

Abstract

The Legislature in Nigeria, otherwise called the National Assembly, is bicameral, consisting of the Senate and the House of Representatives. In addition to their primary responsibility of law-making, these two legislative houses also perform many significant roles in the socio-economic and political development of the country. In the discharge of their onerous legislative duties, these two legislative houses have sometimes been accused of acts incompatible with their revered status, such as legislative corruption and the general abuse of legislative immunity. This situation is further exacerbated by the high cost of running these two legislative houses. Hence there have been calls for either scrapping of one of the two legislative houses, or doing their job on a part time basis. After a thorough examination of the Nigerian constitutional provisions appertaining to the duties of the legislature, this paper recommends, among other things, part-time legislature as a better alternative, and calls on the lawmakers to avoid any act that can cast a pall on them.

Keywords: Part-time Legislature, Legislative Immunity, Corruption, Good Governance, Nigerian Constitution.

1. Introduction

Legislatures are the catalyst for development in any democratic state because of the important functions they perform.¹ The main function of the legislature is to make laws for the good governance of the people or to ‘superintend the making of such laws by other bodies as may be stipulated by the constitution’.² Apart from their law-making functions for which they are highly reputed, legislatures also play an important role in policy formulation and execution through the control of public funds and expenditure,³ control of other arms of government through the legislative investigation committees⁴ and confirmation of appointments made by the executive⁵. The legislature also performs judicial functions through impeachment proceedings whenever a President or Governor is guilty of gross misconduct in the performance of the functions of his office.⁶ Similarly, in most countries the decision of the legislature on the removal of its own members in final⁷, among others. However, because of the excesses of the legislators in the performance of their functions there have been calls in recent times for the introduction of part-time legislature⁸ or the scrapping of the Senate in Nigeria.⁹ The desirability or otherwise of these calls is one of the concerns this paper.

2. The Legislature under the Nigerian Constitution

In Nigeria, the legislature, also known as the National Assembly, is bicameral consisting of the Senate and the House of Representatives¹⁰ at the federal level. It is unicameral of the state level consisting only of the House of Assembly¹¹. The Senate consists of three senators from each state and one from the Federal Capital, Territory, Abuja¹². This gives a total of 109 senators. On the other hand, the House of Representatives consists of three hundred and sixty members ‘representing constituencies of nearly equal populations as far as possible’.¹³ If this is added to the number of senators, it gives a grand total of four hundred and sixty nine members of the National Assembly. By section 65 of the 1999 Constitution, a person is eligible to contest election as a member of the senate if he is a Nigerian citizen and is up to thirty five years old,¹⁴ while aspirants for the House of Representatives must be thirty years old in addition to being Nigerian citizens¹⁵. Furthermore, aspirants into either House of the National Assembly should be educated up to at least school certificate level¹⁶ and must be sponsored by a political party¹⁷.

Functions of the Nigerian Legislature

Despite differences in nomenclature, the primary function of a legislature in any democracy is law-making. Hence section 4 of the 1999 Nigerian Constitution vests the National Assembly with the power to make laws for the ‘peace, order and good government of the Federation or any part thereof’ with respect to any matter included in the Exclusive Legislative

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¹ For example, section 4 (2) of the 1999 Nigerian Constitution vests the National Assembly with the power to make laws for the ‘peace, order and good government of the Federation or any part thereof...’

² O Aguda, *Understanding the Nigerian Constitution of 1999* (Lagos: MIJ Publishers, 2002) p 130.

³ See ss 80- 83 of the 1999 Constitution.

⁴ See s 88 of the 1999 Constitution.

⁵ See ss 147 and 231 on the appointment of ministers the Chief Justice of Nigeria respectively

⁶ See ss 143 and 188 of the 1999 Constitution respectively.

⁷ See *Oloyo v Alegbe* FCA/B/61/82 of 1/8/82.

⁸ A Okpi, ‘Slashing Cost of Governance: Exploring the Part-Time Legislature Option; *The Punch* (8 April 2012) 12.

⁹ J T Didymis. 2002. ‘Nigerians Debate Scrapping of the Senate’ <http://digitaljournal.com/article/333894#izzzzBNombqrR>, accessed on 8 November 2012.

¹⁰ S 47 of the 1999 Constitution.

¹¹ S 90 of the 1999 Constitution.

¹² S 48 of the 1999 Constitution.

¹³ S 49 of the 1999 Constitution.

¹⁴ S 65 (1) (a) of the 1999 Constitution.

¹⁵ S 65 (1) (b) of the 1999 Constitution.

¹⁶ S 65 (2) (a) of the 1999 Constitution.

¹⁷ S 65 (2) (b) of the 1999 Constitution. For grounds for disqualification, see section 66(1)–(3) of the Constitution.

List.¹⁸ According to Nwabueze,¹⁹ the phrase ‘peace, order and good government’ does not delimit the purpose for which the power is granted in the sense that a law must be for peace order and good government to be valid²⁰. It is only a legal formula for expressing the ‘widest plenitude of legislative power exercisable by a sovereign legislature’²¹ ‘Expansive though this formula appears to be’, Nwabueze continues, ‘there is no gain saying the fact that law making power hereunder is limited by the formula itself’.²² This, he claims, is a necessary consequence of the written nature of the constitution ‘as a law antecedent and superior to government.’²³ Therefore, a legislature that passes laws inconsistent with the spirit and letter of the constitution is acting outside the scope of its law making powers and this might lead to anarchy²⁴.

The law-making power of the Nigerian legislature is not without proper constitutional delimitation. By section 4 (8) of the 1999 Constitution, the exercise of legislative powers in Nigeria is subject to the jurisdiction of courts and of ‘judicial tribunals established by law’, nor is the legislature allowed to enact law ‘that ousts or purports to oust the jurisdiction of a court’.²⁵ The legislature is further prohibited from enacting retroactive criminal legislations.²⁶ An important function of the legislature that is not frequently performed is in relation to the declaration of emergency²⁷. Although the President is the only person constitutionally empowered to proclaim a state of emergency, the declaration ceases to have effect if not supported by two-thirds majority of all members of each House of the National Assembly.²⁸ A proclamation of emergency will also come to an end if it is revoked by a simple majority of all members of each House of the National Assembly.²⁹ Next to be considered is whether all these functions of the National Assembly can be performed on a part-time basis as contended by the proponents of part-time legislature.

3. Part-Time Legislature in Nigeria

Of recent, there have been calls for introduction of part-time legislature in Nigeria or in the alternative the scrapping of the Senate³⁰. The reasons adduced by the proponents of these calls are legion. They include high cost of maintaining the legislators, legislative corruption and a general abuse of legislative immunity, among others. Some of these will be examined.

4. Arguments in Favour of Part-Time Legislature

High Costs of Running the Legislature

The first reason while most Nigerians want the Nigerian legislature to be on part-time basis is the high cost of maintaining the legislators. According to the former Governor of the Central Bank of Nigeria, Mallam Sanusi Lamido Sanusi, about 25 percent of the country’s overhead expenditure is spent on the National Assembly alone³¹. In his own view, Sagay points out that it costs about two hundred and ninety million naira (N290, 000.000.00) annually to maintain each member of the National Assembly in a country where the average earning of 80 percent of the population is below three hundred naira (N300.00) per day³². He states further that the earning of a Nigerian Senator per day is more than the yearly income of a doctor; it is more than the salary of 42 army generals or 48 professors or 70 Commissioners of Police or more than twice the pay of the United States President, or nine times the salary of US Congressional Representative.³³ To the former President-General, Trade Union Congress (TUC), Peter Esele the abnormally high pay of the legislators is very regrettable when compared with the state of the Nigerian economy, living standards of the people, life expectancy of Nigerians and the income and salary of the average Nigerian worker³⁴. The constitutionality or otherwise of the current salaries and allowances of the Nigerian legislators is the concern of Femi Falana. According to him, the current remuneration of the members of the National Assembly is a breach of section 70 of the 1999 Nigerian Constitution which empowers the Revenue Mobilization, Allocation and Fiscal Commission to fix the salaries and allowances of the members of National Assembly³⁵.

¹⁸ The National Assembly has exclusive power to legislate on the Exclusive Legislative List while both the National Assembly and the State Assembly can legislate on the Concurrent Legislative List.

¹⁹ B O Nwabueze, *Ideas and Facts in Constitution Making*. (Ibadan: Spectrum, 1993) p36

²⁰ *Ibid*.

²¹ *Ibid*.

²² *Ibid*.

²³ *Ibid*.

²⁴ D A Guobadia, ‘The Legislature and Good Governance in Nigeria.’ In I A Ayua, *et al* (eds), *Nigeria; Issues in the 1999 Constitution*. (Lagos: NIALS, 2000) p47.

²⁵ This means that the laws are amenable to judicial review.

²⁶ See also s 36 (8) of the Constitution.

²⁷ See ss 305 of the 1999 Constitution.

²⁸ This must be done within two days when the National Assembly is in session or within ten days when not in session.

²⁹ S 305 (6) (d) of the 1999 Constitution.

³⁰ A Okpi, *op cit*, p 8. See also ‘Tinubu Calls for Scrapping of Senate’. *The Punch* (19 September, 2012). 15.

³¹ ‘Legislators Jumbo Pay: Sanusi Refuses to Back Down’, *The Punch* (8 December 2010 1). According to the Chairman, Senate Committee on Finance, Ahmed Makarfi, when this figure is taken as a percentage of the national budget it will come to about eight percent of the nation’s budget *This Day* (3 February 2011) 1.

³² *The Punch* 20 December, 2010 p4.

³³ *Ibid*.

³⁴ P Esele, ‘Legislator’s Pay Should Reflect Salaries and Allowances of Nigerian Workers’. *The Punch* (12 January 2011) 1.

³⁵ *The Punch* 30 December 2010 pp 1 and 2. Section 70 of the 1999 Constitution provides that:

‘A member of the senate or of the House of Representatives will receive such salary and other allowances as the Revenue Mobilization Allocation and Fiscal Commission may determine’.

The most comprehensive analysis of the effect of the high percentage of the country's budget being spent on the legislator's salaries and allowances seems to be by John Kalama, Charity E. Etubu, Charles A. Martha and Sophia M. John in a paper entitled: 'Legislator's Jumbo Pay, Cost of Governance and the State of Education in Nigeria: Issues and Contradictions.'³⁶ According to the quartet, spending 25 percent of the country's budget overhead cost on the National Assembly alone has created income inequality which has widened the gap between the income of civil servants and political office holders in the country³⁷. They also contend that the excessive spending on recurrent expenditure such as 'huge legislator's jumbo pays and servicing of domestic debts spent on overheads' has contributed to the 'neglect of the education sector and other critical sectors of the economy' which has equally affected the cost of governance in the country.³⁸ Another reason why many Nigerians prefer part-time legislature is because of legislative corruption.

Legislative Corruption

Any discussion on corruption generally evokes a feeling of hatred and resentment. This is because of the repulsive and endemic nature of corruption³⁹ Irrespective of the controversies on its origin and forms, corruption brings odium, opprobrium, contempt and ridicule to any society where it exists⁴⁰. Corruption is not the exclusive preserve of any nation, race or section of the world, but rather transcends national boundaries and frontiers and symbolizes phenomenal universal unwholesomeness⁴¹. According to Rose-Ackerman, corruption may have its roots in culture and history, but it is nevertheless an economic and political problem.⁴² It produces inefficiency and unfairness in the distribution of public benefits and costs, and indicates that the government structure does not channel private interest effectively⁴³. Political legitimacy is also undermined if government permits some to obtain 'disproportionate private gains at the expense of others'⁴⁴. Furthermore, corruption compromises national development, contaminates collective morality and values, distorts national planning, corrodes integrity and 'destroys the foundations of creativity, innovation and democratic structure and development'⁴⁵. To Nwabueze, 'by far the most tragic consequence of corruption is its effects upon the attitude and mentality of the people. It has created a widespread feeling of frustration, of disgust, and cynicism, which in turn undermined enthusiasm for, and faith in the state'⁴⁶. *A fortiori* legislative corruption debases the legislature, erodes public confidence in the lawmakers and their activities, betrays the collective trust reposed in the legislature and undermines its watchdog role.⁴⁷ Legislative corruption comes in many forms and guises. It can take the form of gratification, extortion, collection of bribes before confirmation of ministerial nominees⁴⁸ or approval of departmental budgets⁴⁹ demanding of contracts and licence concessions from government agencies over which the lawmakers perform oversight functions,⁵⁰ collection of huge sums of money for constituency projects that are not executed or haphazardly executed⁵¹, jerking up the appropriation bill submitted by the executive in order to inflate legislative votes⁵², succumbing to undue influence in voting or abstaining from voting at any legislative session in favour or against any measure or question submitted to the legislature⁵³, using threats of impeachment to gain unmerited favours and concessions from the executive⁵⁴ and failure to disclose any pecuniary interest of the lawmakers in any legislative proposal and receiving money for tabling parliamentary questions among others.⁵⁵

As earlier noted, one of the ways by which the Nigerian legislators engage in corruption is through collection of bribes and gifts. According to Rose-Ackerman, gift giving and bribery will be more common if legal dispute resolution mechanisms are costly and time consuming⁵⁶. The offence of bribery can, however, be circumvented on the grounds that the money given is based on charitable and altruistic consideration.⁵⁷ This, therefore, creates a problem in drawing a line of

³⁶ J Kakama, C E Etubu, C A Martha and S M John, 'Legislators Jumbo, Cost of Governance and the State of Education in Nigeria'. (2012) 2 *Educational and Social Research* 73.

³⁷ *Ibid.*

³⁸ *Ibid.* They recommend that the Federal Government through the Revenue Mobilization and Fiscal Commission should moderate, harmonise and fix salaries in line with due process and existing law.

³⁹ I B Lawal, 'Legislative Corruption in Nigeria' *op cit.* (2006) 5.

⁴⁰ *Ibid.*

⁴¹ O Oluyide 'Legal Perspectives in Corruption in Nigeria', J Sokefun. (ed), *Issues in Corruption and the Law in Nigeria*. (Ago Iwoye: Faculty of Law Olabisi Onabanjo University.2002) p1.

⁴² S Rose Ackerman, *Corruption and Government*. London: Cambridge, 1999) 265

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *The National Interest* (23 March 2012) 30.

⁴⁶ B O Nwabueze, *Nigeria's Presidential Constitution 1979-1983*. (New York: Longman, 1985) p326.

⁴⁷ I B Lawal '@Legislative Corruption in Nigeria: A Watchdog's Albatross?' *op cit.* p 5

⁴⁸ As alleged by the Mallam Nasir El-Rufai, the former Minister for the Federal Capital Territory in 2005.

⁴⁹ This was what led to the fifty-five-million-naira bribery scandal between the Federal Ministry of Education and the National Assembly in 2005.

⁵⁰ *Tony Momoh v Senate* 1983 4NCLR 209.

⁵¹ Execution of constituency projects should ordinarily be within the jurisdiction of the executive.

⁵² This has been the practice since the year 2000.

⁵³ This is usually caused by political affiliation or tribal and religious beliefs.

⁵⁴ President Olusegun Obasanjo was threatened with impeachment for more than four times. Each attempt subsided after he had danced to the tune of the lawmakers.

⁵⁵ This is a major source of conflict of interests in the Nigerian legislature.

⁵⁶ A good example is the three million dollars bribery scandal between the Chairman of the House of Representatives Ad Hoc Committee on Petroleum Subsidy, Farouk Lawan and Mr Femi Otedola, the Managing Director of Zenon Oil and Gas Ltd in 2012.

⁵⁷ S Rose-Ackerman, *op cit* p 3.

demarcation between where gift ends and bribery begins. This is because the latter is a corrupt practice while the former is not.⁵⁸ The Nigerian legislature is not immune from bribery scandals. The notable ones include the one involving the Federal Ministry of Education and the National Assembly in 2005 when during the defence of the budgetary proposals of the Ministry of Education in the 2004 Appropriation Act it was agreed that for a monetary consideration of twenty million naira the budget of estimates of the Ministry would be inflated.⁵⁹ The lawmakers fulfilled their own part of the bargain but the Minister of Education, Professor Fabian Osuji, outsmarted the legislators by not furnishing the agreed consideration.⁶⁰ In 2005 the lawmakers threatened to reduce the Ministry's budget if the Minister failed to honour his unfulfilled promise and also furnish fresh consideration for the new budget. All amounted to fifty-five million naira. The Education Minister contacted the agencies under his Ministry to raise the money. The deal eventually leaked to President Olusegun Obasanjo who referred the matter to the Economic and Financial Crimes Commission for investigation after which he made a national broadcast on the incident.⁶¹ It led to the dismissal of Minister for Education while the Senate President Adolphus Wabara resigned his position. Similarly, on 12 March 2024, Senator Abdul Ahmed Ningi, a PDP Senator from Bauchi State, was suspended for three months after stating in a BBC interview that the 2024 budget was 'padded' to the tune of N3.7 trillion representing more than 10% of the N28.78 trillion budget. His suspension was met with great outrage by the generality of Nigerians. He was eventually recalled after much public outcry and condemnation of his suspension, two weeks to the end of the suspension term.⁶² Legislative corruption is, however, not limited to the Nigerian legislature⁶³

Abuse of Legislative Immunity

Another reason why many Nigerians prefer part-time legislature is the abuse of legislative immunity and privileges by the lawmakers. According to Erskine May,⁶⁴ parliamentary privilege, is the sum of peculiar rights enjoyed by each House collectively ... and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals.⁶⁵ Parliamentary privileges have both external and internal aspects⁶⁶; they restrain interference with the House from outside, thus restricting the freedom of speech and action 'which those from outside would otherwise have'⁶⁷ They also shield members from internal attack, for instance conduct incompatible with the position of members⁶⁸. The privileges and immunity of the Nigerian legislature are not derived from the inherent authority of the legislature but from statute, and therefore form part of the general and public law 'of which the courts are bound to take judicial notice'⁶⁹ While it is generally agreed that the lawmakers should be given some protection, the scope and limits of such protection are objects of sharp disagreement. Does legislative immunity cover discussion by parliamentarians outside the legislative House?⁷⁰ Does it justify false declaration of age and falsification of educational qualifications by the parliamentarians?⁷¹ Are verbal attacks and exchange of fisticuffs part of legislative immunity?⁷² All these constitute abuse of legislative immunity. Other ways by which the lawmakers have abused their immunity include using their law-making powers to victimize their perceived enemies,⁷³ summoning editors to disclose their source of information in breach of the constitutionally guaranteed freedom of expression,⁷⁴ enacting laws without following the due legislative process,⁷⁵ arrogating to themselves superior patriotism and knowledge than any other Nigerian⁷⁶, intolerance to being criticized by others,⁷⁷ disrespect for court orders⁷⁸ and involvement in heinous crimes including terrorism⁷⁹.

Constitutional Provisions on Sitzings of the Legislature

Another reason for the call for part-time legislature might be the wording of the constitutional provisions on the sittings of the legislature. By section 63 of the 1999 Constitution, the Senate and the House of Representatives are obliged to sit for a period of not less than 'one hundred and eighty-one days in a year'⁸⁰. Given that there are three hundred and sixty-five days in a year, this means that the lawmakers are only obliged to work for less than half of the number of days in a year. To

⁵⁸ *Ibid.*

⁵⁹ *The Guardian* (23 March 2005) 1.

⁶⁰ *Ibid* at p 4.

⁶¹ *Ibid.*

⁶² 'Senate Recalls Ningi from Suspension' *Premium Times* (28 May, 2024) P.1.

⁶³ There are so also cases of legislative corruption in both the United States and Britain.

⁶⁴ Erskine May, *Parliamentary Practice*, (London: Butterworths 1997) p 65

⁶⁵ *Ibid.*

⁶⁶ E S Wade and A W Bradley, *Constitutional and Administrative Law*. (London: Longman 1993) p211.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ B O Nwabueze, *Constitutional Law of the Nigerian Republic* (London; Butterworths,1964) p217.

⁷⁰ This is doubtful especially if it is not related to legislative business

⁷¹ A former Speaker of House of Representatives, Salisu Buhari, was relieved of his post due to falsification of age and educational qualifications.

⁷² These seem to be a regular occurrence in our legislative houses.

⁷³ A good example is the attempt of the National Assembly to strip the central Bank Governor, 8 Lamido Sanusi, of his powers shortly after the latter had accused them of spending 25 percent of the nation's annual recurrent expenditure.

⁷⁴ *Tony Momoh v The Senate* (1983) 4NCLR 269.

⁷⁵ *A.G. Bendel v A.G. Federation* (1981) INCLR I.

⁷⁶ G Shehu 2012 'NASS vs Executive' No Tyranny is Good'. *Nigerian Tribune* 31 October 2012 p 56.

⁷⁷ *Ibid.*

⁷⁸ F G Nwoke, D C J Dakas, S Adam, and A S A Shaaka 2003. 'The Rule of Law as Cornerstone of Democracy and Good Governance', 39 *NALT Proceedings*, University of Maiduguri pp 93-95.

⁷⁹ As at the time of writing this paper a serving Senator, Ali Ndume, from Borno State was being tried for terrorism related offences.

⁸⁰ See also section 104 of the 1999 Constitution in respect of the State Assemblies.

worsen the situation, section 63 (f) of the Constitution further allows the lawmaker to be absent for not more than one-third of the legislative meeting days if they do not want their seats to be declared vacant⁸¹. This gives a concession of approximately 90 days, which further reduces the mandatory sitting days of the lawmakers to 91 days for which they would be entitled to full salaries⁸². Even though the constitutional stipulation as to the minimum number of days the law makers are obliged to sit in a year is meant to make the legislators more responsible, anybody who is mathematically inclined would find it outrageous for a person to be paid full year's salary for three months' job. Hence the call for part-time legislature so that the law makers would only be paid for the actual number of days they sit. Arguments have equally been advanced against part-time legislature.⁸³

5 Arguments against Part-Time Legislature

The major argument against part-time legislature is that it may reduce the effectiveness and cohesiveness of the legislature. Having gone through the powers and functions of the legislature one is likely to come to the conclusion that law-making is a serious business that should be given full concentration and undivided attention and loyalty for the betterment of the nation.⁸⁴ Furthermore, other arms of government perform their functions on full-time basis, why then would the legislature be an exception? It can equally be argued that part-time legislature is a breach of freedom from discrimination guaranteed under the Constitution.⁸⁵ It has equally been contended that the idea of part-time legislature will weaken the legislature⁸⁶. According to Balarabe Musa, part-time legislature would make the legislature so weak that the executive would be doing some of the things meant for the legislature.⁸⁷ He further argues that Nigeria is not yet mature for part-time legislature. He maintains that until we have set standards that would serve as benchmarks for our legislature, 'it might not be feasible to run part-time legislature'⁸⁸ Balarabe Musa's argument is not without merit because as at now when the legislature is full-time, the executive powers are very wide and intimidating, ranging from execution and implementation of government policies to playing major roles in both judicial and legislative actions.⁸⁹ The overbearing influence of the executive on the legislature during impeachment proceedings is already a cause of worry. Part-time legislature may likely worsen this influence. This leads to the next alternative of scrapping the Senate.

6. Is Scrapping the Senate a Better Alternative?

As an alternative to part-time legislature there have also been calls for the scrapping of the Senate in order to reduce cost. One of the proponents of this call is the former Governor of Lagos State, Asiwaju Bola Ahmed Tinubu, before he later became the Nigerian President.⁹⁰ He contends that there is no need for the country to have a bicameral legislature, and that the House of Representatives representing the smaller constituencies, is enough in the same population.⁹¹ The argument for scrapping the Senate is not without its drawbacks. In the first place, having a bicameral legislature prevents hasty passage of bills as the bills passed in one house will have to be debated and passed in the second house,⁹² thus allowing proper reflections on the bills. Furthermore, a bicameral legislature promotes healthy rivalry between the two houses to the overall advantages of the citizens. Looking at the age qualifications for the two houses,⁹³ scrapping the Senate would mean sacrificing experience and maturity at the altar of expediency. The maturity of the Senate over the House of Representatives probably explains why some legislative functions are constitutionally required to be performed by the Senate to the exclusion of House of Representatives. These include confirmation of ministers, ambassadors, high commissioners and other principal representatives of Nigeria abroad,⁹⁴ the Chief Justice of the Federation,⁹⁵ and the Justices of the Supreme Court of Nigeria,⁹⁶ the President⁹⁷ and Justices of the Court of Appeal⁹⁸ the Auditor General of the Federation⁹⁹ and the chairman and members of certain federal executive bodies.¹⁰⁰ The Senate also has to confirm the removal of the Chief Justice of Nigeria and all heads of federal courts,¹⁰¹ the Auditor General of the Federation¹⁰² and the chairmen and members

⁸¹ S 68 (1) (f) of the 1999 Constitution provides that a member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if 'without just cause' he is absent from meetings of the House of which he is a member for a period amounting in the aggregate to more than 'one third of the total number of days during which the House meets in any one year'.

⁸² That means being paid one year's salary for about three months' work.

⁸³ These are considered below.

⁸⁴ Part-time legislature may lead to divided loyalty.

⁸⁵ Section 42 of the 1999 Constitution.

⁸⁶ O Allwell *op cit* p. 8.

⁸⁷ Cited in O Allwell, *op cit* p 8.

⁸⁸ *Ibid*.

⁸⁹ For a discussion of the pervasive powers of the executive see I B Lawal, 'Is Executive Immunity Coterminous with Executive Corruption?' (2006) 1(1&2) *International Journal of Law and Contemporary Studies*. 325 – 326.

⁹⁰ 'Tinubu Calls for Scrapping of Senate' *The Punch* (19 September, 2012). 15.

⁹¹ *Ibid*.

⁹² See section 58 of the 1999 Constitution.

⁹³ The 1999 Constitution stipulates thirty five years for the Senate and thirty years for the House of Representatives. See section 65 (1) (a) and (b) of the Constitution.

⁹⁴ S 171 (4) of the 1999 Constitution.

⁹⁵ S 231 (1) of the 1999 Constitution.

⁹⁶ S 231 (2) of the 1999 Constitution.

⁹⁷ S 238 (1) of the 1999 Constitution.

⁹⁸ S 238 (2) of the 1999 Constitution.

⁹⁹ S 86 (1) of the 1999 Constitution.

¹⁰⁰ S 154 (1) of the 1999 Constitution.

¹⁰¹ S 292 (1) (a) of the 1999 Constitution.

¹⁰² S 87 (1) of the 1999 Constitution.

of certain federal executive bodies.¹⁰³ The President of the Senate is also exclusively empowered to receive notice of allegation of misconduct against the President or the Vice President¹⁰⁴; and to cause it to be served on the President or Vice President and on each member of the National Assembly.¹⁰⁵ He is also invested with the power to appoint a medical panel to verify a declaration by the members of the Executive Council of the Federation that the President or Vice President is incapable of discharging the functions of his office due to 'infirmary of body or mind'¹⁰⁶; to preside at joint meetings of both Houses of the National Assembly¹⁰⁷ and to receive notice of resignation of the President¹⁰⁸ among other functions. According to Nwabueze,¹⁰⁹ by vesting these powers in the Senate or its President to the exclusion of the House of Representatives 'the Constitution seems to give primacy the Senate.'¹¹⁰ The learned author contends further that the contemplation is that the Senate is to be an 'upper' house of elder statesmen who are to serve as the 'eye of public' in ensuring that the appointment and removal of certain public functionaries by the President 'are made with national interest in view', and not 'from purely personal, sectional or partisan considerations'¹¹¹ From the analysis of some of the functions exclusively reserved for the Senate, the call for scrapping the Senate in order to save the cost of running the Nigerian legislature would be highly counterproductive. Therefore, part-time legislature seems to be a better option. This is because despite the shortcomings also inherent in this option, it would afford us the full benefits of bicameral legislature at a highly reduced cost.¹¹²

7. Part-Time Legislature and Code of Conduct for Public Officers

The Code of Conduct for Public Officer is contained in Part 1 of the Fifth Schedule to the 1999 Nigerian Constitution. It was first introduced into the Nigerian Constitution in 1979¹¹³. It is meant to prevent corruption and abuse of office and to ensure transparency in public officers¹¹⁴. Acts prohibited by the code include a public officer putting himself in a position where his personal interests conflict with his duties and official responsibilities,¹¹⁵ holding two posts from which he is paid from public funds¹¹⁶ and engaging in the running of any private business, profession or trade when employed on a full time basis.¹¹⁷ This, however, does not prevent a public officer from acquiring an interest in a private business like partnership.¹¹⁸ What he cannot do is to hold a managerial officer post or other position in such an undertaking¹¹⁹. A public officer is, however, allowed to engage in farming¹²⁰. According to Aguda, the permission granted to a public officer to engage in farming under the code could lead to be difficulties because farming includes large-scale enterprises.¹²¹ The code also obligates every public officer to declare his assets on assumption of office,¹²² and thereafter at the interval of four years,¹²³ and at the end of his term of office¹²⁴. The National Assembly, may, however, exempt any cadre of public officer from the asset declaration provision, if it appears to it that their position is below the rank which it considers appropriate for the application of those provisions.¹²⁵ The question may be asked whether the provisions of the code of conduct should be applied to part-time legislators especially if one considers the provision of the code which prevents a public officer from engaging in 'any private business, profession or trade' when 'employed on a full-time basis.'¹²⁶ This question should be answered in the affirmative. This is because apart from this provision there are some other provisions of the code like avoidance of conflict of interests¹²⁷, prohibition of collection of bribes,¹²⁸ and declaration of assets¹²⁹ that apply to all public officers with equal force. Part time legislators may, however, be allowed to engage in private business, profession or trade

¹⁰³ S 157 (1) of the 1999 Constitution; see also E M Joye. and K Igweke, *Introduction to the 1979 Nigerian Constitution*. (London: Macmillan, 1982) p 166-167.

¹⁰⁴ S 143 (1) (a) of the 1999 Constitution.

¹⁰⁵ S 143 (1) (b) of the 1999 Constitution.

¹⁰⁶ S 144 (4) of the 1999 Constitution.

¹⁰⁷ S 53 (2) (a) of the 1999 Constitution.

¹⁰⁸ S 306 (3) of the 1999 Constitution.

¹⁰⁹ B O Nwabueze, *Nigeria's Presidential Constitution op cit* (2003) 198.

¹¹⁰ *Ibid*

¹¹¹ *Ibid*: Nwabueze further observes that the functions exclusively vested in the Senate are by no means marginal, and that the primacy of the Senate is recognized by the protocol which accords precedence to senators over members of the House of Representatives at state functions.

¹¹² This is because apart from a sharp reduction in salaries, part-time legislature will also reduce the retinue of legislative aids employed by the lawmakers.

¹¹³ See Part I, Fifth Schedule to the 1979 Constitution.

¹¹⁴ J B Lawal, 'Public Declaration of Assets in Nigeria: Conflict or Synergy between Law and Morality?' (2009) 9(1) *African Human Rights and Journal*. 277.

¹¹⁵ Para 1 part I, Fifth Schedule to the 1999 Constitution.

¹¹⁶ Para 2 (a) Part I Fifth Schedule to the 1999 Constitution.

¹¹⁷ Para 2 (b) Part I Fifth Schedule to the 1999 Constitution.

¹¹⁸ *Nwankwo v Nwankwo* (1995) 30 IRC p 24 at 33.

¹¹⁹ *Ibid*.

¹²⁰ Para 2 (b) Part I, Fifth Schedule to the 1999 Constitution.

¹²¹ O Aguda, *Understanding the Nigerian Constitution 1999*. (Lagos: MIJ Publishers. 2000) p 247.

¹²² Para 11 (1) Part I, Fifth Schedule to the 1999 Constitution.

¹²³ Para 11 (1) (a) Part I, Fifth Schedule to the 1999 Constitution.

¹²⁴ Para 11 (1) (b) Part I, Fifth Schedule to the 1999 Constitution.

¹²⁵ Para 14 (b) Part I, Fifth Schedule to the 1999 Constitution.

¹²⁶ Para 2 (b) Part I, Fifth Schedule to the 1999 Constitution.

¹²⁷ Para 1 Part I, Fifth Schedule to the 1999 Constitution.

¹²⁸ See Para 6 (1) and 8 Part I, Fifth Schedule to the 1999 Constitution.

¹²⁹ Para 11 Part I, Fifth Schedule to the 1999 Constitution.

provided they guard against conflict of interests. Next to be considered is the question whether the part-time legislators can use their power under paragraph 14(b) of the Fifth Schedule to the 1999 Constitution to exempt themselves from asset declaration¹³⁰. While this might be legally permissible, it is morally reprehensible¹³¹ and would be tantamount to an abuse of office which the code of conduct sets out to prevent.

8. Conclusion

It is beyond argument that the legislature performs important functions for the socio-economic development of any country. However, the huge budgetary allocations to the legislature each year are highly disproportional to the services rendered by the lawmakers hence the calls for part-time legislature or the scrapping of the Senate.¹³² This paper has examined the two proposals and is of the view that part-time legislature is a better alternative to the scrapping of the Senate because of some important legislative functions exclusively reserved for the Senate in addition to the maturity of many of its members.¹³³ Part time legislature would not only reduce cost; it would also afford the country the opportunity of benefitting from the wealth of experience of the majority of the senators at no extra cost. Part –time legislature is, however, not without its drawbacks. One of them is the fact that it would weaken the legislature and further engender the domineering influence of the executive over the legislature. It may also make serving in the legislative houses less attractive to serious –minded persons. There is also the possibility of conflict of interests among the legislators engaged in any other trade or profession.¹³⁴ The only way to avoid this might be to reserve legislative business to retired people who have outlived their productive years. The incompatibility of part-time legislature with some of the provisions of the code of conduct is another thorny issue. Therefore, the Constitution should be amended to resolve the incompatibility. The power of the National Assembly to exempt certain categories of persons from asset declaration¹³⁵ should also be withdrawn to prevent possible abuse by part-time legislators. The law makers should also avoid any act that is denigrative of their exalted position. If all these perceived shortcomings are seriously addressed with sincerity of purpose, part-time legislature has good prospects in Nigeria because it would not only reduce the cost of running the legislature it would also reduce legislative corruption and abuse of legislative immunity, and consequently engender good governance in Nigeria.

¹³⁰ Para 14 (b) provides that:

‘The National Assembly may by law exempt any cadre of public officers from the provisions of Paragraphs 4 and 11 of the code if appears to it that their position in the public service is below the rank which it considers appropriate for the application of those provisions.’

¹³¹ For the distinction between Law and Morality see Craig, I.E. (ed) 1998, *Routledge Encyclopedia of Philosophy*. P. 544. See also Dias, R.M.W. (1985). *Jurisprudence*. London: Butterworths p. 215.

¹³² There are also few dissenting voices.

¹³³ The age qualification of the Senate is higher than that of the House of Representatives.

¹³⁴ See Para 1 and 2 Part I Fifth Schedule to the 1999 Constitution.

¹³⁵ Para 14 (b) Part I, Fifth Schedule to the 1999 Constitution.