

CRITIQUING THE DEMOCRATIC IDEALS OF STANDING ORDERS OF LEGISLATIVE HOUSE THROUGH THE PRISM OF THE RULES OF THE DELTA STATE HOUSE OF ASSEMBLY: LESSONS FROM A CROSS-COUNTRY SURVEY

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Abstract

An important aspect of Parliamentary privilege is that each House has the privilege of controlling its own procedures. The Parliament draws up the rules in its own right because it has the power to introduce whatever regulations it deems appropriate. The permanent written rules under which the House regulates its proceedings are known as the Standing Orders, and these rules governing legislative processes have implication on the authenticity, the reach and quality of representation. Despite the paramount need for the sanctity of these rules, there has been a misuse of its provisions in certain quarters. Impelled therefore by the incessant suspension of lawmakers in Nigeria by Legislative Houses citing breach of Standing Orders/Rules, this article critically examines the extent and application of relevant areas of Standing Orders of the Delta State House of Assembly by interrogating the general level of internal democracy entrenched in it and juxtaposing it with corresponding Standing Orders of the parliaments of two different jurisdictions of New South Wales and Kenya. The paper finds that Standing Orders however well thought out are inherently laden with provisions that infringe upon the principles of democracy and democratic ideals generally and accordingly recommends that Standing Orders must not be in breach of democratic ideals.

Keywords: Suspension, Delta State House of Assembly; Standing Orders, Democracy.

Introduction

All legislative bodies need rules to follow if they are to transact business in orderly fashion. Legislatures must have established rules if they are to operate fairly, efficiently, and expeditiously. Mr. Jefferson wrote in his *Manual of Parliamentary Practice* that whether the rules “be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business, not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body.”¹

The common law constitutional concept applied uniformly throughout the commonwealth is that parliament is the master of its own proceedings and affairs in the sense that it enjoys certain powers, privileges and immunities. This is known in the Westminster constitutional jurisprudence as parliamentary privilege.² It derives from the British tradition that evolved after a protracted

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¹ Rules and Administration, ‘History of US Senate’, (16th January, 2008) available at <<https://www.rules.senate.gov/about/history>> accessed on the 25th December, 2022

² Okpaluba, Chuks “Can a Court Review the Internal Affairs and Processes of the Legislature? Contemporary Developments in South Africa.” *The Comparative and International Law Journal of Southern Africa*, (2015) vol. 48(2) p. 183–218., available at <http://www.jstor.org/stable/24585877> accessed on the 1st September, 2022

struggle for supremacy,³ eventual negotiation, and compromise between the House of Commons and the Crown on the one hand, and the House of Lords on the other.⁴ Parliamentary privilege as a concept has developed in scope and extent from the Blackstonian aphorism that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere.⁵ In other words, the courts will not interfere with, or challenge what is said or done within the walls of parliament in the performance of its legislative functions and protection of its established privileges.⁶

This paper interrogates the workings of selected Rules of the Delta State House of Assembly with a view to analyzing its role in the consolidation of democracy and entrenching the principles of justice and fairness that will allow for proper functioning of the legislature being the representative arm of government.

The Concept of the Legislature being a Master of Its Own Proceedings

This concept of the legislative arm of government being a master of its own proceedings is recognized in the Nigerian constitution with regards to the National Assembly and State Houses of Assembly. With respect to the National Assembly, section 60 of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN) provides thus:

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

Regarding the State Houses of Assembly, Section 101 of the CFRN provides as follows:

Subject to the provisions of this Constitution, a House of Assembly shall have power to regulate its own procedure, including the procedure for summoning and recess of the House.

The implication of these provisions is that the exercise of legislative powers is regulated by both the Constitution of the Federal Republic of Nigeria and Standing Orders of the Legislative Houses. This underscores the crucial role of the legislature in democratic governance. Consequently, the legislative Houses must not only be responsible, but must also be responsive to the yearnings and aspirations of the electorate whose mandate they carry. This means that despite the constitutional backing Standing Orders of legislative houses enjoy, such rules must be reflective of public opinion, public feelings, public concern, interest, representation and the tenets of democracy generally. These rules are meant to ease the job of the legislator by entrenching procedures and standards for every process within legislative houses. The rules must therefore conform to democratic ideals both in content and form. They must not be undemocratic or draconian either in purpose or in drafting style

³ Per Frankfurter J 'Speaking on the origins of the 'Speech or Debate' Clause in the American Constitution in *Tenney v Brandhove* (1951)341 US 367 at 372; *United States v Johnson* (1966) 383 US 169 at 178.

⁴ Bearing in mind that the courts in the United Kingdom lack the general competence to entertain challenges of constitutional invalidity of Acts of Parliament in the face of the doctrine of parliamentary sovereignty, the question of judicial non-interference with the internal business of the Houses of Parliament operate with more vigor in that jurisdiction. As Lord Denman CJ stated in the early parliamentary privilege case- *Stockdale v Hansard* (1839) 112 ER 1112 at 1156: 'All the privileges that can be required for the energetic discharge of the duties inherent in that high trust are conceded without a murmur or a doubt.'

⁵ Sir Williams Blackstone, 'Commentaries on the laws of England in four books' (1753) Vol. 1 (17) p.163, available at <https://files.libertyfund.org/files/Blackstone_1387-01_EBK_v6.0.pdf accessed on the 12th March, 2023.

⁶ *Prebble v Television New Zealand Ltd* [1994] 3 All ER 407 at 413; See also *R v Bunt* (1885) 7 OR 524 at 544

Constitutional and Legal Basis for Representation in Nigeria

One of the major roles of a legislature is representation. Representing various constituencies, mainly people in each lawmaker's electoral district, but also organized groups and individuals elsewhere in the state. The concept of representation in a democratic system of Government is to represent the regions, ethnic groups, social class, and occupational interests' or "acting in the interest of the represented (to whom sovereignty belongs) in a manner responsive to them through consultation and the exercise of such discretions and judgments aggregating the views of the governed. To buttress this point, the Constitution of the Federal Republic of Nigeria holds that "sovereignty belongs to the people of Nigeria from whom Government through this Constitution derives all its power and authority."⁷ This is a clear manifestation that Nigeria is a State based on the principles of democracy and social justice. The legislature is therefore, the ears and voice of the people as it listens to them and articulates their views, yearnings and aspirations into good laws and/or government policies. It is the eyes of the people as it oversees the execution of projects by the executive arm and reviews the utilization of public funds by Government agencies and departments.

A democratic system requires that an elected parliament is socially and politically representative or that the constitutional system provides for substantial political equality. In federal systems, a country's territorial diversity is often re-elected in the representation of its component parts in the legislature. Nigeria's system addresses this through the division of legislative seats according to senatorial zones and constituencies. In Nigeria, the Independent National Electoral Commission (INEC) is empowered to create constituencies in such a way that no constituent falls into more than one State. Members of the House of Representative represent smaller geographical area or constituents as against the Senators who cover large Senatorial Districts.⁸ The concept of representation requires that governments take into account the population of the people and adjust these constituencies or districts from time to time as the population grows.

The Rules of the Delta State House of Assembly

The rules of the Delta State House of Assembly was modified by the Assembly in the year 2012 in line with the provisions of Section 101 of the CFRN. It is made up of 16 Orders of 141 Rules as follows-

- i Order 1 deals with the conduct of the business of the House;
- ii Order 2 relates to the meeting of a new Parliament;
- iii Order 3 pertains to Members generally;
- iv Order 4 relates to the Quorum of the House;
- v Order 5 deals with sittings of the House;
- vi Order 6 pertains to privileges;
- vii Order 7 concerns the duties and functions of officers of the House;
- viii Order 8 determines the arrangement of business of the House;
- ix Order 9 deals with Rules and Order;
- x Order 10 relates to order in the House;
- xi Order 11 relates to voting;
- xii Order 12 borders on the procedure on Bills;
- xiii Order 13 relates to procedure on nomination;
- xiv Order 14 borders on annual reports, sessional papers and sectoral debates;
- xv Order 15 deals with the establishment and jurisdiction of committees;
- xvi Order 16 relates to miscellaneous provisions.

⁷ Section 14 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap. C23 Laws of the Federation of Nigeria 2004

⁸ *Ibid*, Sections 49 and 71.

Selected Rules of the Delta State House of Assembly Relating to the Tenets of Democracy

i. *Suspension of Members*

One of the principal immunities held by parliament is the freedom of speech afforded to Members, witnesses and other individuals participating in parliamentary proceedings. Statements made by Members of Parliament in Parliament are absolutely privileged and cannot be the subject of an action for defamation. This “*privilege*”, or “functional immunity”, exists so that Members can fulfil their duties and so that the Assembly can collectively fulfil its constitutional role. Parliamentary privilege also carries significant responsibility and it is incumbent on members to not misuse parliamentary privilege. The House has the power to deal with any breaches of its rules on debate and orderly conduct.⁹ One of such ways Legislative Houses deal with “*erring*” members is by suspensions.

The legislature being the representative arm of government is bound to be democratic in its operation because the legislature is the foundation of democracy. This is underscored by the fact that in all of Nigeria’s years under military rule, the legislature was the only arm of government not in operation. Legislators are representatives of the people, and as such, suspending members of legislatures houses as contained in standing orders must take cognizance of the rights of the people who have voted such legislators into legislative houses. By being democratic in every of its dealings therefore, the legislature will be better positioned to perform its functions. It is paramount therefore that the content of Standing Orders of legislative houses do not subjugate the rights, privileges and dignity of citizens or members of legislative houses.

Almost all standing rules in Legislative Houses around the world make provisions for the discipline of its members. Although the basis for disciplinary action varies, disorderly conduct is the most common. Most legislative rules do not define the types of punishment available or the conduct that subjects a member to each type of punishment. Some have general language that provides that a member can be expelled for conduct that impugns the integrity of the House, reflects adversely on the House, or otherwise undermines public confidence in the institution of the House.

Regarding discipline of its members, the *Order 67 Rule 4 of the Rules of the Delta State House of Assembly* states as follows:

“When a Member is named by the Speaker, if the offence is a minor one, the Speaker may order the Member to withdraw for the remainder of the legislative day; but if the matter appears to the Speaker to be of a serious nature, the Speaker shall put the question on motion being made, no amendment, adjournment or debate being allowed, that such Member be suspended from the service of the House, such suspension being for any time stated in the motion not exceeding 14 legislative days.”

Regarding contempt of the House, by the provisions of Order 68, the rules state that-
“Any Member of the House who:

⁹ As Josef Redlich puts it, in his *Procedure of the House of Commons*: “...the principle of parliamentary freedom of speech is far from being a claim of irresponsibility for members; it asserts a responsibility exclusively to the House where a member sits, and implies that this responsibility is really brought home by the House which is charged with enforcing it”. Josef Redlich, ‘The procedure of the House of Commons’, (1908) *Archibald Constable, London*, vol. 3, p. 49 available at <<https://www.scribd.com/document/19140389/Procedures-of-the-House-of-Commons-Redlich-1908-Vol-1#>> accessed 14th April, 2023

- (a) Being a Member of the Committee of the House, publishes to any person not being a Member of such Committee any evidence taken by the Committee before it has been reported to the House; or
- (b) Assaults or obstructs a Member of the House within the Chamber or precincts of the House; or
- (c) Assaults or obstructs any Officer of the House while in the execution of his/her duty; or
- (d) Is convinced of an offence under the Legislative Houses (powers and Privileges) Act; shall be guilty of contempt of the House and if investigated and found culpable by the State and Court of competent jurisdiction, the House may by a resolution reprimand such Member or suspend him from the service of the House for such period as the House may determine:

Provided that such period shall not exceed 14 legislative days or the remainder of the session, whichever shall first occur.”

A cursory look at these two provisions of the Rules reveals a stern but fair system in place to maintain discipline amongst members and preserve the sanctity of the Legislative House. However, there are a plethora of instances in Nigeria where Legislative Houses with almost identical provisions to this have suspended Members for eons before reversals, which then begs the question, “*who can suspend a legislator?*”

This question is of paramount importance because Nigeria’s recent history is replete with cases of legislators being suspended by the Legislative Houses they were elected into. Making the question even more cogent is the fact that a legislator is an elected representative of a constituency and the Constitution of the Federal Republic of Nigeria is clear about the need for every part of the country to be represented in the legislature. By the aforementioned Rules of the Delta State House of Assembly, suspensions are clearly a legitimate option open to the House towards instilling discipline on erring members. This has constitutional backing by the provisions of the aforementioned section 101, CFRN, 1999.¹⁰ Consequently, there are divergent views on the legality and propriety or otherwise of a Legislative House suspending duly elected members. It is the view in some quarters that Legislative Houses by their Rules that every member of the Legislative House has sworn to abide with, have the right to suspend any member who steps out of the bound of what is interpreted to be proper conduct. At this juncture, it is pertinent to analyse instances where this practices has taken place in Nigeria.

ii. *Instances where lawmakers have been suspended by Legislative Houses in Nigeria*

In the year 2012, the Bauchi State House of Assembly suspended Hon. Rifkatu Samson Danna indefinitely for voicing out her peoples’ opposition to the ‘*unconstitutional*’ transfer of the headquarters of Tafawa Balewa Local Government Area from Tafawa Balewa town.¹¹ During a debate on the proposed relocation of Tafawa Balewa Local Government headquarters from Tafawa Balewa to Bununu, Danna was the lone voice, explaining that the headquarters of local governments listed in the Constitution of the Federal Republic of Nigeria could not be changed without constitutional amendment. While making her point, Hon. Danna said the unanimous and hurried manner in which the decision was reached suggested that there must have been a meeting

¹⁰ This is to the effect that the House of Assembly of a State shall have power to regulate its own procedure, including the procedure for summoning and recess of the House.

¹¹ Vanguard, ‘Bauchi High Court reinstates suspended legislator, Danna’ (31st May, 2013) available at <<https://www.vanguardngr.com/2013/05/bauchi-high-court-reinstates-suspended-legislator-danna/>> accessed on the 22nd, January, 2023

on the matter to which she was not privy. Despite her apologies, a report of the House Committee on Anti-Corruption, Ethics and Privileges found her remarks during a parliamentary session “repugnant, detest full and quite derogatory. An investigating House Committee recommended that she should either be suspended indefinitely or be issued a letter of warning. The House chose the former. She sued the House at the Bauchi State High Court. The Court declared the indefinite suspension illegal, unconstitutional, and restored her seat. The House appealed but the Court of Appeal also ruled in Danna’s favour. The House also approached the Supreme Court for an order staying the execution of the Appeal Court judgment that reinstated Danna, but the apex court declined.

Similarly, in the year 2016, the House of Representatives suspended Abdulmumin Jibrin for 180 legislative days in response to his allegation of ‘*budget padding*’ against the leadership of the House of Representatives. Jibrin’s claim was targeted at the Speaker of the House, Yakubu Dogara, and three other principal officers, whose resignation and prosecution he demanded. Based on the recommendation of the Ethics and Privileges Committee of the Bauchi State House of assembly, Jibrin received an invitation to appear before the committee on Monday, but decided to boycott the hearing, even though his demand that the sitting be thrown open to the public was denied. Jibrin’s failure to appear before a “*properly and constitutionally constituted committee*” was, in effect, a ground for his suspension.

After months in suspension, the leadership of the House announced that Hon. Jibrin had written a letter of apology, and consequently by so doing, “fulfilled all the conditions was free to resume his legislative duties whenever he wants, if he so wishes.” In 2017, the Senate suspended Ali Ndume for 90 days, and in the year 2018, Deputy President of the Senate, Senator Ovie Omo Agege was suspended for 90 legislative days. In Omo-Agege’s case, the Senator was suspended during plenary over his remarks that the amendment of the 2010 Electoral Act to change the sequence of elections set by the Independent National Electoral Commission (INEC), was targeted at President Muhammadu Buhari.¹² The Senate Committee on Ethics recommended that the senator be suspended for 181 legislative days but the chamber reduced it to 90 days. His suspension, according to the Senate, was to serve as a deterrent to other senators who might contemplate suing it over its power to regulate or determine its internal matters.

Regarding Senator Ali Ndume, the former Majority Leader was suspended for 90 legislative days (six months) for raising a matter that the Senate investigates a public allegation of impropriety against the Senate President, Bukola Saraki, and another senator, Dino Melaye. The Senate Committee on Ethics, Privileges and Public Petitions, which investigated the matter, recommended that Mr. Ndume be suspended for one year. Ndume was subsequently suspended for six months for “bringing Melaye, his colleague, and the Institution of the Senate to unbearable disrepute.”¹³ Ndume, not satisfied by the reason given for his suspension, headed to court to challenge the action of the Senate. The Federal High Court, Abuja declared Ndume’s suspension illegal and ordered that he be paid all his outstanding salaries and allowances.

While the legislative houses in the cases cited here always maintained their right to mete these punishments out, there are counter arguments to the effect that it is unconstitutional for any legislative chamber to suspend or sack a member. Accordingly, Femi Falana posits that only a

¹² The Nation, ‘Who can suspend a lawmaker?’ (24th April, 2018), available at <<https://thenationonline.ng/who-can-suspend-a-lawmaker/>> accessed on the 7th February, 2023

¹³ Premium times, ‘Huge protest at National Assembly over Ndume’s suspension by Senate’ (4th April, 2017), available at <<https://www.premiumtimesng.com/news/headlines/227847-breaking-huge-protest-national-assembly-ndumes-suspension-senate.html>> accessed on the 7th February, 2023.

competent court of law can suspend or remove a member of the legislature whether at local, state or federal government level. He further noted that it is only a court of law or the constituency that elected them that can order the removal or suspension of their representative.¹⁴ He called it the height of all illegalities.¹⁵

iii. *Suspension of Legislators in the Delta State House of Assembly (DTHA)*

This is not an exhaustive list but these are some members of the DTHA that have been suspended by the House for varying reasons-

- Hon. Funkekeme Solomon was suspended from the DTHA as a Deputy Speaker and Member of the House on the 9th of April, 2008;
- Hon. Olise Imegwu was suspended from the DTHA for three months in the first instance on the 23rd of February 2010;
- Hon. Rufus Akpodiete was suspended indefinitely on the 5th of March, 2012;
- Hon. Izeze Rume Yakubu Reuben was suspended from the services of the DTHA for three months on the 7th of June 2016;
- Hon. Monday Igbuya was suspended from the House for three months on the 11th of May 2017;
- Hon. Izeze Rume Yakubu Reuben was suspended from the DTHA for three months on the 27th of September, 2017

Irrespective of the motive and justice of these suspensions, they have been premised not only on the constitutional provision that a legislative Assembly has the power to regulate its own proceedings,¹⁶ but on an Act of the National Assembly too, that is, the Legislative Houses (*Power and Privileges*), Act 2018. Section 21(1)(2) is of particular relevance. Titled “*Contempt of a Legislative House by members*”, it holds that “any member of a Legislative House who-

- (a) being a member of a committee of the House, publishes to any person not being a member of such committee any evidence taken by the committee before it has been reported to the House;
- (b) assaults or obstructs a member of the Legislative House within the Chamber or precincts of the House;
- (c) assaults or obstructs any officer of the Legislative House while in the execution of his duty;
- (d) is convicted of any offence under this Act, shall be guilty of contempt of the Legislative House.

It further holds that-

where any member is guilty of contempt of a Legislative House, the House, may by resolution, reprimand such member or suspend him from the service of the House for such period as it may determine, provided that such period does not extend beyond the last day of the meeting next following that in which the resolution is passed, or of the session in which the resolution is passed, whichever shall first occur.

¹⁴ The Cable, ‘No legislative Chamber has power to suspend or remove’ (19th April, 2018) available at <<https://www.thecable.ng/falana-says-legislature-has-no-power-to-suspend-any-member>> accessed on 7th February, 2023

¹⁵ This Day, ‘Falana: Suspension of Senator Ndume illegal ’, available at <<https://www.pressreader.com/nigeria/thisday/20170330/281986082394515>> accessed on 7th February, 2023.

¹⁶ Sections 60 and 101 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap. C23 Laws of the Federation of Nigeria 2004.

No salary or allowance payable to a member of a Legislative House for his service as such shall be paid in respect of any period during which he is suspended from the service of the House under the provisions of this section. The Act also bars and excludes any suspended member from the service of that House while such suspension remains in force. In the event that any such member is found within the Chamber or precincts of the House in contravention of this section, he may be forcibly removed therefrom by any officer of the House and no proceedings shall lie in any court against such officer in respect of such removal. By the provisions of the Act, the legislators are at liberty to exercise the power of removal of a lawmaker without the consent and approval of the relevant constituent members. This runs directly against the spirit of representation and the power of the electorate to determine representatives.

From the foregoing, it is apparent that the suspension of legislators will continue to be a recurring decimal in Nigerian body politics. From the analysis of the incidents of suspensions aforementioned, it is apparent that the seemingly innocuous manner the Rules of the Delta State House of Assembly is couched would not prevent acts of arbitrariness and high handedness once a clique of tyrants desire to suspend a member.

iv. *Appointment and Powers of Minority Leader*

Democracy is a game of numbers, but when the will of a majority population group exclusively prevails in a system of government, it has the propensity of resulting in the potential for tyranny over minority groups. Tyranny of the majority is a situation that can result from a system of majority rule, wherein the majority group places its own interests above the interests of a minority group without consideration for the welfare or rights of the minority. It is an adage that “the collective is always the enemy of the minority.” In a direct democracy for example, this form of oppression could involve the majority using the democratic process to shape public policy solely in their own interests, excluding the minority groups from the distribution of benefits.

The minority in a society is what gives it vigour. For legislative houses, the sacred principle that although the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable, that the minority possess their equal rights which equal law must protect and to violate would be oppression. The minorities in legislative houses attempt to wield real power to keep precious, the protection of beliefs even if those beliefs are at odds with that great tyrant twin of democracy, the majority. Legislative houses therefore, make provision for minority inclusion in the business of the proceedings of their houses, and this constitutes a check on any excesses of the majority. Consequently, in the Delta State House of Assembly by the provisions of Order 31-

Members of the minority parties in the House shall nominate from among them, the Minority Leader, Minority Whip. The functions of such a Minority Leader shall be to lead discussions on behalf of the minority parties, liaise with Committee Chairmen and functionaries of the House on behalf of minority parties in general, and to perform such other functions of as may be assigned to him by the Speaker.”¹⁷

The Minority Whip on the other hand is to “ensure the attendance of Members the minority parties, order decorum and discipline in the House acting in conjunction with other officers, organize minority party members in debates and divisions, and persuade them on voting pattern.

The rules are clear as to the procedure for the emergence of the Minority Leader and Minority Whip, but if what transpired at the House of Representatives in the year 2019 is anything to go by, an improvement upon how the rules are couched may be important. In that instance, the leadership of the major opposition party made a choice of the party’s choice of Minority Leader without

¹⁷ Order 32, Rule (1) Standing orders, Delta State House of Assembly.

necessarily leaving it to the members of the opposition parties on the floor of the House to decide.¹⁸ The unsavory episode that ensued afterwards would easily have been avoided were the Standing Rules of the House of Representatives more explicitly drafted.

v. *Motions Not Open To Debate*

By the Rules of the DTHA, there are certain motions that are to be moved without argument or opinion offered, and the questions thereon shall be put from the Chair without amendment. These motions are-

- (a) Motion for adjournment of debate;
- (b) Motion for extension of time arising from the question on the motion for closure;
- (c) Question that the Bill be reported; and
- (d) Motion that the Chairman reports progress.

Cross-Country Survey

This trans-jurisdictional survey will analyse identical Standing Rules of the Parliament of South Wales in the United Kingdom and Kenya. Specifically, this would be in the areas of the suspension of legislators, instances where legislators may be suspended, the authority to suspend them, and discipline generally. Analysis will also focus on the appointment and powers of minority leaders, the voting powers and patterns of such minority leaders and minority views and rules of debate generally.

i. The Parliament of New South Wales

The extant law guiding proceedings at the House is the Standing Orders of the New South Wales Legislative Assembly, 2016.¹⁹ Made up of 32 chapters of 368 Orders/Rules, it is a comprehensive embodiment of rules of procedure pertaining to all of the aforementioned selected rules as follows-

(a) *Suspension of Members*

In the Parliament of New South Wales, if a member's conduct is such that it is necessary for the Speaker to call such a member to order more than three times in any one sitting for any gross breach of the Rules, the Speaker may direct the removal of the Member by the Sergeant-at-Arms until the adjournment of that sitting.²⁰ Such a member who is removed from the House shall be excluded from the precincts of the House for the remainder of the sitting and must not take part in any proceedings of the House or its committees.²¹ The Speaker may also direct a Member who is grossly disorderly to leave the Chamber for up to three hours, and this direction shall not be open to debate or dissent.²²

A Member may be named by the Speaker for persistently and wilfully obstructing the business of the House, being guilty of disorderly conduct, using offensive words and refusing to withdraw them, persistently and wilfully refusing to conform to any standing order, and persistently and wilfully disregarding the authority of the chair.²³ Such member named may make an explanation limited to five minutes.²⁴ In extreme cases, the House exercises the right to suspend members for

¹⁸ Premium times, 'NASS Leadership: PDP rejects Elumelu, insists on Chinda' (4th July, 2019), available at <<https://www.premiumtimesng.com/news/headlines/338771-nass-leadership-pdp-rejects-elumelu-insists-on-chinda.html>> accessed on 7th February, 2023.

¹⁹ Approved by the Governor 17th January 2022, 21st February 2007, 3rd July 2009, 16th November 2010, 8th October 2015 and 13th April 2016.

²⁰ Order 249(1) Standing Orders of the New South Wales Legislative Assembly, 2016.

²¹ *Ibid*, order 249 (2).

²² *Ibid*, order 249.

²³ *Ibid*, order 250

²⁴ *Ibid*, order 251

gross misconduct. Such a Member who is suspended from the service of the House shall be excluded from the Parliamentary precincts until the expiration of the suspension period including all intervening non-sitting days and cannot take part in any proceedings of the House or its committees.²⁵ Where suspension alone does not suffice, i.e. where a Member is adjudged by the House to be guilty of conduct unworthy of a Member of Parliament, such Member may be expelled by vote of the House, and the Member's seat declared vacant.²⁶

(b) Matters not open to Debate

By the provisions of Order 80 of the extant Rules, there are certain matters not open to debate or amendment.²⁷ Of particular interest here is the rule that prohibits a debate on a motion that a member of the House be suspended. This goes against the grain as far as democratic principles are concerned because the intention behind the movement of the motion may be in bad faith by a tyrannical few. In Parliaments generally, debates are designed to assist members of legislative Houses to reach informed decisions on subjects/issues that are up for consideration. They are an opportunity for members of parliament to discuss government policy, proposed new laws and current issues. It allows them to voice the concerns and interests of their constituents. As such, delineating certain situations under which debates shall not take place deprives the House of reaching an informed decision on any of such issues.

(c) Minority/Opposition Views

The voice of the opposition within the House is protected by the allocation of an unspecified amount of time to canvass points in the areas of Address in Reply, Second Reading, and Private Member Bills. For the consideration in detail of Bill or other matters, an unspecified number of periods limited to 15 minutes each is allowed the leader of the opposition or one member deputed.²⁸

ii. **Kenya**

Chapter Eight of the Constitution of Kenya establishes the Legislature. Article 93 of the Constitution states that “*there is established a Parliament of Kenya which shall consist of the National Assembly and the Senate.*” The two Houses of Parliament perform their respective functions in accordance with the Constitution as stated in *Article 93 (2)* of the Constitution.²⁹ The Parliament of Kenya regulates its own proceedings by Standing Orders adopted by the Senate on 16th June 2022 pursuant to Article 124 of the Constitution and Standing Orders 269 and 270 of the Senate Standing Orders. Some key areas of the Standing Orders related to the scope of this thesis are as follows-

²⁵ *Ibid*, order 253

²⁶ *Ibid*. order 254

²⁷ Adjournment of debate; Adjournment of the House; Extension of time; Leave of the House; Motion that a Member be suspended; Motion that a Message be sent to the Legislative Council; Motion that leave of absence be granted; To withdraw or postpone an order of the day; Personal explanation; That inspection of the paper be restricted to Members only and that no copies or extracts thereof be permitted”; “That visitors be ordered to withdraw”; “That the bill be declared urgent”; “That the order of the day be discharged and the bill be withdrawn”; “That the Committee report be printed”; “That the Member for be further heard”; “That the Member for be not further heard”; “That the Member for be now heard.”; “That the petition not be received”; “That the question be put as separate questions...”; “That the question be now put”; “That the question be not now put”; “That the Member’s speaking time be extended”; and Motion to permit a Member to make an inaugural speech.

²⁸ *Ibid*, order 85

²⁹ The Senate of the Republic of Kenya, ‘Roles of the Senate’ available at <<http://www.parliament.go.ke/the-senate/membership>> accessed 25th January,2023.

(a) *Minority Participation*

The Rules state that the second largest party or coalition of parties in the Senate shall be the Minority Party and shall elect—

- i. a Senator belonging to the party or coalition of parties to be the Senate Minority Leader;
- ii. a Senator belonging to the party or coalition of parties to be the Deputy Senate Minority Leader;
- iii. a Senator belonging to the party or coalition of parties to be the Senate Minority Whip; and
- iv. a Senator belonging to the party or coalition of parties to be the Deputy Senate Minority Whip.³⁰

It is worthy of note that the Rules do not automatically grant the second largest party the right to being the Minority Party neither does it give it the sole right to produce the Minority Leader, Deputy Minority Leader, Senate Minority Whip, or Deputy Senate Minority Whip. The implication here is that there could be a sole member of a political party who is the only member of that party in the Senate and still emerge as a Minority Leader if the coalition of parties deems it fit.

(b) *Suspension of Members*

Like in all parliaments around the world, the Parliament of Kenya reserves the right to discipline erring Members in appropriate circumstances. As such, “any Senator may at any time, on a point of order, invite the Speaker or the Chairperson of Committees to name another Senator for gross disorderly conduct, but the decision whether or not to do so shall remain with the Speaker or Chairperson.”³¹ Whenever a Senator is named by the Speaker or Chairperson, then if the breach has been committed by such Senator in the Senate, a Motion shall be made by any other Senator present “that, such Senator (naming the Senator) be suspended from the service of the Senate”, and the Speaker shall forthwith put the question thereon, no amendment, adjournment, or debate being allowed.

If the breach has been committed in a Committee of the Whole, the Chairperson shall forthwith leave the Chair and report the circumstances to the Senate and the Speaker shall on a Motion as aforesaid being made, forthwith put the question, no amendment, adjournment or debate being allowed, as if the offence had been committed in the Senate itself.³² A suspended Senator must withdraw from the precincts of Parliament once such suspension is made, and this is usually on the order of the Speaker.³³ Such a suspended Senator during the period of such withdrawal or suspension (except during a recess), forfeit the right of access thereto.³⁴ If any Senator is suspended, the suspension on the first occasion shall be for four sitting days including the day of suspension; on the second occasion during the same Session, for eight sitting days, including the day of suspension; and on the third or any subsequent occasion during the same Session, for twenty-eight sitting days, including the day of suspension.³⁵ A Senator in respect of whom a suspension is imposed may appeal in writing to the Speaker, and the Speaker may uphold the suspension as pronounced; or vary the decision and communicate the matter to the Senate.³⁶

³⁰ Order 23(1), Standing Orders and the Houses of Parliament (Joint Sitzings) Rules, Kenya.

³¹ *Ibid*, order 123(1).

³² *Ibid*, order 123(2)(b).

³³ *Ibid*, order 124(1).

³⁴ *Ibid*, order 124(2).

³⁵ *Ibid*, order 25.

³⁶ *Ibid*, order 127.

iii Summary of Findings From The Cross-Country Survey

This study undertook cross-jurisdictional survey and gleaned useful lessons for improved practice from the New South Wales and Kenya. The findings are summarized as follows-

(1) Matters not up for Debate:

In some of the jurisdictions studied, there are specific matters that are not subject to debate. In the Parliament of New South Wales for instance, there are 23 matters listed as not being open to debate.³⁷ In the Standing Orders of the Delta State House of Assembly, there are motions on certain subject matters that are listed as not being open to debate. This infringes upon democratic ideals because debates are the very foundation of the society we live in today. Debates are generally understood as a formal discourse among people with contrasting arguments by presenting facts, logic, and evidence. Formal or general debate, debating is important for the progress of the individual as well the society. In an institution entrenched on democratic ideals such as the Legislature, debates should not be discountenanced in any way shape or form. Under the Standing Orders of the Parliament of Kenya for instance, a matter as critical as the suspension of Members of the House is not subjected to any form of debate. Such a practice has a potential of playing into the hands of tyrannical members who may intend to get a Member suspended for no just cause.

(2) Suspension/ Expulsion of Members

In both of the jurisdictions studied, in order to discipline erring members, with a view to punishment, the suspension or expulsion of Members of Parliament for varying reasons is sacrosanct, with varying degrees of severity. In New South Wales as revealed in this study, members may be expelled by vote of the House and Member's seat declared vacant. The logic of a representative assembly is informed by the need to take care of peculiar interest of the people they represent. Indeed, a representative parliament is the distinguishing hallmark of representative democracy. In order to facilitate the work or business of representation, parliaments often provide support for their members. For instance, in most parliaments, members are provided with funds to establish constituency offices and employ staff. The essence of this is to enable them maintain a close link with the electorate and put the job of representing the people on a more professional platform.

Expelling a legislator—ending his or her term of office—is the most severe disciplinary action available to a Legislative House. It completely goes against the principle of representation- that is one of the cardinal duties of the legislature. Representation is based on the fact that electorates have to surrender their mandate to some elected individuals to represent them in parliament. A suspended legislator means the constituent members who elected him to represent their interests in the legislature are completely cut out from the benefits of representation.

(3) Effect of Suspension of Members

In Kenya, just like the DTHA, the suspension of a Legislator extinguishes any legislative assignments of the Legislator while the suspension is on. While accepting the need to keep members of the legislative houses in the line of civility and decorum by meting out sanctions or punishments to them, it is also important that they are allowed to perform some of the legislative roles while under suspension because of the importance of representation.

³⁷ *Ibid*, order 80.

(4) *In defining what amounts to “disorderly conduct” or “contempt,” the Rules in the jurisdictions studied do not contain “omnibus” provisions.*

The effect of this is that a member may argue that he/she is being held in contempt for what is not explicitly provided for in the Standing Orders as a transgression. This is in line with the well-known principle of *Nullum Crimen Sine Lege*.

(5) *Withholding Emoluments of Members while under Suspension*

The practice in some of the jurisdictions studied is that once a Member is suspended, no allowances payable to a Member of the House for his service shall be paid to such a suspended member during the pendency of the suspension. This is explicitly stated in the Rules of the Delta State House of Assembly.

Suspension is a temporary relief of the duties of an employee, for a period definite or indefinite, with the view of allowing the employer to carry out investigations on allegations of misconduct and other breaches made against an employee, which is usually contained in the letter of suspension. The Nigerian Supreme Court gave an excellent and exquisite definition of suspension of an employee in *Esiaga v University of Calabar and Ors*³⁸ where the court stated thus “the word suspension means a temporary privation or deprivation, stoppage or cessation of or from the right or privileges of a person.” Although the suspension in the instant case does not relate to the suspension of a legislator, it deals with the punishment of suspension in its literal sense. The word “suspension” carries or conveys a temporary or transient disciplinary procedure which keeps away the victim or person disciplined from his regular occupation or calling either for a fixed or terminal period or indefinitely”.³⁹

The apex court went further to add that the verb “suspend” from which the word suspension (which is a noun) emanates means in the context it was used essentially, “to defer, interfere, interrupt, lay aside, temporize, hold in abeyance”.⁴⁰ That term cannot be construed to mean “terminate, extinguish, to bring to an end”. It means what it says, that is to cause to abate for a while or halt midway but not to bring to an end. It always connotes a state of affairs that should wait until a certain event takes place.”⁴¹ From this definition, it is quite lucid and understandable that suspension of an employee is simply a “temporary” termination of a contract of employment. With an emphasis on the word temporary, this means that suspension does not imply a repudiation or termination of a contract of employment. Thus a suspended employee for all purposes and intents is still an employee of his employer until he is rightly dismissed or the contract terminated by any way stated in the conditions of service or staff rules.

Following this principle, the Nigerian Court of Appeal in a very recent judgment in the case of *Globe Motors Holding Ltd v Akinyemi Adegoke Oyewole*⁴² following the precedent set by the Supreme Court in *Longe v FBN Plc*⁴³ held thus- “since the suspension is not a termination of the employment contract nor a dismissal of the employee, the implication is that the employee is still in continuous employment of the employer until he is recalled or formally terminated or dismissed. Pending his recall or dismissal, a suspended employee is entitled to his wages or salary during the period of suspension unless the terms of the contract of employment or the letter of the

³⁸ (2004) LPELR-1169 (SC).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² (2022) LPELR 56856 CA.

⁴³ (2006) 3 NWLR PT 967, p. 228.

suspension itself are specific that the suspended employer will not be paid salary during the period of the suspension.”

From the foregoing, withholding the emolument of a member by a Legislative Assembly during the pendency of a suspension is wrong, especially since the Standing Orders do not state that such emolument would be paid back in full upon the recall of the Member from suspension.

(6) Right of Appeal in Suspension of Members

The practice in the Parliament of Kenya is that a suspended member may appeal the suspension in writing after such a suspension has been carried out. In the Parliament of New South Wales, a named member can make a five (5) minute submission. Conversely in the Rules of the Delta State House of Assembly, no such provisions are explicitly stated. In analyzing this, it is important to note that the right to fair hearing is a fundamental pillar of justice. It is incumbent upon a Legislative House therefore to afford erring members the opportunity of an explanation before wielding the axe.

Conclusion/ Recommendations

This study has revealed inherent problems with provisions of Standing Orders and some variance with democratic ideals. Consequently, it is imperative that modifications are made to the Standing Orders of the Delta State House of Assembly and of all Legislative Houses in general in line with the following recommendations-

- (1) Standing Orders must not explicitly prohibit debates over any matter in the Legislative House. Consequently, in the drafting of Standing Orders, Legislative Houses must expunge provisions that give no room for debating issues irrespective of subject matter;
- (2) The suspension of legislators should not be taken lightly. This is because, as already elaborated upon in this work, legislators are representatives of the constituency that elected them into parliament. Suspending a legislator therefore ultimately denies his constituents a chance at representation. The United States Constitution, for instance, gives its Senate the power to expel any member by two-third votes. However, only 24 Senators have been expelled or censured in over 215 years of American democracy. This is because it is not a matter to be taken lightly and the United States of America recognizes that. It is suggested therefore that, Standing Orders adopt alternative ways of disciplining erring Members other than just suspending or expelling them. This is even more imperative in the light of the indiscriminate way that some Legislative Houses in Nigeria have exercised this power.
- (3) The practice of suspended members being denied emoluments during the pendency of their suspension must be discontinued and explicitly prohibited in Standing Orders;
- (4) All conducts that may amount to the punishment of suspension or expulsion should always contain an omnibus provision that reads along the lines of “*and any other conduct that the Legislative House may deem inappropriate.*”
- (5) Standing Orders must give Members the right to appeal suspensions.