



## **CONSTITUTIONAL PROVISIONS: RELATIONSHIP BETWEEN THE EXECUTIVE AND THE LEGISLATURE**

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### **ABSTRACT**

The 1999 Constitution of the Federal Republic of Nigeria provides vivid roles between the Executive and the legislature. These constitutional provisions are succinctly enunciated to guide against any breach by any arm of Government in the discharge of its functions. However; the Nigerian experience has portrayed the executive and the legislature as strange bed fellows in the practice of the presidential system. This sometimes results to conflict between both arms of Government with attendant consequences on the Nation's democratic experiment. This paper, Constitutional Provision; Relationship between the Executive and the Legislature, examines the concept of the constitution, the relationship between the executive and the legislature in an emerging democracy in Nigeria. The paper further highlights the principles of separation of powers and checks and balances. The paper succinctly draws a conclusion towards strengthening Legislative- Executive relationship. Adequate recommendations were also highlighted.

**Key words:** Constitutional provisions, Executive, Legislature, Principles of separation of power, Checks and balances and Impeachment.

### **INTRODUCTION**

Nigeria re-introduced the presidential system of government with its twin concepts of separation of powers and checks and balances on the 29<sup>th</sup> May, 1999, after about close to sixteen years of military occupation of the Nation's democratic space. Hitherto, the country had attempted the Presidential system in the Second Republic (i.e. 1979-83) and in the aborted Third Republic (1992-93). The re-introduction of the Presidential system of government has opened yet another critical and fundamental issue that relates very strongly to the application of the Principles of separations of powers and checks and balances in the operationalization of the presidential system of government, implicit in the 1999 constitution of the Federal Republic of Nigeria. As we shall show later, although not explicitly stated in the 1999 constitution, those who are conversant with the provision of this constitution will agree that it is in tune with the doctrines of separation of powers and checks and balances. However, the Nigerian experience in the Second, Third and of course, the Fourth Republics has portrayed the executive and the legislature as strange bed fellows in the practice of the presidential system. Thus, there has been struggle and contest for power by the executive and the legislative branches of Government at the Federal and State Government levels, sometimes resulting in serious conflicts between both arms of government, with attendant consequences on the nation's democratic experiment (Ukase, 2003:4).

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For a firm and proper grasp of this paper, the paper is divided into four sections. After the introduction, we shall examine the concepts of separation of powers and checks and balances under the Nigerian Presidential arrangement. Section three will examine the application of these principles in our presidential system with specific consideration on the relationship between the executive and the legislative branches in Nigeria. Section four is conclusion and recommendations.

### **THE PRINCIPLES OF SEPARATION OF POWERS AND CHECKS AND BALANCES**

The principle of separation of powers, which Nigeria's previous and present democratic arrangement is anchored on, was propounded by a French Jurist, Baronde Montesquieu. In his book, **The Spirit of the Laws**, written in 1748, Montesquieu argued, albeit successfully that if liberty and freedom were to be, the three branches of government (i.e. The Legislature, Executive and Judiciary) must be separated and entrusted in different people. He believed that this system of government would provide a safeguard against the concentration of too much powers in a single authority (Kusamotu, 2001: 35-39). The doctrine calls for the dispersal or the sharing of functions of government among the three branches of State power. It is interesting to note that the evolution of the doctrine of separation of powers anti- Dated the writings of Montesquieu. The first historical account of the principle is traceable to Biblical accounts. The principle as chronicled in the Bible indicates that Jethro visited Moses and on his arrival in the Israelite tent, he noticed how Moses was exercising himself in the administration of the Israelites affair. It was as a result of Jethro's advice that Moses agreed to share or delegate part of his assignments and administration, which was socio-political and religious in nature. Following Jethro's advice, Moses appointed judges for the Israelites. From appointment of judges for the Israelites, the Mosaic Code laid down the first principle for separation of powers in anticipation of the statehood God promised the Israelites (Kusamotu 2001).

During the 18<sup>th</sup> century, no principle of politics was more widely shared than idea that power must be used to balance power. The notion of balance of power against power originated from Newtonian Physics. Balancing of power against power also became the basis for modern political economy as it was first and best expressed by Adam Smith in the **Wealth of Nations**, published in 1776. Balance of power which is a concept in international law was elevated higher in political theory by Montesquieu and John Locke. Both of them believed that separate Departments of government were an indispensable defense against tyranny. According to Montesquieu:

*When the legislative and executive powers are united in the same person or body, there can be no liberty. Because apprehension may arise, lest the same monarch or senate should enact tyrannical laws, to enforce them in a tyrannical manner. Again, were the powers of judging joined with the legislative, the life and liberty of the subject would be expressed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive, the judge might behave with all the violence of an oppressor (Montesquieu, 1748).*

The principle of separation of powers in practice is distinctly American. The American doctrine grew out fear of tyranny and frowns at the accumulation of all powers-legislative, executive and judicial in the same hands. Whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny (Adams, 1961: 326-327).

It is evidently clear that the goal sought through separation of powers as enunciated by Montesquieu and other proponents of the theory was the avoidance of governmental tyranny – a goal long associated with the concept of division of powers. The principle comes within the context of analysis of the powers of government and their appropriate arrangement. They stressed the need for person other than the lawmakers to have the powers of executing the laws; otherwise, the lawmakers may be forced to exempt themselves from the application of the laws. Locke and Aristotle provide the most detailed elaboration on the necessity of division of power to avoid governmental tyranny:

*If the three powers are united, the government will be absolute, whether these powers are in the hands of one or a large number. The same party will be the legislator, accuser, judge and executioner, and what probability will an accused person have of an acquittal, however, innocent he may be, when his judge will also be a party (Ukase, 2003:25).*

Moreover, any union of two powers was viewed as producing the same effect. If the legislative and judicial powers were joined, the laws would be uncertain, they would reflect on the whims, caprices or the prejudices of the judge. If the executive and legislative powers were united, the security and protection of the subject would be a shadow – the executive would make itself absolute and the government would end up in tyranny.

The principle of separation of powers cannot be discussed in isolation of its corollary, the check and balances is a theory of governmental powers and functions whereby each branch of government has the ability to counter the actions of another branch, (NASS, 2004:27). Checks and balances are the terms for the arrangement of governmental powers whereby powers of one organ or the branch of government checks or balances those of the other organs or branches.

### **Application of the Principles of Separation of Powers and Checks and Balance : The Nigeria's Presidential System**

The basic philosophy of most presidential democracies is hinged on the principles of separation of powers and checks and balances, and this is clearly reflected in the 1999 Nigerian Constitution. This Constitution contains incompatibility and ineligibility clauses to the effect that the three branches of government should be composed of distinct persons accordingly. Each branch or organ of governmental administration is accorded a place of pride in separate clauses in Part II of the 1999 Constitution which vests Legislative, Executives and Judicial powers in the National Assembly, President and Courts respectively (Constitution, 1999).

In further recognition of the principle of separation of powers, matters pertaining to the operation of each branch of government are accorded treatment in the Constitution in a separate clause of part II of the Constitution dealing with powers of the Federal Government. For instance, Chapter V of the 1999 Constitution deals with matters pertaining to the operations of the legislature, while chapters VI and VII are concerned with matters relating to the executive and the judicature respectively.

In the same vein, the Constitution upholds the sanctity of the separation of powers by splitting the matters dealt with in each of the aforementioned chapters. For instance, Part 1, chapter (V) deals with matters relating to the National Assembly while Part II of the same chapter deals with matters relating to the State Houses of Assembly. Part II of chapters (VI) and (VII) takes care of the executive and the judicature.

To further strengthen the principle of separation of powers, the 1999 Constitution prescribes different oath for members of each organ of governance (Constitution, 1999).

Similarly, numerous examples will suffice to show how the 1999 Constitution makes each organ to observe the principles of checks and balances in its relationship with any of the other organs. For instance, the powers of the President/Governor are subject to checks by the legislature. The House of Assembly is saddled with the responsibility of approving or confirming certain appointments made by the Governor (i.e. Commissioners, Chairmen and Members of statutory bodies, etc). Besides, by refusing to pass the President or Governor's bill into law, withholding funds of the executive and by removing the President or the Governor, the legislature is performing its constitutional functions of checking and balancing the executive arms.

The power of the legislature is subject to checks by the Judiciary which can declare any enactment by the legislature unconstitutional, null and void. The power of the Judiciary is subject to checks by the president e.g. through the exercise of executive power of clemency.

Also, the final power exercised by the Judiciary can be checked by the legislature by enacting appropriate laws. It is in sharing of substantive functions by respective organs that constitute balancing. Having examined theoretical underpinning of separation of powers and checks and balances, let us go into the

crux of the matter by examining in details, the Constitutional relationship between the executive and the legislature.

### **Lawmaking**

Section 4 of 1999 Constitution vests legislative powers of the Country in the National Assembly (NASS). Similarly, section 4, sub-section 6 vests the legislative powers of a state of the Federation in the House of Assembly (HA) of the State. Section 4(6) specifically states that:

*The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State. Section 4, sub-section 7 states further that: The House of Assembly of a State shall have power to make laws for peace, order and good governance of the state or any part thereof.....*

Section 7(a-c) highlights the areas which the NASS and the House of Assembly can legislate upon. Granted the legislature is the only branch that is empowered to pass bills in the State, such bills must be assented to by the Governor before it can become a law (section 100(2)).if the Governor withholds assent, he shall within thirty days thereof signify that he withholds assent, However, where the Governor withholds assents and the bill is again passed by the House of Assembly by the two-thirds majority, the bill shall become law and the assent of the Governor shall no longer be required. Thus, within the Context of law making, there is a constitutional relationship between the executive and legislature. This is because the collaboration of both branches is highly essential, as no single branch can complete the process without the contribution of the other.

### **Public Finance**

Although the appropriation bill of a state is proposed by the executive branch, the same must be forwarded to the legislature for consideration before the former can embark on expenditure. This provision gives the legislature an opportunity to supervise the use of public funds by the executive. it is for this reason that the legislature is described as the “watch dog of public funds”(Guobadia,2000 47-48). In this capacity, the legislature exercises its power to audit public finances as well as the power of investigation into the affairs of government departments in order to scrutinize the use of such funds. The constitutional function of the legislature with regards to public funds include among others: pre and post-appropriation control, authorization of expenditure from the Consolidated Revenue Funds, (Ukase, 2003:230). It also plays a very important role in the auditing of Public Accounts.

What is of particular interest to us in this analysis is the constitutional relationship between the legislature and the executive, especially as it relates to public funds. The appropriation bill is the basis of executive plans for the running of government within a fiscal year. The constitution provides that the budget must be considered by the legislature and the appropriation bill passed before money can be withdrawn from the relevant funds to run government. The 1999 constitution frowns at the expenditure of public funds of the Federation without specific authorization from the Federal or State legislature as the case may be. Therefore, the ability of the executive to get its budget passed by the Legislature would ultimately depend on its relationship with the legislative branch.

### **Oversight Responsibilities**

The executive branch is empowered to execute laws enacted by the legislature. However its executionary **powers** is circumscribed by the oversight powers bestowed on the legislature. For example, section 128 and 129 of the 1999 Constitution empowers the State House of Assembly to conduct investigations into the affairs of government, or into any matter within its legislative competence and also to prevent and expose corruption, inefficiency or waste in the execution or administration of such laws.

Section 129 empowers the legislature to procure whatever evidence it requires, summon before the House any person to give evidence and procure any document or any other thing in his possession or control or to examine such a person. The provision also empowers the legislature to compel the attendance of any person so summoned by warrant. Be that as it may, this constitution limits the investigatory power of the legislature only to the extent for the purpose of enabling it to “make laws with respect to any matter within its legislative competence and to correct any defects in existing laws”.

### **Confirmation of Appointments**

Even though the president is empowered to make various appointments, the 1999 Constitution requires the senate to confirm most of these appointments. Similarly, at the State level, various appointments made by State Governors must first and foremost be confirmed by the House of Assembly before they can become effective. Some of these appointments include Commissioners, Chairmen and members of statutory Commissions, Judges, and etc. Scrutiny of such nominations for appointment by the House is useful in several ways. First, it can be used to discourage favoritism or nepotism on the part of the Governor or keep politically unfit or controversial figures away from State agencies (Ukase2003:101). It can be used and it is often used by the senate to ensure fair balancing of States' interest(Federal Character)since without this, the tendency that a President or Governor, consciously or unconsciously, allows a preponderance of some ethnic groups or sections in his administration to the disadvantage of others is very high.

### **Impeachment**

One very powerful and potent means of legislative control over the executive is the quasi-judicial role performed by the legislature during impeachment under the 1999 Constitution. This is a process by which the legislature brings charges against an official, investigates him, with a view to commencing impeachment proceeding against him/her if found guilty of the charges. It is important to note that the procedure for the removal of the President or Governor, or their deputies is a highly complicated and elaborate process. The framers of the 1999 Constitution realized the possibility of the legislature, especially of an emerging democracy like ours to frequently abuse this provision. It was in consideration of this they coined sections 143(2) and 188(2). Under these sections, the President, Governor and their deputies can only be removed from office after it has been discovered that he/she committed a "grave violation or breach of the provision of the constitution, or a misconduct of such a nature as amounts", in the opinion of the National Assembly or of the State House of Assembly to "gross misconduct".

Because of the rather rigid and cumbersome nature of this provision, it has never been used to impeach any elected President of the Federal Republic of Nigeria. However, in the Second Republic; it was successfully invoked against Governor Balarabe Musa, former Governor of Kaduna State. In the Fourth Republic, it was invoked against Governor Depriye Alameshiegha of Bayelsa State, Governor Joshua Dariye of Plateau State, Governor Ayo Fayose of Ekiti State and Governor Rasheed Ladoja of Oyo State. Similarly, at least six Deputy Governors were removed using this provision under this dispensation. The removal of a Chief Executive or his deputy is more of a political issue than mere adherence to legality (Ayua 2003: 64).

## **CONCLUSION**

### **Towards Strengthening Legislative Executive Relationship**

We have some time x-rayed various constitutional provisions in the discharge of both legislative and executive functions under the 1999 Constitution. This x-ray is very important to the extent that, it is in the discharge of some of these constitutional assigned responsibilities that frictions occur between the executive and the legislative branches. It is also important to note that conflicts and disagreement are bound to arise in the discharge of these responsibilities but the maturity and experience of the operators would help to nip such conflicts in the bud.

Various measures could be adopted in strengthening legislative-executive relations. First, there is need for both branches to adhere strictly to the provisions of the 1999 Constitution; there are no assumed powers under Nigeria's presidential system. Powers are specifically granted to each arm of government and it would do the system much good if each branch strictly adheres to its constitutionally assigned functions.

Secondly, there is the need for both branches to frequently engage each other to address perceived areas of conflicts in the discharge of their functions. While it is advisable for the executive to frequently engage the legislature, there is need for the later to carry on its oversight functions without unnecessarily constituting itself into opposition (Ukase 2010:81). On its part too, the executive need to cultivate a more harmonious working relationship with the legislature. There is also need for both organs to consult with each other to get clarification when the need arises.

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