

STRENGTHENING LEGISLATIVE CONTROLS OVER DELEGATED LEGISLATION IN NIGERIA¹

Abstract

The aim of this paper was to identify ways by which the role of the legislative arm of government in Nigeria can be further strengthened by entrenching the concept of accountability in delegated legislations in Nigeria. In doing so, this paper examined the concept of delegated legislation for the purpose of clarifying its import and dependence for validity on the legislature. It further examined the control mechanism for delegated legislation and harps on the power of the legislature to check delegated legislation as it is done in the United Kingdom and India, especially through legislative committees on subordinate or delegated legislation. This paper later found that the legislative control over delegated legislation in Nigeria is porous, inadequate and restrictive, thereby making the executive arm of government too powerful. The doctrinal method of research was adopted in carrying out this research and the paper ended by arguing for an urgent amendment of sections 88, 89, 128 and 129 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN).

Keywords: Legislative Control, Delegated Legislation, Nigeria, Strengthening

1. Introduction

The legislature is one of the most viable democratic institution through which the wishes of the people are brought to bear in many spheres of civil existence. This paper focuses on the role of the Nigerian legislature in regulating and scrutinizing delegated legislature. At the early part of the paper, focus is placed on the legislature as elected representatives of the people in whom the validity of delegated legislations is derived. Attention is also paid to the evolution and concept of delegated legislation as well as the need to regulate the phenomenon. Having examined sections 88, 89, 128 and 129 of the CFRN, it was discovered that the legislative power of the National Assembly and the State Houses of Assembly to check and scrutinize delegated legislation is excessively restrictive and should be amended in order to reduce the possibilities of abusing delegated power to legislate, especially by the executive arm of government.

2. Legislative Powers

Law making is a function traditionally reserved for the legislative arm of government. This tradition is clearly expressed in section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The section provides that the legislative power of the Federal Republic of Nigeria shall be vested in the National Assembly² and that of the states in the House of Assembly of the State.³ In the case of *Akintokun v. LPDC*,⁴ the Supreme Court noted that it was the duty of the legislature to make laws for public consumption and guidance. There are however, instances where the power to make laws is delegated to another arm of government. The laws or rules made pursuant to such a delegated authority are called delegated legislations. One example of a situation whereby an institution of government other than a legislative house is empowered to make laws is contained in s. 46 (3) of the CFRN. That provision empowers the Chief Justice of Nigeria to make rules for the enforcement of human rights in courts. Similarly, by the provisions of also sections 274, 279, 236 of the CFRN, the Chief Judges, Chief Justice and Grand Khadi are empowered by the CFRN to make rules that regulate procedures in their courts. Such rules must however, be consistent with the statute establishing the court or any other statute in force.

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² Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 4 (1).

³*Ibid*, s. 4 (6)

⁴ (2014) 13 NWLR (pt. 1423) 1 at 91, paras. A – B.

3. Delegated Legislation

Delegated legislation evolved out of the need for effective governance. As the responsibility of government increased, coupled with the increase in population, it became inevitable to evolve an expeditious and effective means⁵ of law making in such a way that the legislature is not required to produce every legal instrument needed to run a government.⁶ Another reason for the evolution of delegated legislation is the technicality of the subject matter. Where a subject matter requiring legislation is too technical as to exhaust the competence of the legislature, such matters are referred to a department or agency of government having competence and technical resources regarding the subject matter.⁷ This need to delegate the power to legislate surfaced in England in the sixteenth century when the King was empowered by the Statute of Proclamation of the year 1539 to make proclamations which were deemed Acts of parliament.⁸ This power was sanctioned by parliament because, it was contemplated that situations might arise which required speedy remedies by way of proclamations.⁹ This power of the King was extinguished in 1547 but in practice, the King continued to use it. Consequently, in 1611, Sir Edward Coke and three other judges were commissioned to consider the legitimacy of the King's power to issue proclamation¹⁰ in the famous *Case of Proclamations*.¹¹ The determination of the panel effectively and significantly limited the power of the King to issue valid proclamations. Particularly, the case determined definitively that the King lacked the powers to create offence which did not exist on the day of the said proclamation. The determination of the case by Sir Coke set the tone for the development of the concepts of separation of power and delegated legislation. Delegated legislation refers to rules, instructions, directives which are made pursuant to a delegated authority to legislate. The term has been defined by various authors¹² and one recurring theme is that these pieces of legal instruments are made by agencies authorised to do so by the legislature. Whereas Egwummuo defines delegated legislation as laws duly made by subordinate law makers,¹³ Okany defines the term as rules and regulations made by any person or body authorized to do so by an Act of the legislature.¹⁴ Oluyede defines delegated legislation differently. This he does by making reference to the Interpretation Act and concludes that delegated legislation includes laws, statutory instruments, enactments and bye-laws.¹⁵ Oluyede, consequently, points out the fact that delegated legislation has many appellations which includes administrative legislation,¹⁶ subsidiary laws, subordinate legislation or secondary legislation¹⁷ but this term does not include departmental circulars.¹⁸ Subordinate/delegated legislation has also been defined as that

⁵ A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law*, (Edinburgh: Pearson Education Limited, 2011), 622, noting that the "inquiry by the Committee on Minister's Powers concluded that unless parliament was willing to delegate law-making powers, it would be unable to pass the kind or quantity of legislation which modern public opinion required."

⁶ P. A. Oluyede, *Nigerian Administrative Law*, (Ibadan: University Press Plc, 2007), 326 – 327, noting that owing to the commitment of governments all over the world, with respect to economic and social policies, administrative legislation (same as delegated legislation) evolved. This, according to him is as a result of many reasons which includes the need to decentralize as a result of regional development or for dealing with matters that are too technical for effective handling by the law makers.

⁷ B. O. Iluyomade and B. U. Eka, *Cases and Materials in Administrative Law in Nigeria*, (Ile-Ife, Obafemi Awolowo University Press, 2007), 72 – 73; P. A. Oluyede, *Nigerian Administrative Law*, (Ibadan: University Press Plc, 2007), 326 – 327; M. C. Okany, *Nigerian Administrative Law*, (Onitsha: Africana First Publishers, 2005), 48 – 49, all pointing to the fact that the reasons for the evolution of the practice of delegated legislation are legion.

⁸ A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law*, (Edinburgh: Pearson Education Limited, 2011), 621.

⁹ Egwummuo, *Modern Trends*, 215 – 216.

¹⁰ *Ibid*, 216.

¹¹ (1611) 12 Co. Rep. 74.

¹² See A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law*, (Edinburgh: Pearson Education Limited, 2011), 621, referring to those body of rules made by the executive arm of government as subsidiary or delegated legislation.

¹³ J. N. Egwummuo, *Modern trends in Administrative Law*, (Enugu: Academic Printing Press, 2000), 214.

¹⁴ M. C. Okany, *Nigerian Administrative Law*, (Onitsha: Africana First Publishers, 2005), 39.

¹⁵ P. A. Oluyede, *Nigerian Administrative Law*, (Ibadan: University Press Plc, 2007), 331-332.

¹⁶ *Ibid*, 326, referring to delegated legislation as administrative legislation.

¹⁷ Okany, *Administrative Law*, 52.

¹⁸ see the case of *Maderibe v. F.R.N* (2014) 5 NWLR (pt. 1399) p. 92 para A – F, where it was noted that departmental circulars are of great importance but that they have no legal effect whatsoever and have no statutory authority.

which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority.¹⁹

Basically, delegated legislations are inferior to laws pursuant to which they were enacted.²⁰ Thus in the case of *NNPC v. Famfa*,²¹ the Supreme Court held that the Federal Minister of Petroleum, having failed to follow the procedure laid out by the Petroleum Act, did not legitimately acquire an Oil Mining Lease which he purportedly acquired under a subsidiary regulation.²² In that case, the Minister of Petroleum had granted an Oil Prospecting License to the Respondent, titled OPL 126. Having found oil, the appellant purportedly acquired 40 % of the OPL 216. The respondent filed a suit to attack the purported acquisition and was successful. The trial court, however, pointed out that the respondent had the right to participate in an Oil Mining Lease (OML), a lease usually granted after the expiration of an OPL. When it got to the stage of obtaining the OML, the respondent, pursuant to a regulation made under the Petroleum Act, purportedly acquired 50 % of the OML, via a procedure outside the contemplation of the Petroleum Act but in compliance with a subsidiary legislation titled the *Back-in-Right Regulation of 2003*. The Supreme Court held that the subsidiary law sources its existence from the Principal legislation and as such, in the event of any inconsistency, the provisions of the principal Act shall prevail and that of the subsidiary legislation shall be void to the extent of the inconsistency.²³

An act carried out, outside the ambit of the delegated power may be regarded as abuse of power and as such *ultra vires* and void. Accordingly, in the case of *Chairman of the Board of Inland Revenue v. Joseph Rezcallah & Sons Ltd*,²⁴ it was held that where there is breach of statutory procedure, the act purported to have been completed would be regarded as void and ineffective. Similarly, where statute provides for a procedure for carrying out a certain action, that procedure set out, must be complied with otherwise the action would be voided by the court.²⁵ The Supreme Court has reiterated this point in the case of *Marwa v. Nyako*²⁶ when it said that where the law prescribes a mode for doing a thing, only that method and no other should be followed. Furthermore, the Supreme Court, in the case of *Muhammed v. ABU, Zaria*,²⁷ makes it clear that an exercise of delegated power not contemplated by law constitutes an abuse of power.²⁸

Delegated legislation exists to make governance effective and responsive to the needs of the people as soon as they arise and in order to be valid, must comply with the tenets and provisions of the rule of law, natural justice and the law authorizing the legislation.

Delegated legislation has been criticized because it is wide open to abuse since there is a recurring tendency for administrative agencies to exceed their powers in promulgating rules.²⁹ This has given rise to the requirement of accountability in the formulation of governmental policies.³⁰ In order to fulfill this sacred obligation of accountability, many jurisdictions have evolved different mechanisms for controlling, monitoring and reviewing the contents of delegated legislations. One of such mechanisms applied in the United Kingdom, for instance, is one put in place by the Parliament; this it does by constituting a joint

¹⁹ John Salmond, *Jurisprudence* (9th ed., London: Sweet and Maxwell Ltd, 1937), 210.

²⁰ *Ibid*, 53, noting that subsidiary laws are subordinate to the enabling statutes under which they are made and by reference to which their validity may be tested.

²¹ *NNPC v. Famfa Oil Ltd* (2012) 17 NWLR (pt 1328) 148.

²² *Ibid*, p. 195.

²³ *NNPC v. Famfa* (supra) at p174 – 175, paras H – B. See also *FGN v. Zebra Energy Ltd.* (2002) 18 NWLR (pt. 798) 162; *Ogunlaji v. A.G Rivers State* (1997) 6 NWLR (pt. 508) 209; *UNTHMB v. Nnoli* (1994) 5 NWLR (pt. 36) 376.

²⁴ (1961) NRNLR 32 at 38.

²⁵ See *Goldmark Nig ltd v. Ibafo Co. ltd.* (2012) 10 NWLR (pt. 1308) 291 at 356 para E – H.

²⁶ (2012) 6 NWLR (pt. 1296) 199 at 360.

²⁷ (2014) 7 NWLR (pt. 1407) 500 at 535, defined abuse of power as including instances where there is an assumption of jurisdiction to perform to perform an act unauthorized by law or a refusal of jurisdiction where same should be exercised.

²⁸ *Ibid*, at p. 535.

²⁹ Oluyede, *Administrative Law*, 327 and 333.

³⁰ A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law*, (Edinburgh: Pearson Education Limited, 2011), 102, noting that accountability requires the government to justify its decisions by giving the reasons for them and opening their decisions to criticisms.

committee of the House of Lords and of Commons to scrutinize the delegated legislations emanating from ministries and departments of government.³¹ Accordingly, a legislative house who delegates her power has the faculty to revoke the power so delegated³² and to control same.

4. Control over Delegated Legislation

Inspired by criticisms that the power to make subsidiary legislation is slippery and could easily stray out of the grasp of the legislature, control mechanisms have evolved to put subsidiary legislators in check. As a matter of fact, subsidiary legislations are susceptible to the controls of the three arms of government, to wit: the legislative, executive and judicial arms of government.³³ For the purpose of this paper, attention will be placed on the control of delegated legislation by the legislature in Nigeria. The power of the legislature to control subsidiary legislations is rooted in the inherent and constitutional powers of the legislature to make laws. Consequently, if the legislative arm of government finds a subsidiary legislation undesirable, it has the power to amend the relevant laws consequently revoking the power granted to make same.³⁴ Upon the basis of this power, in the United Kingdom, a Joint Committee drawn from the House of Commons and the House of Lords is appointed every year since 1944 to consider the propriety or otherwise of subsidiary legislations made by ministers.³⁵ Nigeria has not adopted the practice prevalent in the U.K as described above. In order to maintain some level of control over the making of subsidiary legislations, the practice in Nigeria is that legislature creates certain conditions in the principal statute so as to ensure that the rule-making procedure, at some point, undergoes legislative scrutiny. For instance, section 4 (3) of the Official Secrets Act³⁶ provides that the regulation made by the Minister shall have no effect unless the regulation has been approved by the resolution of each house of the National Assembly.

Essentially, the legislature exercises control through the following measures: i) Mere laying without further direction; ii) Laying subject to annulment, amendment or disallowance; iii) Laying subject to affirmative resolution.³⁷

It is worthy of note that sometimes, these legislative controls do not exist in statutes and this therefore gives rise to a subsidiary legislation being passed without the inputs of elected representatives of the people. It is to these chunks of legislations which do not require legislative inputs that this paper is concerned with. For instance, section 46 of the Police Act provides that the President can make Regulations on the recommendation of the Nigeria Police Council and the Police Service Commission, as well as Standing Orders pursuant to section 48 of the Police Act. What is interesting, with respect to the power of the Police Service Commission to make Standing Orders with the approval of the President, is that such orders shall be binding even if not published in the Federal gazette.³⁸ Another critical instance where wide legislative powers are delegated is in section 9 of the Petroleum Act,³⁹ which provides rather generously, that the Minister may prescribe anything that is required by the Act to be prescribed; the provision actually goes further to empower the minister to provide generally for matters relating to licenses and leases and operations carried on there under.⁴⁰ In the latter instance, one can see how clearly the highest foreign exchange earner in Nigeria is merely placed under the control of one minister who has a wide discretion to prescribe anything which the Act requires. The Act actually allows the Minister to determine what conditions might be fulfilled

³¹ *Ibid*, 622.

³² *Bamgboye v. University of Ilorin* 8 NWLR (pt. 207) 1 at 31, noting that not only can the delegating power resume their authority, with which indeed they have never parted, but they can also revoke the authority which they have delegated.

³³ B. O. Iluyomade and B. U. Eka, *Cases and Materials in Administrative Law in Nigeria*, (Ile-Ife, Obafemi Awolowo University Press, 2007), 93 – 177.

³⁴ *Bamgboye v. University of Ilorin* 8 NWLR (pt. 207) 1 at 31.

³⁵ A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law*, (Edinburgh: Pearson Education Limited, 2011), 622,

³⁶ Official Secrets Act, Cap. O. 3 LFN 2004, s. 4 (3).

³⁷ See generally, O. Iluyomade and B. U. Eka, *Cases and Materials in Administrative Law in Nigeria*, (Ile-Ife, Obafemi Awolowo University Press, 2007), 94.

³⁸ Police Act, Cap 23 LFN, 2004, s. 47 (3).

³⁹ Petroleum Act, CAP P 10, LFN, 2004, s. 9 (1) (a).

⁴⁰ Petroleum Act, s. 9 (1) (b).

before licenses and leases could be granted. To say the least, this sort of power is open to abuse.⁴¹ In the area of criminal justice, none of the criminal procedure laws prescribes regulation on the use of force which is regulated by Police Force Order 237 (a delegated legislation made by the Inspector General of Police). Force Order 237, in its paragraph 3 provides that a police officer may use firearms in the following circumstances;

- a. when attacked and his life is in danger and there is no other way of saving his life;
- b. when defending a person who is attacked and he believes on reasonable grounds that he cannot otherwise protect that person attacked from death;
- c. when necessary to disperse rioters or to prevent them from committing serious offences against life and property;
N.B. remember that twelve or more persons must remain riotously assembled beyond a reasonable time after the reading of the proclamation before the use of firearms can be justified;
- d. if he cannot by any other means arrest a person who being in lawful custody escapes and takes to flight in order to avoid re-arrest; providing the offence with which he is charged or has been convicted of is a felony or misdemeanor;
- e. if he cannot by any other means arrest a person who takes to flight in order to avoid arrest provided the offence is such that the accused may be punished with death or imprisoned for seven years or more.⁴²

This provision is open to abuse, justifies ill treatments, torture, extra-judicial killings by the police⁴³ and is contrary to section 33 of the CFRN and the international bills of rights. Thus it is possible for the police to kill a suspect and justify same by merely stating that the deceased was suspected to have committed a capital offence and that he tried to escape. Lord Denning has had an opportunity to bare out his mind regarding the unfettered discretion of a minister when he noted in the case of *Ashbridge Investments Ltd. v. Minister for Housing and Local Government*⁴⁴ that,

it seems to me that the court can interfere with the Minister's decision if he has acted on no evidence; or if he has come to a conclusion, to which on the evidence, he could not reasonably come; or if he has taken into consideration matters which he ought not to have taken into account, and vice versa; or has otherwise gone wrong with the decision of a lower tribunal which has erred in point of law.⁴⁵

Lord Denning was rigidly antithetical to unlimited ministerial discretion and on many instances, held that unbridled ministerial discretion was an affront to the rule of law.⁴⁶ In view of the above, it is clear that

⁴¹See Yomi Kazeem, "The Most Fascinating Details in United States 54-Paged Case Against Nigeria's Corrupt Ex-Oil Minister," *Quartz Africa*, available at <https://qz.com/africa/1032997/nigeria-oil-corruption-diezani-alison-madueke-and-kola-alukos-one57-manhattan-condo-luxury-yachts-and-ferrari-racing/>, last accessed on 28th November, 2018, stating that the ex-oil Minister, Alison-Madueke, leveraged on her influence as Petroleum Minister in Nigeria, to award multiple oil contracts to companies owned by Aluko and Omokore. In April, 2011, a company owned by the business men was awarded four oil mining leases and even though the company failed to meet contractual obligations, the company was allowed to sell crude oil to the tune of \$ 677 million. In exchange for the contracts, the minister, allegedly got kick backs. Court documents list four homes in the United Kingdom worth over \$11.5 million bought by the companies owned by the business men for Alison-Madueke.

⁴²Police Force Order 237, paragraph 3, available at <http://policehumanrightsresources.org/wp-content/uploads/2016/03/Nigeria-Force-order-237-Rules-for-Guidance-in-the-Use-of-Force-and-Firearms-by-the-Police.pdf>, last accessed on November 7, 2018.

⁴³See Network on Police Reform in Nigeria and Open Society Justice Initiative, *Criminal Force: Torture, Abuse and Extrajudicial Killings by the Nigeria Police Force*, (New York: Open Society Institute, 2010), 51; see also Amnesty International, *Nigeria: You have Signed Your Death Warrant (Torture and other Ill Treatment in the Special Anti-Robbery Squad (SARS))*, p. 9, available at https://www.amnestyusa.org/files/nigeria_sars_report.pdf, last accessed on November 7, 2018.

⁴⁴[1963] 1 W.L.R 1320.

⁴⁵*Ibid.*

⁴⁶See *Gouriet v. U.P.OT.W.* [1977] 2 W.L.R. 310; see also Lord Denning, *The Discipline of Law* (Oxford: Oxford University Press, 1979, Reprinted in 2004 and 2007), 140, where Lord Denning noted as follows: "what then does it come to? If the contention of the Attorney-General is correct, it means he is the final arbiter as to whether the law should be enforced or not. If he does not act himself – or refuses to give his consent to his name being used – then the law will not be enforced. If one Attorney-General after another does this, if each in his turn declines to take action against those who break the law – then the law becomes a dead letter. It may be that each Attorney-

delegated power has to be regulated and it is hereby submitted that the Nigerian legislature, the elected representatives of the people, has to do more in this regard and one way of doing so is to adopt the practice in the United Kingdom whereby a scrutinizing committee is put in place to assess, regulate and control delegated legislations. As a matter of fact, India has adopted the practice. Without a scrutinizing committee for subsidiary legislation in place, the possibility of blatant abuse of powers becomes inevitable. There is, however, a Nigerian version which is the power to oversight the activities of the executive arm of government. In Nigeria, the legislature's power to oversight the executive arm of government at the federal and state levels, and by extension check the activities of the executive, which power is inextricably linked to the power to make laws, is directly or indirectly expressed in ss. 88, 89, 128 and 129 of the CFRN respectively. It has also been noted in the case of *Governor of Ekiti State & ors v. Olayemi*⁴⁷ that the CFRN, despite its recognition of the doctrine of separation of powers, has expressly made provisions for the legislature to exercise limited oversight functions in relation to the executive arm of government.⁴⁸ In scrutinizing subsidiary legislations, it is to be noted that it is within the prerogative of the legislature as representatives of the people, to determine what yardstick it wishes to adopt in determining the reasonableness or validity of a subsidiary legislation. Most likely, the legislature would consider whether the subsidiary legislation is within the contemplation of the principal statute enabling the subsidiary legislation. If the subsidiary legislation complies, it is likely that it would be considered to be good law. But if the delegated power is so wide as to be open to arbitrariness, the legislature is duty bound to cut down the excesses by reviewing the law. Other criteria which the legislature might consider when scrutinizing delegated legislation are: the rule of law, tenets of democracy and the principle of accountability.

5. Validity Tests for Delegated Legislation

Whereas some of these principles such as human rights and the rule of law can be said to be fairly enshrined in the CFRN, the principle of accountability may not enjoy that presumption. Before considering the general compliance of subsidiary legislation with accountability, it appears prudent to consider those proffered by Egwummuo as follows:⁴⁹

- I. Consistency test; is to the effect that any subsidiary legislation must conform to the provisions of the constitution. This is because the Constitution of the Federal Republic of Nigeria is supreme and any other law which is inconsistent with the provisions of the constitution shall be null and void to the extent of the inconsistency. Specifically speaking s. 1 (3) of the CFRN is assertive on the matter.
- II. Objectives or Purpose test; subsidiary legislation must not depart from the objective or aim for which it is granted. In *Howard v. Bodington*,⁵⁰ the Bishop of a Diocese received representations against a priest and being the patron of the benefice held by the priest, forwarded them to the Archbishop more than thirty days after. Later, a judge was appointed to investigate the matter but it was held that the proceedings were void because the requirement as to time was not complied with. See also *Chairman of the Board of Inland Revenue v. Joseph Rezcallah & Sons Ltd.*⁵¹
- III. Reasonableness test; In *Chief F.R.A. Williams v. Majekodunmi*,⁵² it was held that an order made by the Administrator pursuant to the Emergency Powers Act, 1961, restricting the plaintiff's movement to three miles from a certain address was unreasonable and baseless.
- IV. Subjective Language test; under this test, the language of the law grants a near absolute discretion to the subsidiary law maker. Such language includes phrases like; "where the Minister is satisfied," et. c. Notwithstanding the wide discretion granted to the subsidiary law maker, Courts are in the habit of enquiring into the validity of such subsidiary legislation.⁵³
- V. Procedural test; In granting power to make subsidiary legislation, sometimes, certain procedures are provided such as the one considered in section 4 of the Official Secrets Act, which provides that the

General would have good reason of his own for not intervening. He may fear the repercussions if he lends the weight of his authority to proceedings against the infringers. But as one like situation follows another – as it does here- it means that a powerful trade union will feel that it can repeat its performance with impunity. It will be above the law. That cannot be."

⁴⁷ (2016) 4 NWLR (pt. 1501) 1.

⁴⁸ *Ibid*, at 41- 42 paras G – A.

⁴⁹ See J. N. Egwummuo, *Modern trends in Administrative Law*, (Enugu: Academic Printing Press, 2000), 234.

⁵⁰ (1877) 2 P. D. 203

⁵¹ (1961) NRNLR 32 at 38.

⁵² (1962) All NLR 328

⁵³ See *R v. Minister of Housing and Local Government Ex-Parte Chichester Rural District Council* (1960) 1 WLR. 587.

Regulation made by the Minister shall not have the effect of law unless it has been adopted by a resolution by each of the House in the National Assembly.⁵⁴ See also the Police Act which provides that a Regulation shall be made by the President upon recommendation of the Nigeria Police Council. If the President makes a Regulation without consulting the Council, that amounts to a procedural defect which might have the effect of invalidating the Regulation.

- VI. Judicial test; Courts, in the exercise of judicial powers, have the inherent and constitutional powers to make pronouncement regarding the constitutionality or otherwise of a legislation as well as a subsidiary legislation. In the case of *Governor of Ekiti State & ors v. Olayemi*,⁵⁵ it was held that the CFRN has expressly donated the power to the court to pronounce on the constitutionality of the any law made by legislature.⁵⁶ This power, as a matter of course, extends to subsidiary legislation.

6. Accountability

The need for governments to be accountable to the elected representatives of the people and ultimately the people is one that must be given priority and as such, measures have been taken in the United Kingdom to ensure accountability.⁵⁷ In Nigeria however, the legislative check on delegated legislation is manifestly porous and opens the Pandora box for arbitrariness, corruption and waste. This paper builds on the recommendations made by the various committees in the United Kingdom to argue that the National Assembly must assume a more assertive role in fostering accountability in exercise of delegated power.

For instance, section 9 of the Petroleum Act⁵⁸ empowers the Minister for Petroleum to prescribe anything requiring prescription under that Act. This is in addition to the unfettered power to grant licenses required under the Act.⁵⁹ As seen in the recent times, this power has been abused. Unfortunately, this power, apart from the exercise of oversight function by the legislature is not being checked. The power to perform oversight function is limited. Sections 88, 89, 128 and 129 of the CFRN, limit the power to perform oversight function to the purpose of amending the law. Be that as it may, this a valid function of the legislature. In the case of *Keyamo v. L.S.H.A*,⁶⁰ one of the issues for determination was whether the Lagos State House of Assembly had the competence to investigate the alleged wrong doings of a sitting governor. The Court of Appeal held that “issues involving allegation of forgery and perjury against the Governor of a State are matters which members of the SHA” for if found to be true could ground proceeding for impeachment. With the greatest respect, the provision for legislative oversight in the CFRN does not present an adequate opportunity to carry out a thorough scrutiny of the subsidiary legislation made by the executive arm of government, similar to what obtains in the United Kingdom and India. It is hereby argued with verve that subsidiary legislation should be subject to the periodic scrutiny of the National Assembly as is the practice in the United Kingdom. For instance, as it is for now, it appears that if a minister makes regulations pursuant to the Petroleum Act, such a Regulation can only be criticized by the legislature and nothing more.

7. Conclusion

Flowing from the definition of subsidiary legislation by Salmond, it is clear and this paper supports the notion that delegated legislation draws its validity from the legislature. It is therefore absurd that the opportunity afforded by the relevant sections of the CFRN to control and check delegated legislation is quite restrictive. The National Assembly must therefore, as a matter of urgency, amend the relevant provisions of the CFRN for the purpose of ascribing more power to itself so as to control and regulate subordinate legislation.

⁵⁴ Official Secrets Act, Cap. O. 3 LFN 2004, s. 4 (3).

⁵⁵ (2016) 4 NWLR (pt. 1501) 1

⁵⁶ *Ibid* at 44 paras B – E.

⁵⁷ A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law*, (Edinburgh: Pearson Education Limited, 2011), 102, noting that During the 1990s, because of some serious failures of accountability, attempts were made to clarify the essential meaning of accountable government. In 1996, the Scott report on the ‘arms for Iraq’ affair contained penetrating criticism of numerous incomplete and misleading answers given in parliament by ministers to questions about government policy. In 2001, an independent committee urged that parliament must be at the apex of the system of scrutiny of the executive and must develop both a culture of scrutiny and more effective methods of securing accountability.

⁵⁸ Petroleum Act, Cap. P. 10, LFN, 2004.

⁵⁹ *Ibid*, s. 2.

⁶⁰ (2000) 12 NWLR (pt 680). 196 at 218-9