

Rules and Procedures Governing Legislative Process in Nigeria

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Abstract

This research has come to spotlight on the standing rules and regulations guiding the passage of bills leading to promulgation of laws by the Nigerian National Assembly. Under the Nigerian 1999 Constitution as amended, the power to legislate is vested in its National Assembly which is bi-cameral: the House of Representatives and the Senate. The concurrence of both houses is required to make laws. However, the National Assembly has power to regulate its own procedure. Therefore, the legislation process in Nigeria is governed by standing rules and procedures in addition to the Constitution specifying how legislation will be considered by each Chamber. The paper concludes that these rules and regulations and the provisions of the Constitution are mandatory and failure to abide by them by the National Assembly in passing any law in Nigeria will be unconstitutional, illegal, null and void and to no effect.

1.0 Introduction

The first and most important sources of parliamentary procedure are found in the Constitution of the country. The Constitution spells out the powers of the parliament to exercise the legislative powers it derives from the people and the limitations placed on it. By far, the fullest source of parliamentary procedures is the legislature's own Standing Rules which are created for the orderly functioning of the parliamentary process, generally with constitutional authority.

Standing Orders are statements describing the manner in which parliament should proceed under various circumstances. These statements can be amended by parliament by a single majority vote. Standing Orders also mean standing orders made by the Legislative House and for the time being in force.¹

However well drafted these Standing Orders may be, they cannot attempt to meet every situation and may occasionally become obstacles to the consideration of some special item of business. The Standing Orders can never be ignored or violated, but the House can amend them or vote to suspend one or more of them for a particular relevant occasion. The most common instances of suspension deal with extended sittings of the House or alteration of sitting days or a day when the House or parliament meets.

Nigerian National Assembly operates Rules (or Standing Orders) similar to the Rules of most Parliaments of the world. In practice, our Rules are in essence a hybrid of the British House of Commons (Standing Orders) and the American Congressional Rules (of the House of Representatives) or Standing Rules (of the Senate). Secondly, however, there are a few areas of the Nigerian procedures which are typically domestic, but certainly not against the democratic norms and may be found in practice to be more democratic in nature than similar areas of the Standing Orders of the British House of Commons or the Rules and Standing Rules of the United States Congress.²

Therefore, in order however to, implement the constitutional provisions in practice, the National Assembly employs Rules and Regulations commonly known as 'Rules', 'Standing Rules' or 'Standing Orders' which are generally similar for legislatures of democratic countries, but may vary in operational details.³

In order to fully understand the rules and procedures governing legislative process in Nigeria, the paper considered in detail: historical perspective of rules and procedure of legislative process; overview of the legislative process; rules and procedure of legislative process; quorum, motions, amendment, debate, voting, bills, treaties, proclamation of state of emergency and the regulation of internal conducts and proceedings respectively.

2.0 Historical Perspective of Rules and Procedure of Legislative Process

Rules and procedure refer to the body of rules, ethics and customs governing the legislative bodies. It is part of the common law originating primarily in the practice of the House of Commons of the Parliament of the United Kingdom, from which it derives its name. In the United States, Parliamentary procedure is also referred to any Parliamentary procedure, legislative procedure or rules of order. The object of the rules and procedure is to allow deliberation upon questions of any interest to the Parliament or the National Assembly and to arrive at the sense

¹ Section 3, Legislative Houses (Powers and Privileges) Act, Cap.L12, Laws of the Federation of Nigeria, 2004

² Ahmadu, R.A, Appropriation Procedure-An Aspect of the Budgetary Process of Nigeria', being a paper delivered at the Association of Secretaries General of Parliaments, Ouagadougou, Bourkina Faso, September, 2001

³ *Ibid*

or will of the Assembly upon these questions.¹

In the English speaking world including Nigeria, the British House of Commons is the originating source for most rules of orders. These rules have evolved into two separate sets: American Parliamentary procedure as generally followed in the United States and Westminster Parliamentary procedure, followed in the Commonwealth countries (except for Canada, which uses a home-grown version) such as United Kingdom, Australia, India, South Africa and Nigeria to mention a few.

Consequently, in 1979, with the introduction of the Presidential System of Government, the working of our legislative procedures of the British House of Commons Practice which we followed in our first (1960-1965) Republic Legislature based on the Parliamentary System, and the American Congressional Process adopted from our second Republic Presidential System. Hence ours became largely a hybrid of the two systems in most areas of our legislative procedure.²

The Parliamentary procedure is based on the principles allowing the majority to make decisions effectively and efficiently while ensuring fairness towards the minority and giving each member or delegate the right to voice an option.³

3.0 Overview of the legislative process

The process of government by which bills are considered and laws enacted is commonly referred to as the “legislative process”. Pursuant to the Nigerian Constitution, the Senate and the House of Representatives shall each stand dissolved at the expiration of four years commencing from the date of the first sitting of the House.⁴ Both Houses of National Assembly organize, elect officers and adopt rules for the period of four years. The Senate and the House of Representatives shall each sit for a period of not less than one hundred and eighty one days in a year.⁵

The Senate consists of three Senators from each state and one for the Federal Capital Territory, Abuja.⁶ While the House of Representatives shall consist of three hundred and sixty members representing constituencies of nearly equal population as far as possible, provided that no constituency shall fall within more than one state.⁷ The Senate has 52 standing committees, while the House of Representatives has 65 standing committees.⁸ These committees consider legislation in a wide range of policy areas.

Under the United States Constitution, the power to legislate is vested in the United States’ Congress.⁹ Like what obtains in Nigeria, the Congress is made up of two bodies: House of Representatives and the Senate. The concurrence of both is required to enact a law.

However, subject to the provisions of the Constitution, the Senate or the House of Representatives shall have power to regulate its own procedure.¹⁰ Each committee is staffed by members who work closely with each other in facilitating their legislative agenda.

The 1999 Constitution as amended, vests legislative power essentially, the responsibility to make laws of the land in the National Assembly. Under the government’s system of separation of powers, legislative power cannot be delegated to any other branch of government, and although the people are ultimately sovereign in Nigeria, the National Assembly’s legislative power cannot be delegated to the public. This is because Nigeria’s Constitution makes no provision for popular initiative and allows only the National Assembly to propose legislation at the Federal level. Further, in the absence of a constitutional provision allowing a public referendum, bills passed by the legislative cannot be conditioned upon subsequent voter approval or ratification in a state wide election.

The legislative process in Nigeria has some components. First, it is a legal process governed by a host of special rules and procedures that specify how legislation will be considered in each house. The rules of procedure are adopted by the respective chambers at the beginning of each session.¹¹

In the United States, each chamber has a unique mission, distinct rules of procedure and different traditions.

¹ Robert, H.M, *Parliamentary Law*, 1923,p.23

² Ahmadu, R.A. op. cit

³ Henry, R.M, *Robert’s Rules of Order*, Newly Revised, 10th ed., 2000, p. XLVII

⁴ Section 64 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, 2011

⁵ Ibid, section 63

⁶ Ibid, section 48

⁷ Ibid, section 49; see further, section 71(a) (b) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, 2011

⁸ Ibid, section 98

⁹ Article 1

¹⁰ Ibid, section 60

¹¹ These are the Standing Orders of the House of Representatives and the Senate respectively

The Constitution of the Republic of South Africa, 1996¹, is the Supreme law of South Africa and provides among others how the three branches of government; namely the legislature (Parliament, Provincial Legislatures and Municipal Councils), the Executive Authority and Judicial Authority should conduct their business. Chapter four of the Constitution sets out the national legislative process and determines that Parliament is the national legislative (law making body) of the Republic. Both Houses of Parliament, namely the National Assembly and the National Council of Provinces, (NCOP) play a role in this process.²

Therefore, the exercise of legislative powers and responsibilities at the Federal and States level is regulated by both the Constitution and the Standing Rules of the House.

In Nigeria, failure to comply with the requisite provisions relating to procedure will render the outcome or the decision unconstitutional and illegal. In this regard, the case of *Attorney-General of Bendel State v. Attorneys-General of the Federation and Others*³ becomes relevant. The case involved the Allocation of Revenue (Federal Accounts etc.) Act No.1 of 1981 whose constitutionality was challenged by the Government of Bendel State on the ground, *inter alia*, that it had not been passed by the National Assembly in the manner and form required by the Constitution. The Supreme Court invalidated the Act subsequently and another Revenue Allocation was duly passed by the National Assembly and signed by the President.

4.0 Rules and Procedure of Legislative Process

The proceedings of the National Assembly are governed by the Nigerian Constitution. In particular, section 60 of the 1999 Constitution as amended, 2011 provides as follows:

“Subject to the provisions of this constitution, the Senate or the House of Representatives shall have power to regulate its own procedure, including the procedure for summoning and recess of the House.”

In other words, in exercise of the power granted to them each House adopted and modified the rules and regulations made by Parliament under the Constitution Standing Rules (Powers and Procedures) Act.⁴ Again, the Assembly’s Standing Orders, usages, customs guide the proceedings of the Assembly. Consequently, the Proceedings in the National Assembly shall be conducted in accordance with their Standing Orders.⁵ House and Senate Rules of procedure are largely a function of the numbers comprising each chamber. In the House, a structured legislative process and strict adherence to the body’s rules and precedents have resulted from the need to manage how the members make decisions. By contrast, the Senate’s smaller membership has brought about a less formal policy making process and a flexible approach to the chambers standing rules.⁶ In the United States, the Constitution in Article 1 section 5 says that each House shall determine the rules of its proceedings.

5.0 Quorum

Quorum is the minimum number of persons who must be present to conduct business either on the floor of the chamber or in a committee. A quorum usually is one more than half of the membership.⁷

An essential goal of the quorum apparatus is to prevent a situation in which the determination of policy and legislative activity take place in the presence of an extremely limited number of representatives. The existence of a quorum ensures the participation of a minimal number of legislators in the Parliamentary activity and the broadening of public responsibility for the participants’ activity. This is likely to increase the legitimacy of the decision taken.⁸

Legislative proceedings are conducted by legislators sitting in chambers.⁹ The Speaker presides over the sitting in the House of Representatives.¹⁰ While in the Senate, the President of the Senate shall preside.¹¹ However, at any joint sitting of the Senate and House of Representatives, the President of the Senate shall preside and in his absence, the Speaker of the House of Representatives shall preside.¹² The business of National

¹ Act 108 of 1996-“the Constitution”

² [http://www.justice.gov.za/legislation/legal process](http://www.justice.gov.za/legislation/legal%20process) accessed on 26 May 2015

³ (1981) 3 NCLR 1

⁴ Akande, J.O, *Introduction to the Constitution of the Federal Republic of Nigeria 1999*, (Lagos: MIJ Publishers, 2000) pp. 150-151

⁵ See Order 1r1 of the Standing Orders of the House of Representatives and Chapter 1 of the Senate Standing Orders 2007 as amended respectively (herein referred to as the Rules of the Senate)

⁶ Examples can be seen from the handling of the January 2012 general strikes declared by the Organized labour and Civil Society in Nigeria

⁷ <http://www.mtstcil.org/skills/wvlegprocess-4html> accessed on 27 May 2015

⁸ <http://www.knesset.gov.il/mmm/data/pdf/me00563.pdf> accessed on 27 May 2015

⁹ Chapter III of the Senate Rules

¹⁰ Section 53 (1)(b) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, 2011

¹¹ *Ibid*, section 53 (1)(a)

¹² *Ibid*, section 53 (2)

Assembly shall be conducted where the quorum of the Senate or House of Representatives shall be one-third of the members of the legislative house concerned.¹ The quorum of a joint sitting of both the Senate and House of Representatives shall be one-third of all the members of both Houses.² The imperative of this section is that it requires only one-third of the members of either House to transact business in the House. Where however, there is a challenge by any member that a quorum has not been formed, the presiding officer should suspend proceedings for the purpose of ascertaining the number of members present. If the challenge is sustained, then the House must be adjourned. At a joint sitting of both Houses, the quorum is also one-third of both Houses together.³

The Constitution does not prescribe any method for determining the presence of a quorum and it is therefore within the competency of the House to prescribe any method to ascertain the fact.⁴ If there is no challenge that a quorum has not been formed, there must be presumption that a quorum exists until the contrary is actually proved. This is the presumption of legality, which can be inferred from the constitution itself.⁵ In the United States, the test for the determination of quorum in the House is the competency of the House to prescribe any method which shall be reasonably certain to ascertain the fact. Therefore, the rule of the House is that members present in the chamber but not voting would be counted in determining the present of quorum.⁶ The Constitution requires that a quorum (i.e.) a simple majority of the membership present for the House is 218 and the Senate, 51 to conduct business. When the House meets in the Committee of the whole, a quorum of 100 members is required. Both chambers typically assume that a quorum is present unless it can be demonstrated otherwise.⁷

In most Parliaments over the world, the absence of quorum leads to the putting off of the debate or vote until a quorum is present.

Below is a comparative examination of the requirement for a quorum, the presence of a minimal number of members as a condition for the carrying out of a Parliamentary activity. The table contains the quorum required in the Parliament plenum and the quorum required in its committees as well as between the quorum required for the holding of a meeting and a quorum required for taking a vote. It must be pointed out that what obtains in Sweden prevails in Nigeria having regards to the prevailing standing orders of the National Assembly. The exception however, is that if, at any time during daily sessions of the National Assembly, it appears that a quorum is not present, the business under consideration shall stand over until the next sitting.⁸

Summarizing Table

State	Is there a quorum in the Parliament's plenum		Is there a quorum in the Committees		Apparatus for dealing with the absence of a quorum
	Debate	Vote	Debate	vote	
Australia	Yes 1/5 of the members of the House of Representatives (30 out of 150) and 1/4 of the members of the Senate	Yes 1/5 of the members of the House of Representatives and 1/4 of the members of the Senate	Yes 3 or 5 Committee members out of 10, according to committee	Yes 3 or 5 committee members out of 10, according to committee	The absence of quorum leads to a 5 minute pause, after which the sitting is put off until the following meeting.
Austria	No	Yes 1/3 of the members for ordinary bills, 1/2 of the members for bills	No	Yes 1/2 half of the committee members	The absence of a quorum will lead to the sitting being put off by the President for a fixed unlimited time
Canada	Yes 20 out of 301 members in the House of Commons (around 7% including the Speaker 15 out of 101 members in the Senate (15%))	Yes 20 out of 301 members in the House of Commons (around 7%)	Yes A majority of the Committee members (at least 50% + 1)	Yes A majority of the Committee members (at least 50% + 1)	If there is no quorum, and it is not gathered even after the bell is sounded and a 15 minute pause, the sitting is put off until the next day of activity

¹Ibid, section 54(1)

² Ibid, section 54 (2), order III r 5 of the House of Representatives and R 10 (6), Senate Rules

³ Akande, J.O, op. cit

⁴ Ibid

⁵ Ibid

⁶ *United States v. Ballin* 144 U.S. (1892)

⁷Shneider, J *House and Senate Rules of Procedure: A Comparison*, 2008,p. 8.

⁸ Order 3 r. 4 of the House and Rule 10 (4) of the Senate

Denmark	No	Yes At least ½ of the Folketinget members	-	Yes At least ½ of the Committee members	-
Finland	No	No	Yes 2/3 of the Committee members	Yes 2/3 of the Committee members	The customary practice in the Committees is not to insist on a presence of the quorum to hear experts
France	No	No Unless one of the Parliamentary groups, or 1/3 of those present announced before the vote that they insist on a quorum (50% +1 of the members)	No	Yes 1/3 of the Committee	In the event of an absence of a quorum, the vote is put off and takes place later on, without the requirement of a quorum after at least 3 hours.
Germany	No	Yes A majority (at least 50% +1) of the members of the Bundestag and Bundesrat	No	Yes At least ½ of the Committee members	-
Great Britain	Not in the House of Commons. 3 present in the House of Lords	Yes At least 40 of the 659 House of Commons members (1/16)	Yes In supervisory Committees 3 per Committee of 11, 5 per Committee of 18. In legislative Committees, the smaller of 17 or 1/3	Yes In supervisory Committees 3 per Committee of 11, 5 per Committee of 18. In legislative Committees, the smaller of 17 or 1/3	In the Plenum: the debate is put off to the next sitting. In Committees: the procedures are put off under a quorum is attained, or until some other future date
Italy	No	Yes A majority (at least 50% +1) in the chamber of Deputies and the Senate	No	Yes In legislation at least ½ the Committee members; in other matters at least ¼ of the members	The President of the House, or the Chairman of the Committee, can delay the meeting by an hour, or announce its closure until the next day of activity
New Zealand	No	Yes At least 20 out of 120 members of the House of Representatives	Yes 4 Committee members	Yes 4 Committee members	The Plenum: if there is no quorum within 10 minutes of the sitting opening, it is closed. Committees: if in the course of the deliberation, there is no quorum, meeting is closed.
Sweden	No	No	No	-	-
Switzerland	No	Yes A majority (at least 50% +1) in the National Council and the States Council	No	No	The voting is put off to the next day of activity
United States	Yes 1/2 the members of the House of Representatives and the Senate	Yes At least 1/2 the members of the House of Representatives and the Senate	-	Yes At least ½ of the Committee members.	

SOURCE- <http://www.knesset.gov.il/mmm/data/pdf/me00563.pdf> accessed 28 May 2015

6.0 Motions and Amendment

Motion is the basic building block of parliamentary procedure. It is simply a proposal to the House on which a decision is sought. It is achieved by the process of debate which occurs between the moving of a motion and the final vote upon it. There are several stages observed in the process of moving on substantive motion through the House. The first is to publicize the motion to the members (giving notice of it) so they are aware of the matter being raised. In most Commonwealth Parliaments, any member can move a motion provided that he or she has a

second or someone who also supports the motion.

Procedurally, once a motion is on the Order Paper for a particular day, it cannot be withdrawn unless the member who submitted the motion seeks the agreement of the House to do so.

Procedurally, the National Assembly in conducting its business, unless the rules otherwise direct, notice shall be given of any motion or amendment which is proposed to be moved with the exception of the following:

- (a) A motion or amendment made or offered in Committee;
- (b) A motion for the adjournment of any debate;
- (c) A motion that the report of a Select Committee be referred to a Committee of the respective Houses;
- (d) A motion for the withdrawal of strangers;
- (e) A motion for the suspension of a member;
- (f) A motion arising out of the business of the day immediately after that business is disposed of and before any fresh matter is entered;
- (g) An amendment to a motion which has been moved without notice either under this rule.¹

Such notice must be written and signed.² They must be submitted to the Speaker and the President of the two Houses respectively.³ The President of the Senate shall forward such notice(s) of motions to the Rules and Business Committee, which shall schedule it on the order paper.⁴ In the House, the Speaker shall cause such notices of motions to be numbered and published in the “Schedule of Notice of Motions” and assigned to the relevant Committees not later than seven days after the publication in the Schedule.⁵ Notice so issued shall not be dispensed with in the case of a motion or in respect of any other proceeding for which notice is required except with the consent of the Speaker of the House of Representatives⁶ or the President of the Senate⁷ and the general assent of the members present.

In the Senate, the Rules and Business Committee shall examine the substance of all motions referred to it and if approved be scheduled on the order paper for deliberations within seven (7) days after the publication of the schedule.⁸

The motion having been stated, the meeting will deliberate upon it, and after possible amendment(s) and discussion, the ultimate question as to whether the motion in the form it has come to assume is approved, it is put to the meeting. An amendment is a proposed alteration in the terms of the motion or amendment by those whose views would not be met by either the acceptance or rejection of the question or amendment as moved.⁹ An amendment usually takes the form of omitting, substituting or inserting certain words in the original motion. However, the alteration should not be negative for the same result could be achieved by an adverse vote, neither should it be beyond the scope of the original motion.¹⁰ Upon an amendment to insert or add words, the President of the Senate or the Speaker of the House of Representatives or the Chairman shall state the amendment and propose the question thereon in the form that those be inserted (or added).¹¹ Amendments proposed to any motion or bill under consideration in the National Assembly or Committees thereof shall only be in order if they are relevant to the question or matter then under consideration.¹² Motions and amendments may be withdrawn at the request of the mover by the leave of the National Assembly.¹³

7.0 Rules of Debate

Chapters VIII of the standing orders of the Senate and Order IX of the House of Representatives deal with rules of debate. They are identical provisions. These rules shall be copied verbatim from the standing orders of the House of Representatives in Nigeria.

1. (1) A member shall not read his speech save if he is moving a motion or presenting a bill.
(2) A member may however, read short extracts from books or papers in support of his argument, and may refresh his memory by reference to notes.

¹ See Order VIII r 8 of the Standing Orders of the House of Representatives and Chapter VII Article 46 of Senate Standing Orders, op. cit

² Order 8 r. 8, of the House and Rule 47, of the Senate

³ Order 8.r 9(2) of the House and Rule 47(2), of the Senate

⁴ Rule.47(3),of the Senate

⁵ Order 8 r.9 (3) of the House

⁶ Ibid, Order 8 r.14

⁷ Rule 52 of the Senate

⁸ Ibid, rule 47(4)

⁹ Idornigie, P.O, Guide on Effective Use of Motions and Resolutions in the Legislative Process in Nwosu, K.N, (ed) *Law and Practice of the Legislature in Nigeria*, op. cit. at p.262

¹⁰ Ibid

¹¹ Order 8 r.12(1) of the House and Rule 50 (1) of the Senate

¹² Ibid, order 8 r.(10) (1), and rule 48(1)

¹³ Ibid, order 13(1, and rule51(1)

- (3) A member is allowed to read his speech during debates on the Appropriation Bill
- (4) A member must confine his contributions to the subject under discussion and may not introduce matter irrelevant thereto.
- (5) Reference shall not be made to any matter on which a judicial decision is pending, in such a way as might in the Speaker's opinion prejudice the interest of parties thereto.
- (6) It shall be out of order to attempt to reconsider any specific question upon which the House has come to a conclusion during the session except upon a substantive motion for rescission.
- (7) It shall be out of order to use offensive and insulting language on members of the House.
- (8) No member shall impute improper motives to any other member.
- (9) A member desiring to speak shall raise his hand in his place and if called upon shall address his observations to the Chairman.
- (10) If two or more members raise their hands at the same time, the Speaker or the Chairman shall call on the member who first catches his eye.
- (11) No member shall speak more than once on the same question without leave of the House, unless he be the mover, proposer, or introducer of the matter pending, in which case he shall be permitted to speak in reply, but not until those chosen to speak have spoken.
- (12) The member reporting the measure under consideration from a committee may open and close, where general debate has been had thereon; and if it shall extend beyond one day, he shall be entitled to thirty minutes to close, notwithstanding he may have used thirty minutes in opening.

The Rules of both Houses provide for matters that are not opened to debate and therefore they shall be moved without argument or opinion offered and shall be forthwith put from the Chair without amendment.¹ They are as follows:

- (a) Motion for adjournment of debate;
- (b) Motion for extension of time moved by the Chairman of the Rules and Business Committee or any member acting for him;
- (c) Motion that the question be now put;
- (d) Question that a Bill be reported;
- (e) Motion of dissent from a ruling of the Chairman;
- (f) Motion that the Chairman reports progress;
- (g) Motion that a member be suspended; and
- (h) Question that strangers be ordered to withdraw.

At the end of the debate, the Speaker or the President of the Senate will put the question under debate to vote, taking a vote or division on each topic. Generally, votes may be taken by voice, head count or electronically. Whatever that is agreed upon becomes the resolution of the House/Senate.

8.0 Voting

Except as otherwise provided by the Constitution, any question proposed for decision in the National Assembly shall be determined by the required majority of the members present and voting; and the person presiding shall cast a vote whenever necessary to avoid an equality of votes but shall not vote in any other case.² The majority required for the purpose of determining any question shall be a simple majority.³

In the United States Senate, the majority has the power to decide what will be debated, but the minority can often determine whether that debate will ever end in a final vote. No one questions that a majority of quorum can exercise the rule making power. But for any debatable proposition, forty one (41) members can prevent the Senate from taking a final vote, even though as many as fifty nine (59) Senators support the proposition.⁴

8.1 Rules Guiding Voting

- (a) A member of the House shall declare any direct pecuniary interest he may have in any matter coming before the House for deliberation;
- (b) The House may by resolution decide whether or not such member may vote, or participate in its deliberations, on such matter;
- (c) The penalty, if any, which the House may impose for failure to declare any direct pecuniary interest such member may have; and
- (d) For such other matters pertaining to the foregoing as the House may think necessary.⁵

¹ Order 10 r.8(1) of the House and Rule 70 (1) of the Senate

²Section 56 (1) of the Constitution of the Federal Republic of Nigeria, op.cit

³ Ibid, section 56(2)

⁴ Senate Rules XXII, Standing Rules of the Senate, 2000; also available at <http://rules.senate.gov/senaterules/menu.htm> accessed on 1 June 2015

⁵ Ibid, section 56 (3) (a) (b) (c) and (d)

Generally, Chapter X of the Senate standing orders and Order XI of the House of Representatives standing orders deal with voting.

8.2 Modes of Voting

The modes of voting in the House shall be:

- (a) By voice vote¹-the standard rule concerning votes on the floor of the legislature is that votes are taken *viva voca* (voice vote) unless otherwise provided by the rules. In practice, this usually translates to minor motions and issues by voice vote and major items of consideration by “machines vote”
- (b) Signing of register in a division². This is known as a “record vote” which requires the clerk to call aloud the names of each member to prompt a voice vote of “aye”, “nay” or “not voting”. A roll call vote may be requested by any member on any motion or issue. Normally, all roll call votes are taken in alphabetical order. However, any member may request that the roll call vote be conducted in reverse alphabetical order unless the introduction of the motion under consideration objects.
- (c) Through electronic voting device installed in the House³

The presiding officer must cause the result of a vote to be obtained by means of machine vote (electronic voting system), if such a method is requested by a member or if the presiding officer is in doubt of a voice vote. Whenever the “ayes” and “nays” are taken by machine vote, no member may be permitted to vote after the result of the vote is announced by the presiding officer or clerk.

However, any person who sits or votes in the Senate or the House of Representatives knowing or having reasonable grounds for knowing that he is not entitled to do so, commits an offence and is liable on conviction to such punishment as shall be prescribed by an Act of the National Assembly.⁴

Each House is responsible for the discipline of its members, and can vote to expel any member for any act of indiscipline or misconduct but there is no constitutional provision that each House should be the judge of the right of any member to his seat.⁵

In America, the breach of the rules of the House is regarded as a political question and the courts have refused to intervene.⁶ However, it is the practice of the British Parliament to refuse to admit duly elected persons to their seats on the ground that they were morally or politically objectionable to the majority of the House.⁷

In both legislative Houses, when the question has been put at the conclusion of the debate the votes shall be taken by voices Ayes and Noes. Whereas in the Senate, the result of such voice vote shall be declared by the President of the Senate or the Chairman⁸, in the House of Representatives, the Speaker or Chairman shall declare the result provided that no member claims a division.⁹

The Rules of the Senate and the House of Representatives provide for how a division is conducted.¹⁰ Again, whereas the Rules of the House of Representatives provide for the use of tellers to conduct the division and the direction of the “Ayes” to go into the lobby on the right of the House and the “Noes” into that on the left, there is no such provision in the Rules of the Senate.¹¹ In the Senate, a division is taken by the Clerk by calling each Senator’s name and asking each Senator to indicate how he desires to vote and recording the vote accordingly. The Clerk thereafter reads the names and announces the number of those who voted for and against the proposal, and the President or the Chairman shall declare the result of the division. In both Houses, where voting is by division, a register is usually signed.¹² In accordance with Order 74(1) of the Senate Rules, Senator shall declare any direct pecuniary interest he may have in any matter coming before the Senate or a Committee for deliberation. This is in consonance with the provisions of the Constitution thus:

“...but nothing in the foregoing provisions shall enable any rules to be made to require any member, who signifies his intention not to vote on or participate in such matter, and who does not so vote or participate, to declare any such interest.”¹³

In the event of the numbers being equal the Speaker or the Chairman of House of Representatives and the President or the Chairman of the Senate may give a casting vote, but if he does not do so, the question shall pass

¹Rule 72(a) of the Senate and Order XI r.1(8)(a) of the House

² Ibid, rule 72 (b) and Order XI r 8(b)

³ Ibid, rule 72(c) and Order XI r18(c)

⁴ Section 57 of the Constitution, op. cit

⁵ Akande, J.O, op. cit. at p.141

⁶ See *Roudebush v. Hartke* 405 U.S. 15 (1972)

⁷ Akande, J.O, op. cit

⁸ Order 71(3) of the Senate Rules

⁹ Order 69 (3) of the Rules of the House

¹⁰ Order 9 r.2 (1) (2) and (3) and R 73(1) (2) and (3) of the House and Senate

¹¹ Ibid

¹² Idornigie,P.O, op. cit, at p.270

¹³ Section 56 (2) of the Constitution, op. cit

in the negative and they shall declare accordingly.¹

9.0 Procedure on Bills

This segment briefly discusses the procedure adopted by the National Assembly in the passage of Bills and Appropriation Bills (Budget).

9.1 Passage of Bills

This deals with the mode of the National Assembly in exercising Federal Legislative power. For a better understanding, section 58 of the 1999 Constitution provides as follows:

58-(1) the power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President.

(2) A bill may originate in either the Senate or the House of Representatives and shall not become law unless it has been passed and, except as provided by this section and section 59 of this Constitution, assented to in accordance with the provisions of this section.

(3) Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.

(4) Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assents.

(5) Where the President withholds his assent and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required.

In view of the above provisions, it is necessary to give a summary of the legislative maze a bill must navigate before it can become law. Therefore, it is not the intentions of this article to give elaborate discussion on how the National Assembly makes law but to highlight briefly the stages that a bill passes before it becomes a law.

In Nigeria, there are some stages that a bill must go through before it becomes an Act of the National Assembly. These are:

- (a) Bill to be sponsored by the Executive, the Judiciary or the Legislature and also individual/organizations;
- (b) Bill going through first reading-introduction without debate;
- (c) Bill going through the second reading-allows for general debate;
- (d) Bill going through third reading²
- (e) The report stage-presentation of the Committee report together with their recommendations;
- (f) Debating of the bill by the House of Representatives-passed if recommendations are accepted;
- (g) Passage of the bill by the Senate; and
- (h) Assent of the President.³

The Nigerian position regarding the passage of a bill will be compared with what obtains in the United States thus:

- (a) Bill introduction
- (b) Referral to Committee(s)
- (c) Committee hearings
- (d) Committee mark up
- (e) Committee Report
- (f) Scheduling Legislation
- (g) Floor Debate
- (h) Floor Amendment
- (i) Vote on final passage
- (j) Reconciling differences between the House and Senate
- (k) Amendments between the Houses
- (l) Conference Committee negotiation
- (m) Floor debate on conference report
- (n) Floor vote on conference report
- (o) Conference version presented to the President
- (p) President signs law or allows bill to become law without his signature
- (q) President vetoes bill
- (r) First Chamber votes on overriding veto
- (s) Second Chamber votes on overriding veto
- (t) Bill becomes law if 2/3 veto to override is achieved in both Chambers⁴ and
- (u) Bill fails to become law if one Chamber fails to override.

Significantly, Chapter XI of the Senate standing orders and Order XII of the House standing orders deal with procedure on Bills.

Commenting on this section, Professor Jadesola Akande (of the blessed memory) maintained that legislative power is specifically granted to the two Houses which they exercised by passing Bills, however, in legislative matters, the National Assembly is expected to be dominant branch of the government, it is not put in a position to arrogate itself all powers. So the President is given a qualified veto tool to prevent the National Assembly from overstepping its boundaries and to enable him to influence the actual course of legislation.⁵

¹ Order 9 r.2 (13) of the House and Rule 71(6) of the Senate

² See Rule 79 (1) of the Senate

³ See section 58(5) of the Constitution; also see further, section 58(1), (2), (3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, 2011

⁴ Section 58(5) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, 2011

⁵ Akande, J.O, op. cit. at p.142

9.2 Types of Bills

Executive Bill that emanates from the President shall be accompanied by a covering letter personally signed by the President and sent to the President of the Senate and the Speaker of the House of Representatives.¹

A Bill that emanates from the judiciary shall be forwarded to President of the Senate and the Speaker of the House of Representatives under a covering letter personally signed by the Chief Justice of the Federation.²

For a private member Bill, the sponsor shall forward the draft to the Speaker of the House of Representatives who then forwards it to the Rules and Business Committee. The Speaker shall cause the Bill to be numbered and published in the Schedule of Bills.³

In the Senate, the sponsor of the Bill shall forward it to the President of the Senate who also forwards it to the Committee on Rules and Business for publication in the schedule of Bills in the Order Paper.⁴

9.3 Nature of Appropriation Bill-(Budget)

The practice and procedure on money related Bills before the National Assembly is very similar to the one on other Bills.⁵ However, because of the special importance traditionally attached to Appropriation and other money related measures, it is not uncommon for a slight different procedure to be adopted.⁶

An appropriation Bill or a supplementary Appropriation Bill is generally a Bill specifying the extent of Government Expenditure for a specific period. Such a Bill is requesting the legislature to approve the spending of a specified amount from the public fund of the federation.⁷ In other words, the Appropriation Bill contains the estimated financial requirements for expenditure on revenue accounts on the services of the Federal Government in the succeeding financial year.⁸

9.4 Legal framework for Money Bills

Section 59 of the Constitution applies to the mode of exercising Federal Legislative power over money Bills. In other words, the section prescribes some rules of practice and procedure which the National Assembly must comply with. The section provides as follows:

- (1) The provision of this section shall apply to:
 - a) An Appropriation Bill or a supplementary Appropriation Bill, including any other Bill for the payment, issue or withdrawal from the consolidated revenue fund or any other public fund of the federation of any money charged thereon or any alteration in the amount of such payment, issue or withdrawal; and
 - b) A Bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof.
- (2) Where a Bill to which this section applies is passed by one of the Houses of the National Assembly but is not passed by the other House within a period of two months from the commencement of a financial year, the President of the Senate shall within fourteen days thereafter arrange for and convene a meeting of the Joint Finance Committee to examine the Bill with a view to resolving the differences between the two Houses.
- (3) Where the Joint Finance Committee fails to resolve such differences, then the Bill shall be presented to the National Assembly sitting at a joint meeting, and if the Bill is passed at such joint meeting, it shall be presented to the President for assent.
- (4) Where the President, within thirty days after the presentation of the Bill to him, fails to signify his assent or where he withholds assent, then the Bill shall again be presented to the National Assembly sitting at a joint meeting, and if passed by two-thirds majority of the members of both Houses at such joint meeting, the Bill shall become law and the assent of the President shall not be required.
- (5) In this section, "Joint Finance Committee" refers to the Joint Committee of the National Assembly on finance established pursuant to section 62 (3) of this Constitution.

9.5 Procedures for the Passage of Appropriation Bills

The procedures for the passage of Appropriation Bills are summarized as follows:

- (a) The President is expected to forward the Appropriation Bill to the presiding officers of both chambers

¹ Order XII Rule 2(1) (a) of the House and Rule 78(1) (a) of the Senate

² Order XII Rule 2 (1) (b) of the House and Rule 78 (1) (b) of the Senate

³ Order XII Rule 2 (3) of the House

⁴ Rule 78 of the Senate

⁵ Jimoh, A.A, *Law, Practice and Procedure of Legislature*, (Lagos: Learned Publishments Limited, 1999) p.86

⁶ Ibid

⁷ Akande, J.O, op. cit. at p.147

⁸ Nteph, P.C, *Relevance of Committees and the Committee System in the Exercise of Legislative Powers in Nigeria*, K.N, (ed) in *Law and Practice of The Legislature in Nigeria-Essays in Honour of His Excellency, Senator Anyim Pius Anyim, GCON, Prersident of the Senate Federal Republic of Nigeria (2000-2003)*, (Abuja: Nayee Publishing Company Limited, 2003) p. 237

of the National Assembly along with an official covering letter signed by him. The state governors perform the same process accompanied with their signed official covering letters sent to Speakers of their respective Houses of Assembly.¹ Through motions moved in the respective Houses and States Houses of Assembly, the President presents the Appropriation Bill to the joint sitting of the National Assembly while the Governors present theirs to the various Houses of Assembly.²

- (b) The first reading-the presentation of the President or Governors' speech to the National Assembly and States Houses of Assembly signify the first reading. Thus, the House Rules provide thus:
"On presentation, the Bill shall be deemed to have been read the first time and a date be fixed for commencement of the second reading."³
- (c) Second Reading-The majority leader moves a motion that the Appropriation Bill be read for the second time. Once the motion is passed, the House dissolves into a Committee of the whole House. What later follows is provided under Order XII, Rule 16(3) of the House of Representatives as follows:
"During the second reading, the debate shall be confined to the financial and economic state of Nigeria and the government's financial policy. Detailed items in the estimate may not be debated on the second reading."
- (d) Appropriation Committee-rule 92 (4) of the Senate is relevant here:
"When the Bill has been read the second time, it shall be committed to the Appropriation Committee. The standing committee of the Senate shall for this purpose be deemed to be sub-committees of the Appropriation Committee and shall consider estimates for the ministries, departments and agencies which come under their charge."
- (e) Committee of Supply-the House will resolve into a committee of the Whole House referred to in some standing orders or rules as "Committee of Supply".⁴ The Rules and Business Committee must state specific days for the deliberation of the Committee of Supply.⁵ The next stage will entail the listing of the Appropriation Bill as the first 'Order of the Day' on a date specifically allotted for that. The procedure is that once the Appropriation Bill is passed by the Committee of Supply, the Appropriation Committee shall within three working days prepare its final report.
- (f) Third reading-Rule 92(8) of the Senate provides that after third reading, the laid down procedures for bills shall be followed. The significant point here is that when the bill goes through third reading, is passed as the Appropriation Bill.
- (g) More often than not, the two Houses come out with different versions and like the Congressional process, the two Houses appoint equal number of conferees from their Houses(invariably from the Appropriation Committee of the House of Representatives and the Appropriation and Finance Committee of the Senate) to go to conference to resolve the differences(that is areas of disagreement).
- (h) Finally, the two Houses will adopt the Conference Report and thereafter pass the Appropriation Bill. All the amendments made by the National Assembly will have been incorporated in the Draft Estimates and a Clean Copy produced as the Approved Estimate.
- (i) The Clean Bill, accompanied by the Approved Estimates, is thereafter sent by the clerk to the National Assembly to the President for his assent. The Bill then becomes the 'Appropriation Act'.⁶

10.0 Proceedings on Treaties

The Standing Rules of both Houses provide identical provisions for the consideration of treaties in either House.⁷ The treaty is laid before either House and is read for the first time, thereafter, it is referred to the relevant Committee of the House having jurisdiction over such matters.

It shall, unless the Senate unanimously otherwise direct, lie over one day for consideration, after which it may be read a second time on demand and considered as in committee of the whole, when it shall be proceeded by articles, and the amendments reported by the Committee shall be first acted upon, after which other amendments may be proposed.⁸ Treaties transmitted by the President of the Federal Republic of Nigeria to the National Assembly for ratification shall be resumed at the second or subsequent session of the National Assembly at the stage in which they were left at the final adjournment at the session at which they were terminated; but all proceedings on treaties shall terminate with the life of the National Assembly, and they shall

¹ Anyaegbunam, E.O, *The Legislator's Companion-A Handbook for the National and State Houses of Assembly and Local Government Legislative Councils*, 2010,p.250

² Sections 81(1) and 121(1), of the Constitution, op. cit

³ Order 12 r. 16(1) (b) of the House

⁴ Order 12r 16(4) (b) of the House

⁵ See further Anyaegbunam, E.O, op. cit, at p.254

⁶ See further, Ahmadu,R.A *op. cit*

⁷ Order 16 r 1 and 2 of the House and Rules 132 to 133 of the Senate

⁸ Order 132 (b) (i) of the Senate

be resumed at the commencement of the next House as if no proceeding has previously been had thereon.¹

11.0 Proceedings on Proclamation of a State of Emergency

Again, the Standing Rules of both Houses provide identical provisions on proceedings on proclamation of a state of emergency.² Section 305 of the 1999 Constitution gives a very comprehensive procedure for declaration of state of emergency in Nigeria.³ It is the President that takes the first step by issuing a proclamation in the Official Gazette that a state of emergency exists. He communicates the publication to both the President of the Senate and the Speaker of the House of Representatives, each of whom is required to summon his House to consider the information and decide by resolution supported by two-thirds majority of each House.

While the President can only proclaim a state of emergency if any of the situations specified in subsection (3) exists, in *Williams v. Majekodunmi*⁴, the Federal Supreme Court held that it is for the House to decide whether a set of facts justify the declaration of a state of emergency.

Aside from the general power of the President to proclaim a state of emergency in any part of the Federation, the Governor of a State with the sanction by resolution of two-thirds majority of all members of the House of Assembly may request the President to issue a proclamation of a state of emergency in the State. But, if there is (1) a breakdown of public order and safety, (2) clear and present danger of an actual breakdown of public order and safety or (3) an occurrence of imminent danger or occurrence of any disaster or natural calamity, in all these cases, to such an extent as to require extraordinary measures to restore peace and security, and the Governor fails within a reasonable time to make a request to the President to issue a proclamation, then the President can take the initiative.⁵

12.0 Power to Regulate Internal Conducts and Proceedings

The Constitution confers the legislature with powers to regulate its internal proceedings.⁶ Hence, sections 60 and 101 of the 1999 Constitution provide that subject to the provisions of the Constitution, the National and State Assemblies shall have power to regulate their own procedures, including the procedure for summoning and recess of the House. Consequently, the legislative Houses have power to judge the lawfulness or otherwise of conduct before it and also to enforce due compliance and observance of its rules.⁷ This is a major privilege enjoyed by a legislative House and the court cannot exercise any supervisory power over conducts of legislative House.⁸

In alluding to the above, neither the President or Speaker, as the case may be, of a Legislative House nor any officer of a Legislative House shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in him by or under the Act or the standing orders of the Legislative Houses, or by the Constitution.⁹

In order to enforce discipline among the Honourable members of the Legislative Houses, their conducts guided by sections 20, 21 and 22 of the Legislative Houses (Powers and Privileges) Act. Therefore, acceptance of bribes and assault on members are criminal matters with consequent penalties. Also, the legislative House can suspend any of its members who are eventually excluded from chamber and precincts of the House. In the United States, the Constitution provides that each House shall determine the rules of its proceedings.¹⁰

13. Conclusion

The exercise of legislative powers and responsibilities, both at the Federal and at the States level, is regulated by both the Constitution and Standing Rules of the Houses. Therefore, failure to comply with the requisite provisions relating to procedure will render any outcome or decision illegal and unconstitutional.¹¹ This therefore accounts for the crucial role of the legislature in democratic governance. The legislative House must not only be responsible, it must be responsive to the yearnings and aspirations of the electorate whose mandate and cross they carry. Legislative business and proceedings must be reflective of public opinion, public feelings, public

¹ Order 16 r 2 of the House and Rule 133 of the Senate

² Order 16 Rules 3-6 of the House and Rule s 134-137 of the Senate

³ Subsections (1)-(6)(d) respectively

⁴ (1962) W.N.L.R. 185; (1962) 1 ALL N.L.R. 338

⁵ Akande, J.O, op. cit. at p.427

⁶ Section 60, Constitution of the Federal Republic of Nigeria, Cap.C23, Laws of the Federation of Nigeria, 2004

⁷ Jimoh, A, op. cit, at p.66

⁸ Ibid

⁹ Section 30, Legislative Houses (Powers and Privileges) Act, op cit

¹⁰ Article 1, section 5

¹¹ Peters, D, Constitutionality of Legislative Actions: National Assembly in Perspective in .Guobadia, D.A and Azinge, E (eds) in *Current Themes in the 1999 Constitution*, (Lagos: Nigerian Institute of Advanced Legal Studies, Lagos, 2007) p.331

concern and interest.¹ A legislature which operates a Federal written Constitution in which the exercise of legislative power and its limits are clearly set out has no power to ignore the conditions of law-making that are imposed by that Constitution which itself regulates its power to make law.²

¹ Jimoh, A op. cit, at p. 35

² Akande, J.O op. cit. at p.150