

# LEGAL ISSUE BRIEF

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## **An Analysis of the Circumstances under which the National Assembly Can Take Over the Legislative Functions of a State House of Assembly- Edo State House of Assembly in Focus**

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### **Introduction**

On 17<sup>th</sup> June 2019, the Edo State House of Assembly was inaugurated and Hon. Frank Okiye was elected as speaker. Since then, there have been controversies over the election and inauguration of the speaker. Even though all the 24 members of the State Assembly belong to the APC, only nine members inaugurated the House and elected the speaker, while the other lawmakers-elect alleged that they were excluded in the process.<sup>1</sup>

The National Assembly did not take kindly to the happenings in the Edo State House of Assembly. In view of this, a motion was

presented on the floor of the House of Representatives on the issue. The Chamber set up a 13-member Ad-hoc Committee chaired by Hon. Abdulrazak Namdas, to investigate the crisis.<sup>2</sup> The Committee recommended that the inauguration of the Edo State House of Assembly should be done afresh. Similarly, the Senate resolved to work with the House of Representatives to bring the crisis to an end.<sup>3</sup> The Senate also threatened that failure by the Edo State Governor to comply with its order would see the National Assembly invoke relevant laws to take over the function of the Edo State House of Assembly.<sup>4</sup>

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<sup>1</sup> Nasir Ayitogo, "Reps wade into Edo assembly crisis" <https://www.premiumtimesng.com/news/top-news/339843-reps-wade-into-edo-assembly-crisis.html>

(accessed on 20/08/2019).

<sup>2</sup> Leke Baiyewu, "Reps intervene in Edo Assembly crisis, set up probe panel"

<https://punchng.com/reps-intervene-in-edo-assembly-crisis-set-up-probe-panel/>

(accessed on 20/08/2019).

<sup>3</sup> Queen Esther Iroanusi, "Senate to liaise with Reps over Edo Assembly Crisis"

<https://www.premiumtimesng.com/news/more-news/340021-senate-to-liaise-with-reps-over-edo-assembly-crisis.html>

(accessed on 20/08/2019).

<sup>4</sup> Patrick Ochoga, "Edo Assembly Tussle: NASS Intervention Meets Obaseki's Resistance"

<https://leadership.ng/2019/08/04/edo-assembly-tussle-nass-intervention-meets-obasekis-resistance/>

(accessed on 20/08/2019).

This is not the first time that the National Assembly would attempt to intervene or take over the functions of a State House of Assembly. In 2013, the Senate Committee on State and Local Governments investigated the crisis in the Rivers State House of Assembly. The Committee reported to the Senate that the purported impeachment of the Speaker of the Rivers State House of Assembly by five members was not in compliance with the provisions of Section 92(2)(c) of the Constitution of the Federal Republic of Nigeria (as altered) (the Constitution) and also not in compliance with Orders 12 and 28 of the state assembly Standing Orders 199. The Committee therefore recommended that the Assembly be taken over pending the resolution of the crisis and restoration of peace in Rivers State.<sup>5</sup> In line with the recommendations of the Committee, the Senate passed a resolution empowering it and the House of Representatives to take over the legislative functions of the Rivers State House of Assembly by virtue of the fact that the state House of Assembly could no longer carry out its legislative functions.

Indeed, Section 4 (1) of the Constitution provides that the legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly, while Section 4(6) provides that the legislative powers of a State shall be vested in the House of Assembly of the State. This notwithstanding, the Constitution also provides in Section 11 that

under certain circumstances, the National Assembly may make laws for a state.

Against this backdrop, this brief seeks to examine the circumstances under which the National Assembly can take over the legislative functions of the Edo State House of Assembly.

### **Issues to be discussed**

This brief formulates issues for determination which include:

- a) Does the Constitution provide powers to the National Assembly to take over the legislative functions of a state House of Assembly?
- b) Whether in the circumstances, the National Assembly has powers to take over the legislative functions of the Edo State House of Assembly?

### **Does the Constitution provide powers to the National Assembly to take over the legislative functions of a state House of Assembly?**

The Constitution is supreme to any other law in the nation. In view of this, actions by public institutions should be in conformity with the provisions of the Constitution. In this regard, the Constitution provides that if

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<sup>5</sup> Assembly Takes Over Rivers Legislature, Demands Redeployment of State CP

<https://www.legit.ng/41401.html>  
(accessed on 27/08/19).

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National Assembly**

any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall be void, to the extent of its inconsistency.<sup>6</sup>

The Constitution<sup>7</sup> enumerates the circumstances under which the National Assembly can perform the functions of the House of Assembly of a state as follows:

At any time when any House of Assembly of a State is unable to perform its functions by reason of the situation prevailing in that State, the National Assembly may make such laws for the peace, order and good government of that State with respect to matters on which a House of Assembly may make laws as may appear to the National Assembly to be necessary or expedient until such time as the House of Assembly is able to resume its functions; and any such laws enacted by the National Assembly pursuant to this section shall have effect as if they were laws enacted by the House of Assembly of the State

The Constitution<sup>8</sup> further elucidates on circumstances under which the National Assembly may make laws for the peace, order and good governance of the Federation or any part thereof. These include the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and service as may be designed by the National Assembly as essential supplies and services. Furthermore, during any period when the Federation is at war, the National Assembly

may make laws for the peace, order and good government of the Federation or any part. This power also extends to matters not included in the Exclusive Legislative List as may appear to the National Assembly to be necessary or expedient for the defence of the Federation. Also, Section 11(5) of the Constitution crowns it all by stating that a House of Assembly shall not be deemed to be unable to perform its functions so long as the House of Assembly can hold a meeting and transact business.

It is clear from the above provisions of the Constitution that where a State House of Assembly is unable to perform its functions due to one reason or the other, such as a state of emergency being declared in the State, the National Assembly is empowered by the Constitution to make laws for such a State, in effect taking over the legislative functions of the State Assembly. Furthermore, when the Federation is at war, the Constitution similarly empowers the National Assembly to make laws for the Federation or any part, which certainly includes the states. This is because, during times of war, the nation is in a perpetual state of uncertainty and emergency, which requires some extra ordinary measure to be taken to safeguard peace and order of the country.

The historical root of the power conferred on the National Assembly in Section 11(4) and 11(5) of the Constitution deserve some analysis. It dates back to the First Republic when there was a violent clash on the floor of the Western Regional Assembly between a faction supporting Chief Obafemi Awolowo

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<sup>6</sup> See Section 1(3) of the Constitution.

<sup>7</sup> See Section 11(4) of the Constitution.

<sup>8</sup> See Sections 11 subsections (1) (2) and (3) of the Constitution.

and the other supporting Chief Ladoke Akintola. In response to the crisis, the Federal Government declared a state of emergency over the entire region; removal of the premier and appointment of Dr. Moses Majekodunmi as Sole Administrator of the Western Region.<sup>9</sup> Chief Akintola was reinstated as Premier at the end of the emergency which lasted for 6 months.<sup>10</sup>

To avoid the situation that occurred in the Western Region Assembly from repeating itself, the Constitution of the Federal Republic of Nigeria 1979, took measures to provide restrictions on the extent the Federal Government can go in interfering with the functioning of state governments. This was done in order to plug the loophole in the Constitution of Nigeria 1960, which enabled the prime minister to take those steps. The provisions of the 1979 Constitution were retained by the Constitution, hence the proviso to Section 11(4) of the Constitution prohibits the removal of the state governor whenever there is a breakdown of law and order in the state preventing the state assembly from functioning, and necessitating federal intervention. Section 11(5) of the Constitution also limits the situation necessitating federal government intervention only to when a state assembly is unable to hold a meeting and carry on its legislative business.<sup>11</sup>

### **Whether in the circumstances, the National Assembly has powers to take over the legislative functions of the Edo State House of Assembly?**

As stated earlier, the Governor of Edo state, Godwin Obaseki inaugurated the State Assembly with 12 of the 24 member assembly absent. This move led to the threat by the National Assembly to take over proceedings in the Edo State House of Assembly if the governor refused to make another proclamation to inaugurate the Assembly afresh.

It is important to state that the situation contemplated by the Constitution is not the same as that in Edo State. The Constitution provides that the National Assembly could only intervene in the legislative activities of a state when it had become impossible for a state House of Assembly to function, citing section 11 (4) (5) of the Constitution. Furthermore, only a court of competent jurisdiction can declare the proclamation of the governor as illegal and order for a fresh one.

Section 11 (4) and Section 11 (5) of the Constitution provide for situations where law and order have broken down in a state, which prevents the House of Assembly from meeting and engaging in legislative business. The two subsections provide for a scenario

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<sup>9</sup> Joseph Onyekwere "Lawyers flay NASS over Edo Assembly crisis, declares takeover threat illegal" <https://guardian.ng/politics/lawyers-flay-nass-over-edo-assembly-crisis-declares-takeover-threat-illegal/> (accessed on 25/08/19).

<sup>10</sup> Action Group Crisis of 1962

[https://acadar.com/a/unit/cjhyhegvp00183c5z94gcr2mg\\_action\\_group\\_crisis\\_of\\_1962\\_lesson\\_notes\\_tutorials](https://acadar.com/a/unit/cjhyhegvp00183c5z94gcr2mg_action_group_crisis_of_1962_lesson_notes_tutorials)

(accessed on 28/08/19).

<sup>11</sup> Onyekwere (n9).

where an existing assembly is unable to function due to a breakdown of law and order in the state, not just in the assembly alone. So far, there has been no report that Edo State House of Assembly has been unable to carry on its legislative activities.

Suffice it to say that not even the most liberal interpretation of the Constitution would justify the National Assembly to take over the legislative activities of the Edo State House of Assembly. This is because Section 11(5) of the Constitution states in clear language that a state House of Assembly be deemed to be unable to perform its functions so long it holds meetings and transact its business. Therefore, it is immaterial that the house is facing some internal challenges, as long as it is still able to perform its law making functions. There is no question as to whether the Edo State House of Assembly is able to perform its functions because the House is holding meetings and transacting its business as appropriate.

One other issue that requires some attention is that of quorum for a sitting of a state House of Assembly. Quorum is the minimum number of persons who must be present to conduct business either on the floor of a legislative chamber or in a committee. An essential goal of the quorum requirement is to prevent a situation in which the determination of policy and legislative activity take place in the presence of a limited number of representatives. The existence of a quorum ensures the participation of a minimal number of legislators in

parliamentary activities. This is likely to increase legitimacy of decisions taken.<sup>12</sup> The Constitution<sup>13</sup> provides that the quorum of a House of Assembly shall be one-third of members of the House. Therefore, the inauguration of the Edo State House of Assembly and election of the speaker by 9, out of 24 members satisfied the constitutional provision on quorum of a state House of Assembly.

It must also be mentioned that the Constitution does not encourage any undue interference in the affairs of a state House of Assembly by the National Assembly. In this regard, Section 4 of the Constitution (as altered) provides that legislative powers of the Federal Republic of Nigeria are vested in the National Assembly while the legislative powers of the States of the Federation are vested in the state Houses of Assembly. This is based on the ideals of federalism.

Consequently, the National Assembly, in the circumstances prevailing in Edo state House of Assembly, may not be within its powers to take over the functions of the State Assembly, because doing so would not be in line with the provisions of the Constitution.

## **Conclusion**

The most significant aspect of federalism is that the powers, structures and functions of government at each layer, within the federation, are defined. In Nigeria, the Constitution clearly provides for the powers

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<sup>12</sup> Peter Ademolu Anyebe, 'Rules and Procedures Governing Legislative Process in Nigeria'. *Journal of Law, Policy and Globalization* [2016] (48) p. 73.

<sup>13</sup> See Section 96(1) of the Constitution.

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**National Assembly**

that can be exercised by the National Assembly and the State Houses of Assembly. This brief attempted to examine the powers granted by the Constitution to the National Assembly to take over the functions of a state House of Assembly. The Constitution provides that where any House of Assembly of a State is unable to perform its functions by reason of the situation prevailing in that State, the National Assembly may make laws

for the state. However, Section 11(5) of the Constitution also provides that so long as a state House of Assembly is able to hold a meeting and transact business, such House of Assembly shall not be deemed to be unable to perform its functions. Consequently, the Edo State House of Assembly cannot be said to be unable to perform its functions because the House has been holding meetings and transacting its business.