

Is an *Acting* Head of Department a statutory member of University Senate?

Revised position-paper written on August 31, 2023 by

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1.0 Introduction

This treatise is pertinent to the University of Lagos (UNILAG) situation; most universities in Nigeria do not seem to controvert the question under discussion. The fracas between the erstwhile Babalakin-led UNILAG Council and the Management or better put, by the then Pro-Chancellor against the former Vice-Chancellor (VC) generated much interest. Both sides, the observers and the federal government, quoted relevant sections of applicable law while examining that matter. Studying the provisions of the law opened the eyes of many scholars to areas beyond the Appointment or Removal of Principal Officers. During the saga of the purported removal of the VC, which came under the proprietor's scrutiny, the Visitor in accordance with the law mandated the UNILAG Senate to elect an Acting VC. Some concerned individuals within the UNILAG community subsequently circulated the following message:

“Sequel to the Directive of The Visitor to the Senate of the University, members of Senate (who at this time are Professors only) are requested to sign up the request to convene an Emergency Meeting of Senate on Monday, 24th August, 2020.”

Some had reservations about the claim that the Senate then consisted of ‘professors only.’ [I raised my concern briefly both on my faculty WhatsApp and ASUU Telegram platforms. In early 2021 and 2023, I raised the matter via email and Memo with the former VC and the former Registrar respectively but got no response. Not even to my request to the latter that it be brought to Senate for discussion.] While the lapse of tenure could validly be construed to exclude elected members from that Emergency Meeting, it is my submission that Senate has at any given time, other statutory members who are not necessarily professors and the Acting Heads of Departments (HoDs) are included in such group. If the composition of (UNILAG) Senate is not in accordance with the law, that ought to be redressed immediately. Otherwise, a staff or student may challenge the decisions of Senate by affirming the body is not properly constituted.

2.0 Relevant Laws on Senate function and composition

The University of Lagos (UNILAG) Act 1967 as Amended [Section 8] states that:

“it shall be the general function of the Senate to organise and control the teaching of the University and the admission and discipline of students, and to promote research at the University.”

This is buttressed and further spelt out in detail in the Universities Amendment Act 2003 [Section 7A]

(1) There shall be a senate for each of the Universities consisting of-

(a) the Vice-Chancellor;

(b) the Deputy Vice-Chancellor;

(c) all professors of the University;

(d) all deans, provosts and directors of academic units of the University,

(e) all heads of academic departments, units and research institutes of the University;

(f) the University Librarian; and

(g) academic members of the Congregation who are not professors as specified in the Laws of each University.

The intent of (1)(c) above is to **distinguish professors as a class, relative to other statutory members of senate**. The import is that *persons in the other categories may NOT necessarily all be professors nor need be*. For instance, in the recent past, a VC at UNIABUJA was an academic but not a professor at the time of appointment. The referenced Acts of Parliament provide that ***the Librarian, Heads of academic Departments, Heads (Directors) of Research Institutes*** SHALL be members of senate (regardless of their personal professional rank, i.e. irrespective of whether the occupier of such office is a professor or not). There would be no need for (1)(d), (e) & (f) if only professors are required to take up such positions. The provision in (1)(g) to elect academics who are *not professors* intends to bring into Senate another segment, namely scholarly representatives of congregation who are not part of the topmost echelon within departments, faculties, research institutes, and the university administration at large. The fact that even a Lecturer 1 who is customarily not appointable as Acting HOD may legally be elected into Senate makes the UNILAG situation enigmatic. While it may be the convention in UNILAG to appoint professors as substantive Heads of academic Departments/Research Institutes, etc. the University Autonomy Law does NOT expressly mandate so. Thus, senior academics yet to attain the professorial rank could be appointed as HoDs in *full or acting capacity*, depending on institutional preference or style.

Acting title is given to someone when there is a vacancy that is not filled by the substantive rank officer and, the former has to perform the functions associated with this office, usually in addition to his normal duties. Acting appointment is normally made only in order to fill posts that are temporarily vacant and their duration are limited accordingly.

Concerning appointment into an acting position, Section 11 of the Interpretation Act cap 123 of the Laws of the Federation of Nigeria [Act 2004] vol. 7 updated in 2010 specifies regarding appointments:

- “(1) *Where an enactment confers a power to appoint a person either to an office or to exercise any functions, whether for a specified period or not, the power includes-*
- (a) *Power to appoint a person by name or to appoint the holder from time to time of a particular office;*
 - (b) *Power to remove or suspend him;*
 - (c) *Power, exercisable in the manner and subject to the limitations and conditions (if any) applicable to the power to appoint-*
 - (i) *To reappoint or reinstate him;*
 - (ii) *To appoint a person to act in his place, either generally or in regard to specified functions, during such time as is considered expedient by the authority in whom the power of appointment is question is vested.*
- (2) *A reference in an enactment to the holder of an office shall be construed as including a reference to a person for the time being appointed to act in his place, either as respects the functions of the office generally or the functions in regard to which he is appointed, as the case may be.”*

The import of (1)(c)(ii) & (2) above is that ***an acting officer is ordinarily to be presumed as empowered as if he were substantive; the powers and duties devolves to the office and not the person per se***. Unless explicitly stated in the instrument of appointment by an appointing authority, the acting officer will assume the full duties and responsibilities of the post in question.

For instance, former Vice President Yemi Osinbajo exercised full presidential powers by signing the 2017 appropriation bill, summoning meetings of the service chiefs, etc. when he served as Ag. President while President Buhari underwent medical treatment in UK.

Clarification is needed on the following:

1. Is an **Acting Vice-Chancellor ineligible** to perform certain roles or functions such as attend a meeting of the Committee of Vice-Chancellors of Nigerian Universities? Could such person in that acting capacity (e.g. Professor O. Ibidapo-Obe; 2000-2002, Professor F.T. Ogunsola; Aug 2020-Nov 2020), not convene and chair a meeting of the UNILAG Senate?
2. Is an **Acting Registrar** (e.g. Mr. I. O. Ajijola; 1979-1987, Mrs. O. E. Makinde Aug 2023-) not recognized as Secretary of Senate, and is such barred from attending Senate meetings?
3. Is an **Acting Librarian** (e.g. Dr. O. O. Adediji; 2007-2013) not admitted as a member of Senate?
4. At different occasions, academics who had not yet attained the full professorial rank served as **Acting Dean of SPGS** (e.g. Dr. B. I. Alo), **Acting Dean of the Faculty of Business Administration** [now Faculty of Management Sciences] (e.g. Dr. J. F. Akingbade), **Acting Dean of Student Affairs** (e.g. Dr. M. A. Babalola), etc. Were such precluded from Senate during their acting tenure?
5. Why do **Acting HoDs** presently attend ‘*Dean & HoDs Meeting,*’ and other meetings but are **not** invited to Senate meetings?

Indeed, the appointment letter of a typical Acting Head of Department (Ag. HoD) in UNILAG is silent about any restriction compared to being a substantive officer except in the tenure of office. The Ag. position is for 1 year rather than 3 years. The *Regulations Governing the Conditions of Service* of Senior Staff (2016) however, indicates in Chapter II Section 2(ii) &(iii) that a non-professor Ag. HoD/Dean be recused at a meeting of any Appointment & Promotions Committee/Board convened to consider candidates for the professorial position or a post for which the office holder is an applicant. This is understandable since one should not be a judge in his own case. It is for same reason that where there are acting officials in a department/unit without professors, the Annual APER Form of senior academics are assessed at the Faculty/College or University level rather than at the departmental level.

3.0 Conclusion

Even if UNILAG had made local statute(s) on the matter, such statutes are superseded by the University Miscellaneous Act which affirms in Section 1 [Application of Act to federal universities] that "*Notwithstanding anything to the contrary contained in any law, the provisions of this Act shall apply to a University controlled by the Government of the Federation and listed in the Schedule to this Act.*" Since the University of Lagos is listed in that Schedule, isn't any provision of the UNILAG Act as well as any statute, rule, regulation or policy made by the University which is inconsistent with the University Miscellaneous Act, is to the extent of such inconsistency, '*null and void and of no effect whatsoever*'?

Just as their substantive counterparts, Acting HoDs ought to be duly recognized in Senate as Acting VCs, Acting Deans, Acting Registrars, Acting Librarians, etc. are recognized. Given the function of Senate and the role of HoDs as academic officers over teaching units, it is amazing that Ag. HoDs are excluded from Senate meetings. If the Acting HoDs are allowed to speak as Chief Examiners in Senate, many issues will be resolved promptly without referring such to committees like BCOS.