



THE LEGISLATIVE-EXECUTIVE RELATIONS IN NIGERIA'S PRESIDENTIAL DEMOCRACY

Angela E. OBIDIMMA B.A, LL.B, B.L., LL.M., PhD*
Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria
Email: angyobi2005@yahoo.com

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Emmanuel O.C. OBIDIMMA B.A, LL.B, B.L., LL.M., PhD*
Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria
Email: eocobidimma@gmail.com

ABSTRACT

The doctrine of separation of powers, an essential prerequisite of a presidential democracy, provides for a division of powers of government into three distinct arms; the legislature, the executive and the judiciary. The importance of this division cannot be over emphasized for it is only by separating the function of execution from that of law-making, by insisting that every executive action must have the authority of some law, and by prescribing a different procedure for law-making, can the arbitrariness of executive action be effectively checked. Yet the doctrine advocates for a certain level of over lapping which also cannot be removed if there has to be an effective government. By the nature of the functions of the legislature and the executive, it is important that in this division and sharing of powers as well as the necessary checks and balances put into the system, the two arms of government must work hand in hand to achieve good governance which is the whole essence of the doctrine. The legislative power is the source of much and indeed the preponderant portion of the power exercised by the executive, therefore without the necessary co-operation between the two arms of government, there may not be effective governance.

Keywords: legislature, power, presidential democracy, constitution, Nigeria

INTRODUCTION

The legislature performs the all-important function of law-making, one of three limbs of the doctrine of separation of powers. And without doubt, legislation is the most far-reaching and crucial power of the government of a society. As succinctly put by a most learned constitutional scholar, legislative power is the “distinctive mark of a country’s sovereignty, and the index of its status as an independent state.”¹ The executive on the other hand, performs the function *inter alia* of execution and maintenance of the laws made by the legislature. Laws validly made by the legislature are the predominant source of executive powers, and without such laws, the executive function cannot be performed. The sovereign power in a state is thus identified in the organ that has power to make laws by legislation, to issue commands in the form of legislation binding on the community, which is the legislature.

The relationship between the legislature and the executive is often determined by the system of government in operation in the country. In parliamentary system, there is need for the government to be composed by parties that together command more than 50% of legislative seats, as the primary function of parliaments is to make or break government. Governments are formed as parties exchange cabinet positions for legislative support: a party is considered to be in government if it controls one or more cabinets; when in government, a party’s members of parliament are expected to vote in support of

* Senior Lecturers, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria

¹ B. Nwabueze, *Constitutional Democracy in Africa* VI. 1, Ibadan: Spectrum Books Ltd (2003) p. 182

government measures.² This is why in parliamentary democracies, when no party controls more than 50% of legislative seats, parties form a coalition government by sharing cabinet positions. Generally therefore, parliamentary regimes foster cooperation at various arms of government. In a parliamentary system, political parties have an incentive to cooperate with one another. Parties in government will support the executive, and parties out of government will refrain from escalating any conflict because they may, at any time, become part of the government.

In presidential democracy, the cooperation that is manifest in parliamentary system is lacking basically because presidential constitutions provide little or no incentives for coalition formation of any kind. Linz adduces three reasons for this:

- (1) Because the president's survival in office does not depend on any kind of legislative support, a president need not seek the cooperation of political parties other than his or her own;
- (2) Because presidents are independent from the legislature when it comes to survival, and are elected in nationwide contests that provide widespread popular support, they have an inflated sense of power and overestimate their ability to govern alone;
- (3) Finally, presidential politics is a zero-sum winner-takes-all affair, which is hardly conducive to cooperation or coalition formation.³

By the same token, as the legislators do not depend on the president to obtain and retain their seats, and also given that they cultivate their own ties with voters, they have little or no incentives to support the president and to pay attention to national issues.

Presidentialism thus operates against the formation of coalitions and in most cases generates either minority governments or governments that are only nominally in the majority.

This in turn results in conflict and deadlocks between the government and the legislature as there are no constitutional principle that can be invoked to resolve conflicts between the executive and the legislature such as the vote of no confidence in parliamentary regimes. The presidents resort to extra-constitutional means of resolving their differences. The higher likelihood of executive/legislative conflict and deadlock in presidential democracies is thus the product of the system's defining feature.⁴ They will in a lot of cases try to bypass the legislature in order to implement their programmes.

SEPARATION OF POWERS

Separation of powers is the division of powers and functions of government among the three broadly demarcated arms of government, the Legislature, the Executive and the Judiciary. In a federation, there is a further separation of powers between the national and sub national governments. However for the purpose of this paper our focus is on the former.

Theoretically, the doctrine of separation of powers is an attempt at allocating and making exclusive to each of the three arms of government specified, powers and functions of government. This is a condition precedent for the supremacy of the rule of law in any society especially in a presidential democracy where, due to the enormous power given to the executive, it is necessary to check possible executive arbitrariness. Political philosophers in various parts of the world from ancient times recognised that in order for there to be an organised and well-ordered society where man is to enjoy his God-endowed attributes of freedom, governmental powers cannot be allowed to be concentrated in one body. Thus, they highlighted the danger of over concentration of powers in one hand. The central objective is to assure to the individual of the maximum amount of liberty compatible with effective government. The modern articulation of the doctrine of separation of powers is credited to John Locke whose work on the doctrine

² J.A. Cheibub and F. Limongi, "From Conflict to Coordination: Perspectives on the Study of Executive –Legislative Relations" *Riel –Revista – American De Estudos Legislativos* – Vol. 1, N. 1, 117 P., DEZ 2010, p 40.

³Ibid.

⁴ Cheibub P. 7

was further improved by Montesquieu. Montesquieu was concerned with the preservation of political liberty and said

“Political liberty is to be found only when there is no abuse of power. But constant experience shows us that every man invested with power is liable to abuse it, and to carry this authority as far as it will go. To prevent this abuse, it is necessary from the nature of things that one power should be a check on another ... When the legislative and executive powers are united in the same person or body There can be no liberty Again, there is no liberty if the judicial power is not separated from the legislative and executive ... there would be an end of everything if the same person or body whether of the nobles or of the people, were to exercise all three powers.⁵

The Nigerian Constitution, following closely the United States arrangement, vests the legislative, executive and judicial powers on the three separate arms of government respectively. Under the 1999 Presidential Constitution, the three powers of government are vested in three different independent and co-equal bodies; the National/State House of Assembly, The President/Governors and the Federal/State Courts.⁶ The clear and accepted implication of this constitutional arrangement says Aguda is that no level of government, and no organ of government at either level, may exercise any power or perform any function that is not assigned to it by the Constitution whether directly, indirectly, or by necessary implication.⁷

In practice however, there is no such pure separation of these powers. The separation of powers is a rather flexible and accommodating doctrine. In the modern state, there is no way in which all the functions of government can be shared out and put into mutually exclusive compartments and assigned to different segments of government. Some overlapping is bound to occur and often do occur at various points. The position was captured by the Supreme Court of the United State of America in the classic statement in **Youngstown Sheet and Tube Co. v. Sawyer**⁸ to the effect that

while the constitution diffuses power the better to secure liberty, it also contemplates that the practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.⁹

Likewise in Nigeria the three arms of government would have to co-operate to be able to operate a workable government.¹⁰

THE LEGISLATIVE AND EXECUTIVE POWERS

The legislative and executive powers of government depend on each other. As the Constitution allows for certain level of interdependence in the functioning of the arms of government, there is need for cooperation between them and in this case especially between the executive and the legislature. Furthermore, as the Constitution insists on separation in the principal areas of exercise of authority of each arm, it behoves on each of them to respect the boundaries of its authority, to avoid undue and unconstitutional interference in the area of another. The major conflict between the executive and the legislature arises either when performing a constitutional function but without being careful to avoid exceeding its area of authority, or in some cases out rightly taking up a function clearly assigned to another arm. The area of competence of each government is found in the Constitution, under legislative list which provides for the scope of authority of the legislature and the executive. Nigeria being a federal presidential democracy, there is a technique of division of power among the different tiers of government;

⁵ D.O. Aihe and P.A Oluyede, **Cases & Materials on Constitutional Law in Nigeria**, Ibadan: University Press Plc (2003) p. 65.

⁶ The sharing of governmental powers is effected in sections 4, 5, and 6.

⁷ O. O. Aguda, **Understanding the Nigerian Constitution of 1999**, Lagos: MIJ Professional Publishers Ltd (2000), p. 271

⁸ (1952) 343 US 579 at 635

⁹ **Buckley v. Valeo** (1976) 424 US 1

¹⁰ Aguda, *op. cit.*, p. 276

certain powers are enumerated and reserved for the respective levels of government and some are residual. The enumeration is into exclusive and concurrent lists. The Exclusive Legislative List¹¹ deals with specific items, which only the National Assembly has the sole prerogative to legislate on for the whole country. There is the Concurrent Legislative List¹² which includes 12 items. For items in this list the Constitution allows both the National Assembly and the State Houses of Assembly to legislate on them. The 12 items in the Concurrent Legislative List are broken down into 30 sub-divisions. By this sub-division, the list defines the respective extent of federal and state power in respect of the matters listed therein. The residue not listed is left for the state government to legislate on.

This division covers both legislative and executive powers recognising the fact that the area for which each legislature can make laws is the area for which the executive can deal with. In this vein cooperation between the two arms becomes of utmost importance since the executive can actually not carry out its functions effectively or even at all without the legislature promulgating laws through which these functions are to be carried out. The executive may and do propose bills to be considered by the legislature. The legislature goes through the legislative process and at the end submits the proposed legislation to the president/governor for his approval. The two arms must be working in the same direction for these steps to be properly taken without unnecessary hitches. Furthermore, each arm must recognise that though they have to work in line with the other that each arm must work within its sphere of authority without usurping that of the other. Thus, much as the executive depend on the laws made by the legislature to carry out its functions, the Constitution assigns to each arm specific functions that are to be performed by it alone.

THE LEGISLATIVE POWERS

The legislature in Nigeria consists of the National Assembly, which is made up of the Senate and the House of Representatives at the federal level and the House of Assembly at the state level. The National Assembly shall have power to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List.¹³ The National Assembly shall also have power to make laws with respect to – any matter in the Concurrent Legislative List and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.¹⁴ The legislative powers of the states of the federation are vested in the Houses of Assembly of the states.¹⁵ The House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to any matter not included in the Exclusive Legislative List and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.

Law-Making Powers of the Legislature

The principal function of the legislature in Nigeria as elsewhere is to make law. In this vein, the 1999 Constitution provides that the legislature shall have power to make laws for the peace, order and good government of the federation or the state.¹⁶ The phrase peace, order and good government” used in reference to the power of the legislature in Nigeria does not delimit the purpose for which the power is granted, such that a law must be for the peace, order and good government in order to be valid. The phrase is rather used as a legal formula for expressing the wildest plenitude of legislative power exercisable by a sovereign legislature, subject to limitations arising from the division of powers between a central and regional government in a federal system such as Nigeria.

¹¹ Part 1 of the Second Schedule of the Constitution

¹² part 1 of the Second Schedule

¹³ Section 4(2) of the 1999 Constitution (as amended)

¹⁴ Section 4(4)

¹⁵ Section 4(6)

¹⁶ Section 4(2) and (7) 1999 constitution of the Federal Republic of Nigeria (as amended)

The law-making powers and procedure of the legislature in Nigeria¹⁷ can be used to control the administration and its units; especially, as executive policies and programs must have legislative budgetary backing before they can be implemented.¹⁸ The consideration of executive/administration bill affords the legislature the chance to inquire into the work of the executive for within the law making power of the legislature is the power of enactment of legislative proposal into law or their rejection. The importance of this power lies in the opportunity it gives to the legislature for a thorough scrutiny and criticism of the proposals in question especially when they originate from the government. The independence of the legislature depends not only on the separation of powers in the Constitution, but even more on the effect of its critical function in producing in the government, an attitude of responsibility and restraint and a feeling that the reaction of the Assembly has to be reckoned with in the framing of legislative proposals. Very important in the separation is the possibility that the legislative and executive agencies may be under the control of different parties. An opposition majority in the legislature affords the greatest opportunity for effective control of government by the legislature. They are able to subject government proposals to severe scrutiny and criticism. However, an opposition majority in the legislature may also and in most cases, be of great disadvantage to the legislature. It tends to make the legislature lose sight of the fact that its main function is to scrutinise and criticise and not the freedom to reject government measures at the whims and pleasure of its members. Undue executive-legislative antagonism may result in a stalemate which paralyses the government, and in other cases, the policy that results from such system is seldom an integral whole, but rather a patchwork with vital pieces cut off by a legislature jealously asserting its power regardless of the true needs of the nation. Where a legislature is dominated by members of the ruling party in the executive, there is the tendency to dance to the tune of the executive without subjecting their proposals to adequate scrutiny and criticism required for effective legislation resulting in the making of laws to suit the whims of the executive even if it may not augur well for the majority of the citizenry.

The legislature in Nigeria has had its ups and downs in the exercise of their law-making power in Nigeria. While they have been applauded for passing certain laws,¹⁹ they have been criticized for their performance in passing some other laws.²⁰ However the constitutional and legislative procedures employed by the National Assembly and State Houses of Assembly, which involve several readings, public hearings, legislative committees and sub-committees deliberations and publicity, principles of limitations and checks, enhances the transparency and accountability in the exercise of this governmental power.²¹ Furthermore, the failure to observe the substantive and procedural provisions of the Constitution will render the exercise of legislative law-making power null and void in consonance with the supreme nature of the Constitution.²² In **National Assembly v. President Federal Republic of Nigeria**,²³ where, the National Assembly passed a 'motion' for 'veto override' in breach of section 58(5) of the Constitution, the motion was held to be unconstitutional

Though law-making is their primary function, it is important to recognise that the legislature has many other important responsibilities/functions which includes among others; oversight, investigation, representation and management of public funds.

Legislative Oversight

Legislative oversight is the exercise of the constitutional powers of the legislature to check or control the exercise of the constitutional power of the other arms of government. More specifically, legislative

¹⁷ as contained in Sections 4, 58, and 59 of the 1999 Constitution (as amended)– National Assembly and Section 100 – for the House of Assembly of a State

¹⁸ See **Fawehinmi v. Babangida** (2003)12 WRN I, **Togun v. Oputa** (2001)49 WRN I.

¹⁹ Examples – Niger Delta Development Commission Act

²⁰ Example is the Electoral Act, 2001, the ICPC Act, 2002

²¹ O. Oyeowo "Constitutionalism and the Oversight Function of the Legislative of Constitutional Law Conference on Fostering Constitutionalism in Africa, Nairobi April 2007

²² **INEC v. Musa** (2003) 10 WRN I, **Attorney-General Ogun State v. Attorney-General of the Federation** (1982) 3 NCLR 166

²³ (2003)41 WRN 94

oversight is seen as the process by which the legislative body takes an active role in understanding and monitoring the performance of the executive arm. The knowledge acquired is applied to its other three primary functions of law-making, setting budgets and raising revenues. Oversight or surveillance of the executive and the administration is premised on the grounds that the legislature must understand the operations of the executive branch in order to make informed decisions on the laws which it passes and the financial decisions which it makes. The oversight function attains even greatest relevance in a democratic set up like ours in which there is emphasis on the logic and rationality of dialogue, debate, choice and consensus over public policies in the pursuit of the fulfilment of the citizenry and the primary functions of meeting the needs of public interest. John Stuart Mill, the utilitarian philosopher asserted that oversight was the key for a meaningful representative body. According to him, "The proper office of a representative assembly is to watch and control their government"²⁴

The oversight function of the legislature under the Nigerian Constitution finds relevance in section 80(1)-(4) and 88(1)-(2) (b).²⁵ The legislature under these sections is vested with oversight powers including powers to investigate any matter within its legislative competence and the conduct of affairs of any person, authority, ministry or government department charged with the duty or responsibility for administering or executing the laws passed by the National Assembly, and any person, authority, ministry or government department charged with any responsibility howsoever of disbursing moneys appropriated or to be appropriated by the National Assembly. The powers are not intended to be used for punitive purposes or for the exposure of misappropriation, fraud or corruption. They are intended to assist the legislature to carry out its responsibilities more effectively and efficiently, although in the process misdeeds like fraud and corruption might be exposed. Thus the Constitution in section 88 (2)²⁶ stipulates that the powers in sub-section (1) are exercisable only for the purpose of enabling it to make laws with respect to any matter within its competence and correct any defects in existing laws and expose corruption, inefficiency or waste in the execution or administration of laws within its competence and in the disbursement or administration of funds appropriated by it. By this grant of power the oversight function extends to the Appropriation Act²⁷ made by the legislature on matters within its legislative competence, and aimed at exposing corruption, inefficiency, and waste not only in the administration of the Appropriation Acts generally, but in the disbursement or administration of funds appropriated by the Act. The section also allows the legislature to carry out oversight function on the implementation of the current Appropriation Act with a view to identifying any defects made to some projects for purposes of correcting same in the next Appropriation Act.

The oversight function is very broad and all-encompassing and overlaps, shades into and involves the discharge of the other legislative functions of law making, control of public finance, investigative functions as well as constituency responsibilities.

Control and Supervision of Public Funds

The Constitution gives the National Assembly and State Houses of Assembly power and control over public funds.²⁸ Both are empowered to establish the Consolidated Revenue Fund into which shall be paid most of the revenue raised or received by each jurisdiction.²⁹ Those sections go further to state the different aspects of this power and control. By their provisions, no money can be withdrawn from the Consolidated Revenue Funds of the Federation or of a State without the approval of the relevant House. Constitutionally, the "Appropriation Bill" is the basis of the executive's plan for running the government within the relevant fiscal year. The legislature must consider the executive's budget and appropriation bill passed before any money can be withdrawn from the relevant funds and accounts to run government.³⁰

²⁴ J.S. Mill, **Considerations on Representative Government** New York: H. Holt & Co., (1890) p. 104

²⁵ Although the term oversight function is not expressly employed in the constitutional lexicon, neither is it defined or described by the 1999 Constitution.

²⁶ Section 128 (2) for the states legislature

²⁷ or Appropriation Law

²⁸ Sections 80 and 81, and 121 and 121.

²⁹ Sections 80(1) and 120(1)

³⁰ O. Oyeowo, *op.cit.*, p.

With regards to its power over appropriations, the legislature can give conditions and place limitations on spending and how funds are to be used. They cannot however introduce issues outside the subject under consideration in the Appropriation Bill presented it.

Budget review by the legislature is generally regarded as a crucial test of surveillance.³¹ Unfortunately, the legislatures have severally been condemned for scoring very low marks on this area. In considering budget proposals of the chief executives in Nigeria it would appear that legislators are more concerned with their personal gains than with financial prudence or financial probity on the part of the executives.

THE EXECUTIVE POWER

The executive broadly refers to the arm of government responsible for carrying out or administering laws enacted by the legislature. It is the branch of government responsible for the day-to-day management of the state. The executive contains the head of government, who is the head of that arm of government. The executive is normally identified by the Head of State, while in a parliamentary system he is usually the leader of the largest party in the legislature and is most commonly called the Prime Minister.

In Nigeria, by the terms of the Constitution, the executive powers of the federation is vested in the president and shall extend to the execution and maintenance of the Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has for the time being power to make laws. The executive powers of a state shall be vested in the state governor and is extended to the execution and maintenance of the Constitution and to all matters of which the State House of Assembly has power to make laws.³²

Execution and Maintenance of the Constitution - The powers granted under section 5 (1) (b) are perhaps the basis of the bulk of the powers and duties being exercised or to be exercised by the president. The duty of execution and maintenance of the Constitution is one which is all encompassing, the scope of which cannot be easily determined until situations arise which have to be dealt with. The president is by this duty responsible for making sure that the provisions of the Constitution are brought into effect. Under section 153 for example, certain federal executive bodies; commissions and councils are to be established, such as the independent National Electoral Commission, National Defence Council, National Populations Commission etc. These are of such fundamental importance to the existence and continence of Nigeria that their establishment must be done with utmost care. Thus, the president is to ensure that this section is executed in keeping with the provisions of other sections of the Constitution in relation to it. In other provisions of the Constitution where the National Assembly is given power to make laws in relation to the establishment of certain bodies, the president has the duty to ensure this, and execute the provisions of the laws after they are made in conformity with the provisions of the Constitution. The National Assembly is for instance, empowered, subject to other provisions of the Constitution, to make laws in relation to the establishment, equipment and maintenance of the Nigeria Police Force, and the Armed Forces of the Federation.³³ The two forces are however under the authority of the president who is therefore responsible for making sure that the laws made by the National Assembly are executed in accordance with the provisions of the Constitution. The president has the duty to study the Constitution and make sure that the aspirations and hopes of the people channelled through it are realised through a diligent execution of its provisions. This duty also involves vigilance so as to make sure that the provisions of the Constitution are adhered to by every section of the society. Whenever there is any infraction or attempted infraction of any

³¹ The importance attached by the legislative to its role in budgetary matters was demonstrated by the fact that non-implementation of the budget was a major ground for the proposed impeachment of the president in 2003

³² Section 5(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

³³ Sections 214 and 217

constitutional provision, therefore the president as the executive head has the duty of redressing such either judicially, or if the case so demands, through the use of force.³⁴

Execution and Maintenance of all Laws made by the National Assembly - Section 5 (1) (b) also imposes on him the duty to execute and maintain all laws made by the National Assembly. This is by no means a very enormous duty yet the section goes on to provide that his executive power extends to “all matters with respect to which the National Assembly has for the time being power to make laws.” This implies that whenever a situation occurs in relation to a particular matter under the legislative authority of the National Assembly, but for which a law has not yet been made, the president has a duty to deal with it in the course of his duties in the day to day running of the affairs of the nation.

Apart from the general powers granted under section 5, the Constitution again confers other powers and duties on the president in other sections of the constitution. This is the implication of the phrase “subject to the provision of this Constitution” with which section 5 starts.³⁵ Thus within the constitutional grant of power to the executive arise certain functions that are carried out by the executive in Nigeria, which include inter alia; Budge Preparation;

Initiation of Development Project; Appointing Officials; Providing Diplomatic Representation; Grant Pardon to Convicted Criminals; Make Declarations etc.

THE EXECUTIVE-LEGISLATIVE CONFLICTS AND THE EFFECTS ON THE NIGERIAN PRESIDENTIAL DEMOCRACY

For a harmonious partnership between the legislature and executive, each must carry out the functions assigned to it by the Constitution effectively and each must keep within the limits of its power and within the Constitution generally. The essence of the doctrine of separation of power is that for a free and democratic society to exist there must be clear separation between the three branches of government. If one of these branches encroaches upon the functions of the others, the doctrine goes, and freedom and the rule of law are imperilled. If for example the executive makes laws and enforces them, then there would not be rule of law but rule by man, and the governmental system will tend towards autocracy and tyranny. Generally, usurpation of the other’s power invites a resistance leading to frictions and in other cases a showdown. This can only be avoided by each keeping strictly within the limits of its power. To be able to refrain from usurpation or from encroachment on each other’s domain requires that the legislature and the executive have adequate understanding of the limits of their respective powers and the method for exercising them or are desirous of acquiring it. Such understanding opines Nwabueze,³⁶ can only be acquired by reading widely upon the subject and through practical experience in the art of democratic self-government over many years.

In Nigeria’s presidential democracy there have been several instances of one form of interference/usurpation of power between the legislature and executive since the inception of presidential democracy in 1979.³⁷ However such interference/usurpation got to its peak at the first 8 years of the Fourth Republic after the inception of the new democratic dispensation in 1999. This is not surprising as the new democratic government was headed by a retired general in the military who had previously been the head of a military government. It is therefore not surprising that as the legislative arm does not exist under military regimes, it was difficult for the executive to allow the legislature the necessary independence. The president continuously concerned himself with who was in charge of the House of Representatives and the Senate and frequently interfered to select or depose their leaders thereby creating tension and confusion. He was constantly at war with the legislature and did so much damage in the Senate that in a space of 8 years, the senate had five senate presidents. Those early years of the Nigerian

³⁴Such as secession or infraction of some other constitutional provisions that will be to the detriment of some Nigerians, or contrary to international obligations.

³⁵*National Assembly v Tony Momoh* (1982) 4 NWLR 269

³⁶B. Nwabueze, *Constitutional Democracy in Africa*, vol. 1 Ibadan: Spectrum Books Ltd. 2003 p. 35

³⁷See for instance *Governor, Kaduna State v. The House of Assembly of Kaduna State* (1982) 3 NCLR 450

experiment in democratic government were fraught with lots of unconstitutional interference by the executive in the affairs of the other arms of the government. Some instances are discussed herein:

In 2007, closed-circuit monitoring cameras were discovered to have been secretly planted in the Senate Chambers. The planting of such devices were an infringement on the privacy of the senators as well as a reflection of dictatorship. The impetus and desperation of the perpetrator of such act to know how the senators conduct their affairs did not augur well with the tenets of democracy, especially as the cameras had earlier been discovered and removed from the Senate Chambers a year earlier. The idea of separation of powers being to prevent one arm of government from lording it over another, the act was a clear case of the executive arm acting as if the legislature was to exist at its pleasure. In the words of Nwabueze³⁸ surely, to bug the Senate in order to protect the security of the Presidency is a preposterous act of subversion of the autonomy of the National Assembly, that symbol of parliamentary democracy in Nigeria.

Also in the year 2006, the president in violation of the Constitution and usurping the powers of the National Assembly, declared the office of the serving vice-president vacant claiming that the vice-president having defected from the political party on whose platform he was elected, to join another political party, had constructively resigned, withdrawn from or voluntarily abandoned his office of vice-president. The totality of the actions of the vice-president may be condemnable and may even amount to gross misconduct for which a person may be impeached under section 143.³⁹ However, that section does not give the power of impeachment to any other arm of government but the National Assembly. The court therefore, declared the president's declarations unconstitutional, illegal, null and void and of no effect.⁴⁰

Another major obstacle to fostering a harmonious partnership between the legislature and the executive is the abuse of power by either of them while keeping within the limits of their power or acting in excess of power, all for reasons of personal gains. Power of impeachment is one of the powers assigned to the legislature in the Constitution,⁴¹ and is prone to abuse. The exercise of this power was marred by illegality or abuse in its use by the Kaduna State House of Assembly in 1981. As reported by Nwabueze,⁴² the composition of the committee set up by the House of Assembly and its proceedings, the spurious charges, the superficial manner in which the committee conducted the investigation, the refusal to suspend the investigation to await the ruling of the court in the pending suits in which the legality of the composition and proceedings of the committee was challenged, the finding of the committee on the charges, and the politicisation of the entire impeachment process, all point to a clear case of abuse of power. The whole impeachment proceeding was political, though the façade of indictment, trial and conviction had to be put up just to satisfy the Constitution, as long as the verdict of guilty was already predetermined regardless of the merits, the impeachment was nothing but a sham. Similarly, the removal of the Oyo State governor in 2006 followed this negative trend, and the Court of Appeal in November of that year declared it unconstitutional, null and void in the case of **Adeleke & Others v. Oyo State House of Assembly**.⁴³

Acting in excess of power or its abuse is often the result of arrogant and intolerant attitude towards state power which has become rampant among leaders almost everywhere in Africa. Such attitude which is usually manifested in military regimes has unfortunately infiltrated into democratic Nigeria, overshadowing humility which should be the hallmark of democracy. Such arrogance is seen in the daily utterances and actions of government officials in Nigeria, and a few instances are given. In 1999, the federal government deployed the military to Odi, a small village of about 15,000 people in Bayelsa State for what has been equated with genocide in retaliation of the killing by militants in the area of security

³⁸B. Nwabueze, *op.cit.*, p. 145

³⁹ See **A.G. Federation & Ors v. Atiku Abubakar** (2007)10 NWLR (Pt. 1041)1 at 125-126

⁴⁰ **Atiku Abubakar v. A.G. Federation & Ors** (2007)3 NWLR (Pt. 1022) 601 and **A.G. Federation & Ors v. Atiku Abubakar** *supra*

⁴¹ Sections 143 and 188

⁴² *op.cit* p. 363

⁴³ (2006) 16 NWLR (Pt. 1006) 608 at 674, see also **Diaplong v. Dariye** (2007) 8 NWLR (Pt. 1036) 332

men deployed to the region for security purposes.⁴⁴ In another instance in 2001, Zaki Biam, a town in Benue State suffered the same fate for similar reasons. This deployment which resulted in massive violation of rights of the people was carried out without the approval of the National Assembly as required by the Constitution.

In contrast to the conflict ridden relationship between the legislature and the executive, there is a more cordial relationship between the executive and the legislature in Nigeria today. However although there is appreciable progress in the executive-legislative relationship, there are still some amount of conflict, and some are quite serious enough to cause an imbalance on the fledgling democracy of the country. One major area of conflict between the executive and the legislature in contemporary Nigeria was the implementation of the annual budget. In October 2012, law makers had serious difficulty in allowing the president the chance to present his 2013 budget for the reason that the president and members of his executive cabinet were in fragrant abuse of the implementation of the previous year's budget. In fact it took the spirited intervention of many respected members of the society and the leadership of the ruling party to appease the lawmakers to let go of their earlier insistence before the president could be given the opportunity to present the budget⁴⁵. A similar controversy also trailed the budget presentation of the 2014 budget, as the request to admit the president on the floor of the House of Representative to lay the bill met very serious controversy at the floor of the House.

CONCLUSION

The executive-legislative relation in Nigeria's presidential democracy since the 29th of May 1999 when democracy was again enthroned has been more conflictive than collaborative. The first few years of democratic experiment was so conflict ridden that on many occasions, due to the unconstitutional acts of the executive and the legislature, the polity was so heated up that the survival of the fledgling democracy was threatened. This is not surprising as before this time, Nigeria has had a prolonged military occupation and usurpation of the country's political machinery for 16 consecutive years. As is usual with military regimes, the legislature is the arm of government that suffers most and in most cases, does not survive at all. This invariably resulted in reduced capacity of the legislature in the new democratic dispensation. Furthermore, the independence of the legislature in Nigeria was greatly threatened by the executive, especially at the early stage of the new democratic dispensation due to the disposition of the president. In every democracy, whether presidential or parliamentary, there is need for a cordial relationship between the executive and the legislature in order to achieve good governance. This is of particular importance in presidential democracy which, by its nature, breeds more executive-legislative conflicts and has the resultant effects of tending more towards democratic break down. However, conflict is inevitable and in a lot of cases serve to entrench democratic values because lessons are often learnt from the resolution of such disputes, but it is important that such conflicts are not allowed to be blown out of proportion. They should also be promptly and constructively resolved by proper interactions by the powers that be, so as to avert its dysfunctional consequence on the democratic process.

WAY FORWARD

The search for a harmonious relationship between the executive and the legislature is a continuous one for in every human relationship, there must always be reasons for disagreements. What however makes for the success of a government is its understanding of the rules necessary to prevent such debilitating conflicts and the means of resolution of conflicts when they arise in order to avoid a breakdown of governance. In this vein there is need for Enlightenment Programmes on Executive-Legislature Relations; Collaboration between the Executive and the Legislature; Observation of the Principle of Separation of Powers; Effective Oversight Function and Independence of the Legislature and its Leadership.

⁴⁴ D. Ola & A Oluwafemi(eds), A Blanket of Silence-Images of the Odi Genocide Nigeria: Environmental Rights Action/Friends of the Earth 2002 <www/eraction.org/publications/silence.pdf> 03/10/14

⁴⁵ George Oji "Executive, Legislature in Cat and Mouse Relationship" **National Mirror**, May 29, 2013.