

Senate:

Procedure for Hearing of Public Petitions



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PLAC
POLICY AND LEGAL ADVOCACY CENTRE



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1.0 INTRODUCTION

Legislative hearing is one of the major activities of the Senate in which the Senate collects, collate and analyse information that would enhance the legislative law-making process. Irrespective of the Committee of the Senate, almost all legislative hearings have similar procedures.

The Senate Standing Orders 2015 (as amended) provides for the procedures and processes of hearings in the various Committees of the Senate. In particular, Orders **102** and **103** set out the hearing procedures to which Senate Committees must conform, including the quorum requirement, calling and interrogation of witnesses, taking of testimony and limits on the jurisdiction of the Senate Committees. These Committees, led by their Chairmen, have broad discretion in how they conduct a hearing, in part because the Committees adopt their own rules of procedure. These rules may supplement Senate Standing Orders, but they cannot contravene them. Committee customs and leadership style are generally not embodied in rules and thus, may vary considerably among Committees, which could influence hearing procedures.

Committee members and staff make considerable plans for Committee hearings.¹ These planning activities usually include collecting background information; preparing a preliminary hearing memorandum for the chairman and members; discussing the scope of the hearing and the expected outcome; scheduling and providing public notice of a hearing; selecting witnesses; determining the order and format of their testimony; and preparing questions or talking points for Committee members to use in questioning witnesses². Other considerations include preparing briefing documents, determining whether the hearing will be broadcast and alerting the media, and attending to other administrative arrangements, such as setting up of the hearing room.³

1 PLAC. (2018) *Public Hearing: A How-To Guide*. Abuja, PLAC.

2 Ibid. pp. 7, 8, 11 and 12

3 Ibid. pp. 10 and 11

2.0 COMPOSITION OF THE COMMITTEE

The Standing Orders of the Senate (as amended) provides that the Senate Committee on Ethics, Privileges and Public Petitions shall be composed of (9) nine to (13) thirteen Senators.⁴

Order 97 Rule 4 establishes the Senate Committee on Ethics, Privileges and Public Petitions. The Chairman of the Senate Selection Committee appoints the Chairman and Deputy Chairman of the Senate Committee on Ethics, Privileges and Public Petitions. This appointment is however made in consultation with the Selection Committee subject to the approval of the Senate during plenary.⁵

The Committee shall also have a Committee Clerk, who would support in administering the activities of the Committee⁶.

4 Order 95 Rule 1

5 Order 100 Rule 1

6 Order 102 Rule 1(j)



3.0 NOTICES AND FIXING OF HEARING DATE

Once the Senate refers a petition to the Committee, the Clerk of the Committee is expected to formally notify the parties mentioned in the petition. The Clerk will send a Notice of meeting to the parties named in the petition stating:

- (a) The nature of the allegation against the respondent(s) and attaching a copy of the petition; and
- (b) That the respondent is to formally appear in person to reply or respond to the allegations contained in the petition on a specific day.

After the meeting, if documents are needed to support the respondent's defense, the respondent(s) sends the documents to the Committee. The Clerk will send a notice of hearing date to both the petitioner and the respondent(s). It is important to note that the Clerk does not forward the respondent's reply to the Petitioner along with the hearing notice.

Furthermore, according to **Order 102 Rule 2(f)(iv)**, the Committee is expected to make a public announcement of the date, place and subject matter of the Committee hearing not later than a week before the date of the hearing.



4.0 PROCEEDINGS AT THE COMMITTEE'S HEARING

The proceedings at the Hearing of a petition by the Committee on Ethics, Privileges and Public Petitions are very informal and are simple and straightforward. The aim is to give all parties an opportunity to be heard.

It is expected that before the date of the hearings, Committee staff must ensure that important requirements for guaranteeing fairness have been met such as sending notices to all the parties involved in the petition.

4.1 QUORUM

The Committee must form a quorum before the commencement of the hearing of any petition. According to the **Order 101**, the quorum at Committee sittings shall be one-third of the membership of the Committee.

Every hearing must be presided over by the Chairman of the Committee or, in his absence, the Vice-Chairman. If both the Chairman and Vice Chairman are absent, the members present will elect from amongst themselves a person that would preside over the hearing.⁷

4.2 NATURE OF THE HEARING

The procedures for determination of petitions by Committee of the National Assembly, including the Senate Committee on Ethics, Privileges and Public Petitions, are not formally laid out. The Committee may adopt any procedure that is most convenient and expeditious in the handling of a petition. However, the Committee is also guided by the basic principles of natural justice. Therefore, each petition is treated individually.

The Committee hearings are open to the general public, as required under **Order 102 Rule 2(f)(i)** of the Senate Standing Orders. A hearing may, however, be closed to the general public if majority of the Committee determine, by roll call vote, that the hearing or part of the remainder of the hearing session be closed to the public⁸.

Members of the Committee can vote to close the hearing to discuss whether the testimony or evidence to be received would endanger national security. Other reasons for closing a hearing may be as result of testimony or evidence that:

- (1) involves national security information;
- (2) invades the personal privacy of an individual, damages an individual's reputation or professional standing;
- (3) discloses certain kinds of confidential financial or commercial information; or
- (4) divulges information that other laws or regulations require to be kept confidential.⁹

8 Order 102 Rule 2(f)(ii)

9 Order 102 Rule 2(f)(iii)

4.3 OPENING STATEMENTS

As stated earlier, the committee's chairman, when present, ordinarily presides over its hearings. To begin the hearing, the Chairman makes an opening statement introducing the subject and purpose of the investigative hearing¹⁰.

Following opening statements, the Chairman customarily introduces each member of the Committee. Thereafter the petitioner(s), respondent(s) and witness(es) are introduced in accordance with the arranged order and format.

4.4 PRESENTATION OF PETITIONER'S AND RESPONDENT'S CASE

After the opening statement, the Committee Chairman will give each side the opportunity to tell their story uninterrupted. Generally, it is the petitioner (the person who made the petition) that will speak first. The petitioner under oath is expected to give a brief summary of his/her petition and all the supporting documents or evidence that had been forwarded, to the committee to support his/her case and his/her prayers.

After the petitioner concludes with his/her statements, the respondent is invited to present his reply to the petitioner's allegations. Just like the petitioner, the respondent under oath is expected to give a brief summary of his defense/reply and all the supporting documents or evidence, which had been earlier forwarded to the Committee.

The Senate Standing Orders do not limit the time allowed for parties/witnesses to present oral testimony. In practice, the Committee shall require each witness to appear before it to file with the Committee (in advance of his or her appearance), a written statement of the proposed testimony.¹¹ Since witness' testimony generally is available to the committee in advance, and in the interest of time, it is usually not necessary or desirable for witnesses to read their entire prepared statement.

4.5 PRESENTATION OF EVIDENCE BY WITNESSES

Generally, the Committee need not observe technical rules of evidence applicable to judicial proceedings that do not affect substantive rights of parties at the hearings of petitions.

The rules regarding the presentation of witness testimony are as follows:

- (a) By **Order 102 Rule 2(f)(v)**, every person who intends to appear before the Committee as a "witness" must submit a written statement of the proposed testimony with the Committee before the date of the hearing.
- (b) Any testimony given or adduced at a hearing may be under oath or affirmation if the committee so requires. The committee clerk or any other designated person may administer an oath or affirmation to a witness at a hearing of such committee.
- (c) During the oral presentation of testimony, a witness

would be limited to his written statement and shall merely give a brief summary of his or her argument.

- (d) Witnesses may be accompanied by their personal legal counsel to the hearing; the legal counsel's role is only limited to guiding the witnesses with respect to their constitutional rights.¹²
- (e) The Counsel for a witness shall conduct himself in a professional, ethical and proper manner. His failure to do so shall subject such counsel to disciplinary action, which may include a warning, censure, removal from the hearing room, or punishment for contempt.¹³
- (f) Oral arguments and counsel objections to questions of committee member and rulings of the chairman are prohibited.
- (g) Where the Committee is of the opinion that an evidence or testimony may defame, degrade or incriminate any person(s), it may vote that such testimony or evidence shall be presented in a closed session¹⁴.
- (h) No evidence or testimony taken in a closed session may be released or used in open session without the consent of the Committee¹⁵.
- (i) There must be at least two (2) Senators present during the presentation of any testimony or evidence at the hearing¹⁶. However, the Committee is at liberty to adopt a higher number of Senators that must be present at the hearing before a witness can give his/her testimony.

12 Rule 3(b), Senate Standing Orders 2015 (as amended) pg. 137

13 Chapter XIV, Rule 3(c), Ibid.

14 Chapter XIV, Rule 3(d), Ibid.

15 Chapter XIV, Rule 3(f), Senate Standing Orders 2015 (as amended) pg. 138

16 Chapter XIV, Rule 1(1)(a), Senate Standing Orders 2015 (as amended) pg. 137

A complete and accurate record shall be kept of all Committee action, which includes testimonies and proceedings at hearings, both in public and in executive sessions¹⁷. The testimony of witnesses shall be recorded verbatim. Records of testimonies shall be placed in the custody of the Clerk of the Committee who shall ensure their preservation and confidentiality.

A witness or the counsel of such witness may obtain transcripts of any public testimony of witnesses from the Clerk of the Committee subject to the prior approval of the Committee.¹⁸ The witness will bear the expense for the production of the transcripts.

4.6 INTERROGATION OF WITNESSES BY MEMBERS OF THE COMMITTEE

The interrogation session that follows a witness' statement presents an opportunity for members of the Committee to clarify assertions made in testimony, to expand upon witness statements, and sometimes to question the veracity of statements. Additionally, it offers an opportunity for the committee to build a public record and to obtain information to support the future actions of the committee.

By virtue of *Chapter XIV Rule 2(b) of the Senate Standing Orders 2015*, the Committee is expected to apply the five-minute rule in the interrogation of witnesses and every

¹⁷ Order 102 Rule 2(e)(ii)

¹⁸ Chapter XIV, Rule 3(h), Senate Standing Orders 2015 (as amended) pg. 138

member of the Committee present must be afforded the opportunity to put questions to the witnesses.

4.7 SUBPOENAS AND DEPOSITIONS

Some individuals respond favorably to an invitation to testify, believing it to be a valuable opportunity to communicate and publicize their views on the subject matter of the petition. However, when it is asserted that the evidence or testimony may defame or degrade a person, such testimony shall be presented in executive session.¹⁹ If a majority of the members of the Committee determine that such evidence or testimony will not defame or degrade a person, the Committee shall proceed to receive such testimony in open session. The Chairman shall receive, and the Committee shall dispose of requests to subpoena witnesses.²⁰

The Committee may subpoena witnesses, correspondence, books, papers, and other documents relevant to the determination of the petition.

19 Chapter XIV, Rule 3(d)(i), Senate Standing Orders 2015 (as amended), pg. 137

20 Chapter XIV, Rule 3(e), Senate Standing Orders 2015 (as amended) pg. 137



5.0 PUBLICITY AND MEDIA CONSIDERATIONS

The Committee's goal in holding a hearing is often broader than collecting information on legislative issues or the resolution of a dispute. It can include publicizing an issue or problem to focus attention and build support for an issue in broad or narrow areas of the public. Exposure of a problem at an investigative hearing has been argued to be a particularly effective technique by Public Petition Committees in various jurisdictions. Public officials often seem responsive to correcting infractions or violations when the issue has been broadly publicized.

Press releases are a standard format for informing journalists of newsworthy activities of the Committee. If the meeting would be broadcast live, staff of the Committee would prepare media briefs prior to hearings. The briefs can include a variety of material, such as statements by the Committee chairman and other members, a list of witnesses and other background materials.

In addition, press conferences may be organized to either inform the public of issues in an upcoming hearing or to clarify the issues that were raised following a hearing.

At the end of the question and answer session by members, the Committee chairman will close the hearing. The chairman may summarize what the Committee has decided by holding the hearing and deciding on the next Committee schedule or expected action.

6.0 DETERMINATION OF A PETITION AND REPORT OF THE COMMITTEE

Unlike the House Standing Orders, the Senate Standing Orders does not provide for the time frame for the determination of petitions before the Committee on Ethics, Privileges and Public Petitions.

It should be noted that the Committee Clerk is responsible for the preparation and drafting of the report. The report shall contain the findings of the committee on the subject matter of the inquiry, the grounds on which its findings are based and its recommendations, if any. The Clerk thereafter presents the draft report to the Committee Chairman and members for their further consideration and approval.

The final report of the Committee shall be determined by the Committee unanimously or a majority of the members²¹ which shall be thereafter presented to the Senate. According to the Senate Standing Orders, a minority report would not be considered.²²

21 Order 102 Rule 1(e)

22 Order 102 Rule 1(f)

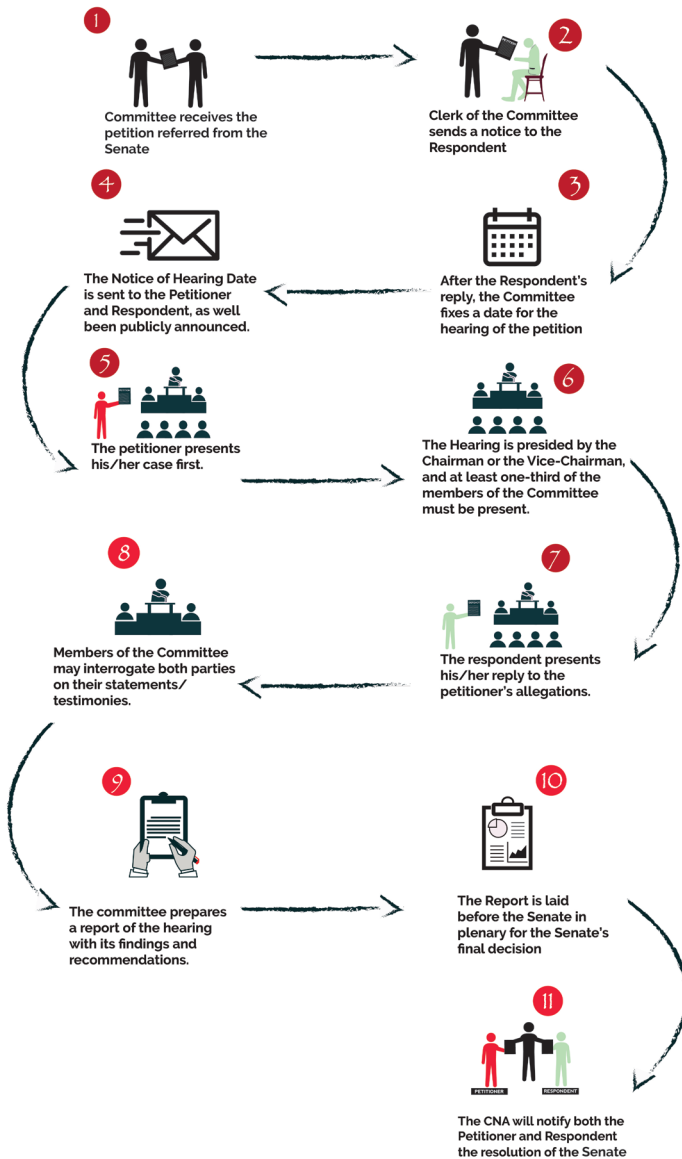
Nonetheless, every Senator who voted against the approval of the report and who did not sign the majority report is permitted to make concurring or dissenting opinions. The Senators are allowed to indicate in the report of the petition the particular recommendations or comments that he/she objects to and his reasons shall be clearly stated in the report.²³

Once a report has been determined by majority of the members of the Committee, it will be scheduled on the Order Paper of the Senate for presentation and consideration by the Senate during plenary.

After receiving the report of the Committee, the Senate, in plenary, may take a decision based on any of the recommendations contained in the Committee report. Nonetheless, it is not mandatory for the Senate to accept any of the recommendations of the Committee. Any decision taken by the Senate on the report of the Committee will be treated as a resolution of the Senate.

Thereafter, the Clerk of the National Assembly (CNA) will notify both the petitioner and the respondent of the Senate's resolution on the petition. The resolution of the Senate will be sent to the Secretary to the Government of the Federation (SGF) who now authorizes the respondents (Ministries, Agencies, Parastatals etc.) to act.

HEARING PROCESS FOR PUBLIC PETITIONS IN THE SENATE



About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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