

**GOVERNANCE AT GREAT COST: AN APPRAISAL OF THE
NATIONAL ASSEMBLY**

BY

PETER A. AKHIHIERO ESQ.*
LL.B (Hons) IFE, B.L.

**PAPER PRESENTED AT THE
NATIONAL SEMINAR FOR LL.M.
STUDENTS IN LEGISLATIVE DRAFTING**

* **LL.M. STUDENT IN LEGISLATIVE DRAFTING IN THE NIGERIAN INSTITUTE OF
ADVANCED LEGAL STUDIES, LAGOS.**

GOVERNANCE AT GREAT COST: AN APPRAISAL OF THE NATIONAL ASSEMBLY

1. INTRODUCTION

The provisions of the 1999 Constitution of the Federal Republic of Nigeria enshrines the principle of separation of powers. Thus, the legislative power of the Federal Government is vested in the National Assembly,¹ the executive power is vested in The President,² while the judicial power is vested in the Courts.³

Essentially, this paper shall focus on the organisation, functions, powers and duties of the National Assembly, viewed from the economic standpoint. The Point must be made at the outset, that unlike the 1960 and the 1963 Constitutions, which adopted the Westminster parliamentary model of government, the 1999 Constitution wholly followed the 1979 Constitution in the adoption of the Presidential system of government.

The legislature, it must be emphasised is not an extension of the executive but a co-ordinate and complementary branch of the government, which derives its legitimacy and authority from the Constitution. It is therefore equally responsible for the governance of the nation as the executive. It has an independent existence, with independent powers, functions or duties and should therefore not be seen as a mere rubber stamp of the executive policies and decisions.⁴

The vesting of Federal legislative power exclusively in the National Assembly means that the President is not a constituent part of the legislature, as under the parliamentary system of the Westminster model. Thus, whilst the President's assent is normally required for a

¹ See section 4 of the 1999 Constitution.

² Section 5, 1999 Constitution.

³ Section 6, 1999 Constitution.

⁴ See Introduction to the 1979 Nigerian Constitution by E. Micheal Joye Ikingsley Igweike, 1982

bill passed by the Assembly, to become Law,⁵ this requirement effects, not the title to the legislative power which belongs exclusively to the National Assembly, but only the mode of exercising the power. It is simply designed as part of a system of checks and balances. Thus, the withholding of assent by the President can be overridden by the National Assembly re-passing the legislative measure by two-thirds majority, whereupon the measure becomes Law without his consent.⁶

An attempt will be made in this paper, to articulate the role of the National Assembly in the presidential system of Government as practiced in Nigeria, and to take a fresh view of the expectations of its performance in the new dispensation. The essential role of the National Assembly is that of creating an autonomous legislative arm at the federal level, to make policy and to enact suitable laws for the welfare of the society.

The growth of the legislature in Nigeria has been severely retarded by constant military intervention in governance. It is a notorious fact that for the entire period of 39 years of Nigeria's nationhood, the legislature has only existed for a period of 9 years. Consequently, the legislature in Nigeria, is still in its infancy after 39 years of independence.

2. **COMPOSITION AND STAFF OF THE NATIONAL ASSEMBLY**

The National Assembly, as the Federal Legislature is called under the 1999 Nigerian Constitution, is a bicameral legislature. It consists of a Senate and a House of Representatives.⁷

p.143.

⁵ section 58(1) 1999 Constitution.

⁶ See Paper delivered by Prof. Nwabueze at Workshop on "Redefining the Nigerian Budget Process" at Abuja on 19/5/2000.

⁷ Section 47 1999 Constitution.

The Senate has always been considered as the senior partner, in view of the more exalted position accorded to it by the Constitution. But it must be pointed out that as far as it relates to the process of legislation, the powers of both houses are the same.

(a) **The Senate**

The membership of the Senate, though not its size, is fixed by the Constitution. The Senate shall consist of three Senators from each State and one from the Federal Capital Territory, Abuja.⁸

Thus the size of the Senate is related directly to the number of states and the creation of more states will inevitably mean an increase in the size of the Senate.

There shall be a President and a Deputy president of the Senate, who shall be elected by the members of that House from among themselves.⁹

Subject to the provisions of section 66 of the Constitution, a person shall be qualified for election as a Senator if:

- (i) he is a citizen of Nigeria and has attained the age of thirty-five years;
- (ii) he has been educated up to at least school Certificate level or its equivalent, and
- (iii) he is a member of a political party and is sponsored by that party.¹⁰

Apart from the elected members of the Senate, the Senate also has some supporting administrative staff. The supporting staff consists of the Clerk to the National Assembly and such other staff as may be prescribed by an Act of the National Assembly. The method of appointment of the Clerk and other staff shall be as prescribed by the Act.¹¹

⁸ Section 48.

⁹ Section 50(1)(a).

¹⁰ Section 65.

¹¹ Section 51.

(b) **The House of Representatives**

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.¹²

There shall be a Speaker and a Deputy Speaker of the House who shall be elected by the members of that House from among themselves.¹³

Apart from the requirement of attaining the age of thirty years for members of the House of Representatives, the qualification for membership is like that of the Senate.¹⁴ There are also several supporting administrative staff who are all under the Clerk of the National Assembly.

3. THE COMMITTEE SYSTEM

Each Branch of the National Assembly meets in plenary session or through one of its committees. It would be unimaginable to conceive a situation where all the legislative proposals of the National Assembly are considered in plenary session. The size of the Assembly of which a good proportion would want to participate in any discussion before the House would render this impracticable. As a result, the Assembly has been characterised by a stable system of committees with fixed functions and jurisdiction.¹⁵

Each House may appoint a committee of its members for such special or general purpose as in its opinion would be better regulated and managed by means of such a committee, and may by resolution, regulation or otherwise, delegate any functions exercisable by it to any such committee.

¹² Section 49.

¹³ Section 50(1)(b).

¹⁴ Section 65.

¹⁵ See generally, "Introduction to the 1979 Nigerian Constitution" by E. Michael Joye op.cit at

However, neither House is empowered to delegate to a committee, its power to decide whether a Bill shall be passed into law or its power to pass a resolution on any matter.¹⁶

The National Assembly has several different kinds of committees, which can be grouped into four. These are the Committee of the whole House, the Standing Committees, the Special Committees and the select Committees.¹⁷

(a) **Committee of the whole House**

The Committee of the whole House as its name suggests, is the whole Senate or House of Representatives sitting as a committee. This usually happens after a Bill has been read the second time when it shall stand committed to the whole House unless the House decides to commit it to a standing or select Committee. In such a situation, the President or Deputy President of the Senate or the Speaker or Deputy Speaker, as the case may be, vacates the chair. However, he continues as the Chairman of the Committee of the whole House.

(b) **Standing Committees**

These are sometimes called ‘General Purpose Committees’ and are appointed at the beginning of the life of each legislature. Under the 1979 Constitution, there were twenty-seven of these in the House of Representatives and twenty-two in the Senate. Each Standing Committee in the House of Representatives and the Senate at that time had twenty-five and eleven members respectively.

(c) **Special Committees**

These are sometimes called “Special Purposes Committees” and are appointed at

¹⁶ p.150.
section 62.

¹⁷ By virtue of section 311 of the 1999 Constitution, the standing Orders established under the 1979 Constitution are still applicable to the present one, until new rules are enacted.

the beginning of each legislative session, though any other special committee may be appointed by either House and assigned such duties as the need may arise.

The most important of the Special Committees is the Committee of Selection, appointed at the beginning of every session.

Under the 1979 Constitution, in the Senate, it consisted of the President, the Deputy President and four other senators while in the House of Representatives, it was made up of the Speaker, Deputy Speaker and nominees of political parties in accordance with their numerical strength in the House. Its functions include nominating members to serve on ad hoc special committees and on parliamentary delegations.

(d) **Select Committees**

The Senate or the House of Representative may appoint a Select Committee of ten or fifteen members respectively to consider any matter that may be referred to it. The nomination in each case is by the Committee of Selection after a notice has been given on a motion made and a question put.

4. ECONOMIC REVIEW OF THE STRUCTURE OF THE NATIONAL ASSEMBLY

Within thirty-nine years of Nigeria's sovereignty, there has been eleven national governments under the intermittent leadership of the civilian and the military classes. Sir Tafawa Balewa headed a Westminster parliamentary government, while Alhaji Shehu Shagari and Chief Olusegun Obasanjo are identified with the American-type presidential system, each coming into power via the ballot box. On the other hand, Generals Aguiyi-Ironsi, Yakubu Gowon, Murtala Muhammed, Olusegun Obasanjo, Muhammadu Buhari,

Ibrahim Babangida, Sani Abacha and Abdusalam Abubakar, have been at the helm of military governments which came in **vi et arms** (by force of arms).

Thus the country has witnessed three political systems, to wit: parliamentary, military and presidential. Ultimately, there has been two leadership classes, viz, civilian and military. There has been military preponderance, interspersed by civilian **interregnum**, in that the military have been in power for about thirty years of Nigeria's formal independence.

The focus of this paper is not to determine the economic viability of any of the three political systems. Rather the focus is on the economic viability of the National Assembly, as a distinct organ of government in the present political dispensation. Naturally, to archive this desired objective, we may need to make some comparative analysis of the various political systems **inter se**.

Under the military dispensation, there was a fusion of the legislative and the executive arm, at both the Federal and State level. At the Federal level, the supreme ruling body, called the Supreme Military Council, the Armed Forces Ruling Council and the Provisional Ruling Council, interchangeably, carried out the dual function of execution and legislation. Viewed from the economic standpoint, this was a cost saving measure to the government.

Moreso, the membership of the Supreme ruling body were usually very few scarcely above fifty in number.

Similarly, under a parliamentary system of the Westminster model as was practiced between 1960 to 1966, there was a fusion of the executive and the legislative arm of government. Thus, the members of cabinet were selected from parliament. Infact, the Prime Minister (chief executive) in the parliamentary system, was actually the leader

of the parliamentary party that had majority in parliament. Consequently, by and large the parliamentary system of government was equally cost effective.

Coming to the present civilian dispensation, the presidential system entails a clear separation of powers between the three arms of government. Apart from the exercise of checks and balances between the arms, there is no provision for any fusion of arms of government. Each of the three arms of government has its distinct structural paraphernalia. Moreover, the Constitution has set up a bi-cameral National Assembly. In the preceding pages, we have outlined the human composition of the Assembly, in terms of its elected officials and administrative personnel. We have seen that the human outlay is quite large.

(a) **Infrastructural Facilities**

Apart from the personnel, the National Assembly is also saddled with several infrastructural requirements to enhance its performance. In a paper presented at the “NGE Capacity Building Workshop on Media coverage of the legislature” Professor Alex Gboyega, lamented the plight of the National Assembly among the legislatures in the Third World. He observed that the Assembly does not have the institutional infrastructure available to the executive arm of government. According to him, “Consider for a moment that when Chief Olusegun Obasanjo was elected as President, he inherited a huge civil bureaucracy that provided continuity of government and a pool of expertise through which he could formulate new policies. The civil service, as the repository of government records, plays an important role in assembling and analyzing the necessary data, identifying options for dealing with the issues at hand and monitoring implementation to ensure that objectives are being achieved through outputs The National

Assembly did not inherit an administrative machinery with the awesome resources available to the civil service.”¹⁸

Just as an industry’s potential to produce is limited ultimately by its available plant capacity, so a legislature’s potential for functioning effectively, is dictated by the capacity of the legislative “plant.” Legislative manpower may be hamstrung in hopelessly inadequate physical facilities, just as skilled industrial workmen may be frustrated by the use of obsolete plants with improper equipment.

The modern trend is to equip the Legislature with up to date gadgets to maximize their efficiency. The most notable adaptation of electronic gadgetry by modern legislatures is the electric roll-call voting machine now in use in most lower houses and senates. This machine saves much legislative time by instantly recording and tabulating votes when legislators activate switches at their desks, as compared with the name-by-name call of the roll by a clerk or the inconveniences of **viva-voce** voting.¹⁹

From the experiences of the more advanced democracies around the world, it is fundamentally clear that no legislature can be effective unless it has adequate resources to conduct research on policy issues, develop models, analyze data, and write laws. Staff libraries and expertise are all necessary, as are tools like computers, telephones and fax machines.²⁰

(b) Supporting Legislative Staff

We have seen that the legislature must have a retinue of several supporting staff to

¹⁸ See Prof. Alex Gboyega. “Legislatures in a Presidential Democracy: An Overview” p.3.
¹⁹ see “State Legislatures in American Politics” by The American Assembly, Columbia University 1966, page 135.
²⁰ See Norman Ornstein: The Role of the Legislature in a Democracy.

carry out administrative functions. Also, individual legislators are entitled to some staff, attached to them to ease their duties. They include secretarial assistants, research assistants and personal assistants. As the business of legislatures increases, it seems inevitable that the provision of such staff services will also increase.

For example, some Senators have started to open constituency offices in their constituency to open up effective communication with their constituencies. Such constituency offices must have resident constituency assistants.²¹

The salient issue is: who is to be responsible for the remuneration of these chain of supporting staff? Should the wage bill of such personnel be tied to the wage bill of the National Assembly? Or should it be tied to the personal emoluments of the legislator to whom they are attached? Next, should the attachees be on full time or on part time employment?

We cannot give any clear-cut answers to these questions. We must first be able to determine the scope of their duties. Naturally, their functions cannot be clear-cut. They will be mainly political functions, which may appear rather unorthodox. Moreover the answer to these salient questions would to a large extent be dependent on several economic variables like the state of the national economy or the resources allocated to the National Assembly for each fiscal year.

(c) **Emoluments of Legislators**

On the emoluments of lawmakers, the dispute has always been on whether they should be paid salaries or only allowances. In England the payment of lawmakers probably began as compensation, rather than as a reward. Payment was due for the period

²¹ Recently, Senator A.U. Osunbor from Edo State opened his constituency office in his constituency to serve as a channel of information and consultancy with his people.

of service, including not only the stay in Parliament, but also the journey to and from. However with the passage of time, the practice changed, so that today they earn salaries equivalent to a particular cadre of civil servants. In addition to their salaries, members are entitled to secretarial, postal, and travel expenses. Various statutes, of which the latest is the Parliamentary Pensions etc. Act 1984, provide for the payment of pensions to former members of Parliament.²²

The idea has sometimes been mooted, that the States should be responsible for the remuneration of their legislators at the National level, to reduce the financial burden of the National Assembly.

The same idea was mooted in the United States at an early period. While sternly opposing the proposal, Madison observed that it would be improper to leave the members of the National Legislature to be provided for by the states because it would create an improper dependence.²³

Under the second Republic, the members of the National Assembly received salaries in addition to a string of allowances. The assembly men actually fixed their emoluments for themselves.

On November 15, 1979, the Joint Committee of the Senate and House of Representatives on remuneration submitted a report on the recommended salaries. The salary scale which they recommended was extremely exorbitant. Wide criticisms and protestations heralded the report. Two well known Lagos Lawyers, Chief Gani Fawehinmi and Mr. Tunji Braithwaite described the salaries as “unpatriotic, selfish, unreasonable and too high.”

²² See Hood Philips: Constitutional and Administrative Law 7th Ed. Pp.182-183.

²³ See Luce: Legislative Assemblies, 1924 p.535.

Despite the wide protestation, the Assemblymen stuck to their guns and refused to budge.²⁴

Under the 1999 Constitution, there is no controversy over the remuneration of the members of the National Assembly.

A member of the Senate or the House of Representatives shall receive such salary and other allowances as the Revenue Mobilisation Allocation and Fiscal Commission may determine.²⁵ Thus, they are entitled to salaries and allowances as fixed by a neutral body. To a large extent, this will prevent the shameful salary-grabbing practices of the former legislators. Furthermore, it is to be expected that the Commission will take cognisance of the state of the nations economy, while fixing the remuneration of the members.

The Commission is not likely to encounter any problems with fixing the salaries of the members. The controversial area will be the fixing of their allowances. The guiding principle should be that the allowances should serve as a recompense or compensation to settle legitimate out of pocket expenses.

Governor Dix of the State of New York, said in his message urging a Constitutional Commission, in 1873: “It is neither just nor creditable to the State that its legislators should be kept at a distance from their homes, to labour for the welfare of the people, and to protect the interest of their constituents, and be compelled to have recourse to their private means to meet their personal expenses. All who give their time and talents to the State should receive a compensation for their services proportionate to the importance of

²⁴ see James O. Ojiako: 1st Four Years of Nigeria Executive Presidency Success or Failure 1983 p.86.

²⁵ section 70 1999 Constitution.

their duties, and to the expenditures which they must necessarily incur in performing them.”²⁶

The critic who finds fault with the allowances of lawmakers, usually forgets or ignores the outlays that are incidental to public service. From the outset, election costs alone make a great inroad on the private earnings of the legislator. The question is who reimburses him for his huge election expenses?

This is only the beginning of expenses if he is elected. As long as he is in office, he is the target for every sort of financial solicitation. He is expected to be a generous contributor to his political party, to charities, town unions, indigent members of his constituency and a host of other “essential” groups. There are also countless trips to his constituency. Clearly, a member ought not to be put to all these expenses for serving the public without adequate compensation.

I am of the view that the Commission should always take cognisance of these numerous heads of expenditures while fixing a scale. Such moderate expenses as may reasonably be incurred by the legislator should be adequately compensated through allowances.

(d) **Two Chambers or One**

The view has been canvassed that the present bi-cameral system is a major contributory factor to the high cost of the National Assembly. Some have advocated a change to a uni-cameral legislature. While advocating a single legislature, Governor George Hunt of Arizona in his inaugural address in 1915 maintained that “A single legislative body comprising not less than seven nor more than fifteen qualified

²⁶ See Luce: Legislative Assemblies op.cit p.550.

representatives, selected by the people, compensated with an annual salary.....would in my opinion, prove an economical innovation, resulting in efficient service.”²⁷

But the idea of a uni-cameral system has evinced a wave of criticisms over the years.

In his “**Thoughts on Government**,” John Adams articulated some of the views against a unicameral legislature thus:

- (i) A single assembly is liable to all the vices, follies and frailties of an individual
- (ii) A single assembly is apt to be avaricious, and in time will not scruple to exempt itself from burdens, which it will lay, without compunction, upon its constituents
- (iii) A single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual.

The American writer Lecky, saw the same evil when he commented: “Of all the forms of government that are possible among mankind, I do not know any which is likely to be worse than the government of a single omnipotent democratic chamber. It is at least as susceptible as an individual despot of the temptations that grow out of the possession of an uncontrolled power, and it is likely to act with much less sense of responsibility and much less real deliberation.”²⁸

On the whole, I do not think it is expedient to sacrifice the value of a second chamber for the sake of economic gains. The monetary expense of a second chamber is a makeweight often thrown into the discussion. Stated without qualification, it is an unfair argument. If a second chamber is to be abolished simply because it adds to expense, then both chambers ought to be abolished, for the saving would be twice as great. Of course

²⁷ see Luce op-cit p.34.

²⁸ Lecky: Democracy and Liberty p.299.

the real question is whether the extra cost of a second chamber is repaid by public benefit.²⁹

5. CONCLUSION

The National Assembly occupies a prominent and pivotal position as the apex Law Making organ of government under the 1999 Constitution.

A strong legislature is vital to a democratic system of government. A democratic government is based on a system of limited constitutional authority distributed to different decision structures. This ensures that major political decisions are taken after thorough deliberations. The ultimate goal of creating multiple power centres is to ensure that they checkmate each other and thereby prevent the emergence of a dictator. The intricate interrelationships between the multiple power centres and the mechanisms for ensuring that they work are the ingredients of constitutionalism. In this scheme of power-sharing, the legislature plays a more enhanced role in a presidential democracy than in a parliamentary democracy.³⁰

I have identified the three major political systems which have been operated in the course of the nations political history to wit; the parliamentary, the military and the presidential systems. I have assessed the economic implications of the three systems and it is evident that the presidential system is the least economical.

I have x-rayed the organisation and the structure of the National Assembly to ascertain its economic viability. There is no doubt that the present structure has the propensity to attract enormous financial burdens.

The crucial question is what is to be done?

²⁹ see Luce op-cit pp.41-42.

³⁰ See Pro. Alex Gboyega op-cit p.4.

At the 17th Annual Lecture of the Nigerian Institute of Advanced Legal Studies at Abuja, on October, 25 1999, Prof. J.I. Elaigwu observed that “democracy is not necessarily the most efficient and inexpensive system. Indeed, it is very expensive. There can be no durable democracy without an efficient economic base..... Our new transition is going to be a difficult and long process, but it is worth it. It needs patience, dedication, honesty and a high sense of propriety and caution. It is therefore important that our political class notes the importance of a buoyant economy to their survival as a class, and to democracy. Thus, it is important for them to be prudent in their expenditure and demonstrate through their actions, and by their management of the economy, their concern for the average man.”³¹ In a nutshell, according to the erudite Professor, economic development is the only panacea to democracy.

I highly commend the above admonitions to the honorable members of the National Assembly. They carry the burden of the success or failure of democracy on their shoulders. They should be committed to the success of the democratic process. The nations economy is still very much in the woods. We cannot afford the reckless pattern of spending that characterised the second republic. With prudent management of the available resources the present structure of the National Assembly is quite workable. It is in this vein that we must condemn the position taken by the National Assembly in the raging controversy between the Executive and the Assembly over the contents of the 2000 annual budget. The unilateral hike by the National Assembly of their allocation to the staggering sum of N22b, is reminiscent of the unwholesome and avaricious practices which characterised the Assembly members of the second Republic. I think it is too early

³¹ Prof. Elaigwu: “Transition to Transition” published in NIALS, Mirror Vol.IV No.3. December, 1999 p.14.

in the day to adopt this money-grabbing posture. The interest of the nation as a whole is paramount.

REFERENCES

1. Constitution of the Federal Republic of Nigeria 1999
2. Introduction to the 1979 Nigerian Constitution by E. Michael Joye and Kingsley Igweike
3. Prof. Nwabueze: Redefining the Nigerian Budget Process
4. Prof. Alex Gboyega: Legislatures in a Presidential Democracy: An Overview
5. “State Legislatures in American Politics” by Columbia University 1966
6. Norman Ornstein: The Role of the Legislature in a Democracy
7. Hood Philips: Constitutional and Administrative Law 7th Edition
8. Luce: Legislative Assemblies, 1924
9. James Ojiako: 1st Four Years of Nigeria Executive Presidency, Success or Failure
10. Lecky: Democracy and Liberty
11. Prof. Elaigwu: “Transition to Transition” NIALS Mirror Vol.IV No.3, December, 1999.