://www.thecable.ng/national-assembly-challenge-morality> accessed 23 May 2021. In fact the relationship between the executive and legislature during this period has been described as "hostile", Abubakar Jimoh, "The 8th National Assembly from A Critical Assessment" <https://cislacnigeria.net/the-8th-national-assembly-from-a-critical-assessment/> accessed 23 May 2021.

(Noting further that "there was lack of cordiality in the relationship between the Executive and Legislature, under the 8th National Assembly…the relationship between the two arms was marred by conflict of interest, low capacity of some members to constructively engage in legislative work, poor communication strategy, executive blackmail and intimidation").

Note 49. House of Reps, Definition, History and Facts <https://www.britannica.com/topic/House-of-Representatives-Unites-States-government#ref102407> accessed 28 May 2021.

Note 50. Rudy Andeweg "Ministers as Double Agents? The Delegation Process between Cabinet and Ministers", (2000) 37(3) European Journal of Political Research, 377-395.

Note 51. Shane Martin and Sam Depauw, Parliamentary Committees and Multi_Party Government, Paper presentation at the European Consortium for Political Research Joint Sessions, Lisbon, 14-19 April 2009. Workshop No. 26: "Institutional Design of Parliamentary Rules and Party Politics" <https://ecpr.eu> accessed 28 May 2021.

Note 52. "A Committee System" <https://www.lawteacher.net/free-law-essays/public-law/a-committee-system-law-essays.php> accessed 22 May 2021.

Note 53. Nereru I Nwosu, Legislature and Foreign Policy: "Nigeria's Experience under the First and Second Republics" (1994) 24 Journal of Eastern African Research and Development, 88,

Note 54. This section also gives the same of appointment of committees to the House of Representatives.

Note 55. 1999 Constitution, s. 62(3).

Note 56. SSO 2015, Chapter XIII. The House of Representatives has 7 special and 90 standing committees. See Order Eighteen of the Standing Orders of the House of Representatives, 9th Edition, 2016. The Constitution does not specifically define the word "committee". Section 25 of the LHPP Act 2017 defines "committee" as the committee set up by the leadership of a legislative house. This definition has a broad scope that incorporates committees appointed for special or general purpose under section 62(1) of the Constitution and the joint committee on finance or any other joint committee appointed by the Senate and the House of Representatives by virtue of section 62(3) of the Constitution.

Note 57. SSO 2015, Order 97 rule (1)(d); Standing Orders of the House of Representatives 2016, Order Eighteen rule 9.

Note 58. On the other hand, the Standing Orders of the House of Representatives 2016 does not limit the Committee on Selection from appointing Members to several committees. See generally See Order Eighteen of the Standing Orders of the House of Representatives, 9th Edition, 2016.

Note 59. *Chevron (Nig) Ltd v Imo State House of Assembly & Ors* (2016) LpELR-41563(CA) per Agube JCA [D-E] 71.

Note 60. ibid.

Note 61. PM Lewis (n 43) 18.

Note 62. 1999 Constitution, s 62(2).

Note 63. 1999 Constitution, s 60.

Note 64. Members seek committee assignments to boost their influence or access to resources. It needs be recalled that an assessment of the system conducted under the then Speaker of the House of Representatives, Dimeji Bankole, made him dissolve all except three of the House committees with a view to rationalising the system, but, as is typical of the Nigerian legislature, the exercise ended three months later with the creation of additional 12 committees. John Ameh, "Bankole Sacks 69 Committee Chairmen, Deputies", *Punch Newspaper* (1 August 2008) cited in PM Lewis (n 43) 19.

Note 65. News Agency of Nigeria, "Senate to release new strategies on corruption fight" <https://pulse.ng/news/local/senate-to-release--new-strategies-on-corruption-fight/66wtm78> accessed 21 June 2021.

Note 66. 354 US 178 (1957) <http://caselaw.findlaw.com/us-supreme-court/354/178.html> accessed 6 August 2021.

Note 67. ibid 187.

Note 68. Part 1 of the Second Schedule to the 1999 Constitution.

Note 69. Part II of the Second Schedule to the Constitution 1999.

Note 70. See *AG Federation v AG Lagos State* (2013) 16 NWLR (Pt 1380) 249, 327-328 per Muhammad JSC; *INEC v Balarade Musa & 4 Ors* (2003) 3 NWLR (Pt 806) 72, 204 per Niki Tobi JSC; AG Ogun State v AG Federation (1982) LPELR-11 Per Idigbe JSC (SC) [E-A] 75-76*EDOSACA v Osakue & 7 Ors* (2018) LPELR-44157(CA) per Adumein JCA [D-B] 52-70; the Austria case of *Ex Parte McLean* (1930) 43 CLR 472 at 483; US Cases of *Priggs v Pennsylvania* 16 Pet (1842) 617-618; *Houston v Moore* 5 Wheat 1 (1820).

Note 71. *Chevron (Nig) Ltd* v *Imo State House of Assembly & Ors* (2016) LPELR-41563 (CA) per Agube JCA [F-A] 83-86; *Innocent Adikwu* v *Federal House of Representatives* (1982) 3 NCLR 394, 407.

Note 72. 1999 Constitution, s. 88(1)(b)(i) and (ii).

Note 73. For example, section 12(1) of the Urban and Regional Planning Act 1992 provides that subject to subsection (2) of this section, the duty assigned to the Commission, the Board or the Authority by sections 7, 9 and 11 of this Act may in each case be delegated to a person registered under the relevant profession as the Commission, Board or the Authority may deem fit in each circumstance.

Note 74. *Attorney-General of Bendel State* v *Attorney-General of the Federation* (1981) LPELR-605 (SC) per Obaseki JSC [E-F] 123.

Note 75. ibid [B-C] 124.

Note 76. J. Nnamdi Aduba & Sam Oguche (n 4) 288.

Note 77. See section 308(2) 1999 Constitution.

Note 78. Offornze Amucheazi "The Role of National Assembly in the Consolidation of Democracy in Nigeria" in: Epiphany Azinge (ed) Century of Constitutional Evolution 1914-2014 (Nigerian Institute of Advanced Legal Studies 2014), 1055, 1065.

Note 79. (2016) LPELR-41563 CA.

Note 80. ibid per Agube JCA [F-A] 83-86; Innocent Adikwu v Federal House of Representative (1982) NCLR 394, 407.

Note 81. 1999 Constitution, s. 62(1). See also SSO 2015, Order 103.

Note 82. 1999 Constitution, s. 62(4).

Note 83. (1981) LPELR-605 (SC).

Note 84. ibid per Obaseki JSC [F-G] 123.

Note 85. 1999 Constitution, s 62(4) and SSO 2015, Order 104.

Note 86. ibid per Agube JCA [E-F] 71.

Note 87. SSO 2015, Order 96(iv).

Note 88. SSO 2015, Order 14(a).

Note 89. Bryan A. Garner (Ed), *Black's Law Dictionary* (10th ed., Thomson Reuter 2014) 670. According to Geoffrey, as used here, ethics refers to imperatives regarding the welfare of others that are recognised as binding upon a person's conduct in some more immediate and binding sense than law and in some more general and impersonal sense than morals. Geoffrey Hazard Jr, *Ethics in the Practice of Law 1-2* (1978). ibid.

Note 90. National Democratic Institute for International Affairs, "Legislative Ethics: A Comparative Analysis" Legislative Research Series 4, 2 <ww w.ndi.org/files/026_ww_legethics.pdf> accessed 12 July 2021 ("Legislative Research Series").

Note 91. W Shittu, "Legislative Ethics and Law Reform" in E Azinge and N Udombana (Eds.), *Drafting Legislation in Nigeria: Constitutional Imperatives* (Nigerian Institute of Advanced Legal Studies 2012) 379.

Note 92. Garner (n 89) 1329.

Note 93. ibid 1422.

Note 94. *Attorney-General of Bendel State* v *Attorney-General of the Federation* (1981) 10 S.C. (REPRINT) 1, 90.

Note 95. The act of smoking or drinking on the floor of the Senate Chambers is further prohibited under Chapter three dealing with privileges. See SSO 2015, Order 17 rule 3.

Note 96. Paragraph 4(1) of the Code of Conduct for Public Officers states that a public officer shall not, after his retirement from public service and while receiving pension from public funds, accept more than one remunerative position as chairman, director or employee of (a) a company owned or controlled by the government; or (b) any public authority. Subparagraph (2) states further that a retired public servant shall not receive any other remuneration from public funds in addition to his pension and the emolument of such remunerative position.

Note 97. Part I, Fifth Schedule 1999 Constitution, para 1.

Note 98. ibid para 3.

Note 99. ibid para 6(2).

Note 100. ibid para 8.

Note 101. ibid paras 9 and 10.

Note 102. ibid para 11; ss 10-13 Code of Conduct Bureau and Tribunal Act, Cap C15 LFN 2010. The aborted Draft Constitutions of 1989 and 1995, respectively, extended the prohibited conducts by including acts such as public officers living above their legitimate income and certain property transactions. These were referred to as "Illicit enrichment". Such acts of illicit enrichment were, however, omitted in the 1999 Constitution. This is despite popular conviction that most retired and serving Public Officers in Nigeria are guilty of "Illicit enrichment", O Oyewo, "Constitutions, Good Governance and Corruption: Challenges and Prospects for Nigeria" <http://www.nigerianlawguru.com> accessed 19 June 2021. The African Union Convention on Preventing and Combating Corruption in Article 1 defines "illicit enrichment" as "the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income". Section 26 of the Code of Conduct Bureau and Tribunal Act Cap C15 LFN 2010 defines a child to include a step-child, a lawfully adopted child, a child born out of wedlock and any child to whom any individual stands in place of a parent.

Note 103. See n 96 for text of para 4.

Note 104. News item on 99.3 Info F.M. around the middle of 2012. See also The Tide News online, "Nigeria's Public Officers and Code of Conduct" <http://www.thetidenewsonline.com/2015/06/26/nigerias-public-officer-and-code-of-conduct/> accessed 17 June 2021 (noting that indiscipline is the root cause of failure of majority of Nigerian citizens to obey simple rules, regulations and codes of ethical behaviour and that the Bureau should be strengthened to face the challenges of enforcement of the Code as its workability revolves around its effective enforcement).

Note 105. See specifically sections 5-18 of the Act.

Note 106. Part 1 of the Third Schedule to the Constitution 1999 and paragraph 12 of Part 1 of the Fifth Schedule to the Constitution 1999.

Note 107. SSO 2015, Order 14 rule 2.

Note 108. SSO 2015, Order 15.

Note 109. SSO 2015, Order 16.

Note 110. SSO 2015, Order 17 rule 2.

Note 111. SSO 2015, Order 18.

Note 112. SSO 2015, Order 19.

Note 113. LHPP Act 2017, s 1.

Note 114. LHPP Act 2017, s 21.

Note 115. LHPP Act 2017, s 22.

Note 116. LHPP Act 2017, s. 23(a).

Note 117. LHPP Act 2017, s 23(b).

Note 118. SSO 2015, Chapter XIV 1(a).

Note 119. SSO 2015, Chapter XIV 2(a).

Note 120. SSO 2015, Chapter XIV 3(a).

Note 121. SSO 2015, Chapter XIV 3(b).

Note 122. SSO 2015, Chapter XIV 3(d)(i).

Note 123. SSO 2015, Chapter XIV 3(d)(ii).

Note 124. SSO 2015, Chapter XIV 3(f).

Note 125. SSO 2015, Chapter XIV rule 3(h)

Note 126. SSO 2015, Chapter XIV rule 3(g).

Note 127. 1999 Constitution, s. 89(1)(b).

Note 128. ibid s. 89(1)(c).

Note 129. ibid s. 89(2). This provision also applies to the Speaker of the House of Representatives, as the case may require.

Note 130. This contention also applies to summons and warrants emanating from the House of Representatives.

Note 131. As the case may require, the Speaker of the House of Representatives has similar power under this provision.

Note 132. ibid.

Note 133. 1999 Constitution, s. 89(1)(d).

Note 134. (2015) LPELR-25928 (CA). Also, *NOSDRA* v *ExxonMobil* (2018) LPEL-44210(CA) per Adah JCA [B-D] 10.

Note 135. ibid.

Note 136. (2018) LPEL-44210(CA).

Note 137. ibid per Adah JCA [D-E] 10.

Note 138. Garner, (n 89) 1373.

Note 139. (2004) LPELR-11320(CA) [A-B] 29.

Note 140. ibid [A-B] 29.

Note 141. *Edewor v Uwegba* (1987) 1 NWLR (Pt 50) 313, 338 (Per Nnamani JSC); *Charles* v *FRN* (2018) LPELR-43922(CA) per Ekanem JCA [B-D] 12.

Note 142. *Charles v FRN* (2018) LPELR-43922(CA) per Ekanem JCA [F-A] 12-13.

Note 143. *Registered Trustee of Synagogue Church of All Nations* v *State & Ors* (2018) LPELR-46631 (CA) Per Georgewill JCA [E-F] 29.

Note 144. Senator Ayo Akinyelure, FCA, Brief Remarks by the Chairman, Senate Committee on Ethics, Privileges and Public Petitions, Senator Ayo Akinyelure, FCA at the 2019 Retreat of the Committee Organised by PLAC in Conjunction with the European Union (EU) at Legend Hotel Airport, Lagos on 25th October, 2019, 2.

Note 145. Henry Umoru and Joseph Erunke, "NASS Amends CCT Act, Takes over control of agency from Presidency", Vanguard Online, 27 October 2016 <http://www.vanguardngr.com/2016/10/nass-amends-cct-act-takes-control-agency-presidency/ > accessed 15 October 2021 .

Note 146. Abdulwahab Abdulah, Amendment of Code of Conduct Act Foretells Nass witch hunt—Fashanu, SAN, Vanguard Online, 25 November 2016 <http://www.vanguardngr.com/2016/11/amendment-of-code-of-conduct-act-foretells-nass-witch-hunt-fashanu-san/ > accessed 15 October 2021.

Note 147. *Tony Momoh v The Senate* (1981)1 NCLR 105 where the court stated that Stating that the Senate would be acting ultra vires its powers under the Constitution to summon an editor for the purpose of asking him to disclose the sources of his information in respect of publications in his newspaper.

Note 148. (1982) NCLR 105.

Note 149. (2016) LPELR-41563(CA).

Note 150. ibid per Agube JCA [F-A] 85-86.

Note 151. (2016) LPELR-41563(CA).

Note 152. ibid [D-F] 85.

Note 153. (2019) LPELR- 47673(CA).

Note 154. ibid per Ebiowei JCA [F-B] 16-21.

Note 155. (2017) LPELR-43474(SC).

Note 156. ibid [A-B] 26.

Note 157. (2015)18 NWLR (Pt. 1490) 105.

Note 158. (1982) 3 NCLR 394.

Note 159. (1981)1 NCLR 105.

Note 160. See generally sections 174 and 211 of the Constitution on the prosecution powers of the Attorney General of the Federation and Attorney General of a state respectively and *Oloyede v State* (2013) LPELR-22215(CA). See also *Watkins v United States* 354 US 178 (1957) <http://caselaw.findlaw.com/us-supreme-court/354/178.html> accessed 6 August 2021 (Stating that the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under the constitution to the executive and the judiciary).

Note 161. News Agency of Nigeria (n 65).

Note 162. Ismail Mudashir and others (n 11).

Note 163. SSO 2015, Order 97 rule 4(b).