

ETCHES



OF A MENTOR

44

YEARS

OF INTELLECTUAL SERVICE

A Festschrift in Honour of
PROFESSOR RAUFU AYOADE DUNMOYE

Editors

Kayode Adeniran Omojuwa,
Sama'ila Shehu, Jacob Audu, Rahila Yakubu
and Shuaibu Mohammed

CONTENTS

FOREWORD	III
ACKNOWLEDGEMENT	IX
SECTION ONE: STATE AND ECONOMY	1
CHAPTER ONE	
Ideas and Perspectives of Professor Dunmoye on Political Economy, Democracy, Development, Ethnicity, Conflict and Nigeria in a Wider World.....	2
Saminu Idris, Shuaibu Mohammed & Aliyu Yahaya	
CHAPTER TWO	
Human Trafficking in Nigeria: A Political Economy Perspective.....	20
Rahila Yakubu	
CHAPTER THREE	
Nigerian State and the Quest for Economic Diversification: Interrogating the Iron and Steel Sector	39
Orungbami Orunyomi	
CHAPTER FOUR	
Governance, Cash Transfer Programmemmes and Quest for Poverty Reduction in Nigeria	57
Lamidi Kamal Olaniyi	
CHAPTER FIVE	
The State, Corruption and Poverty in the Nigeria's Fourth Republic.....	71
Sa'idu Abdullahi	
SECTION TWO: DEVELOPMENT STUDIES	103
CHAPTER SIX	
Federalism and Local Government Autonomy in Nigeria:.....	104
A Reflection on Contemporary Issues	
Aliyu Tanko Ahmed	
CHAPTER SEVEN	
Pragmatic Examination of the Challenges of Nation-Building and the Prospects of Development in Nigeria.....	120
Ononihu, S. C. & Okonkwo, C. N.	

CHAPTER EIGHT	
Emerging Trends in Leadership Roles in Africa: Factors Responsible for Good Governance	148
Adamu Halima Sa'adiyat & Sanusi Khadijah Gumbi	
CHAPTER NINE	
Nation-Building and the Question of Leadership in Africa: Lessons from Plato's Philosopher Kings Model	159
Hassan Daiyabu Muhammad	
SECTION THREE: NIGERIAN GOVERNMENT AND POLITICS..... 171	
CHAPTER TEN	
Women in Politics: The Case of Nigeria's Fourth Republic.....	172
Rabiat Bukola Momodu & Fatima Mahmud	
CHAPTER ELEVEN	
Group Identity and Political Mobilisation: An Analysis of Voting Patterns of the 2019 Gubernatorial Election in Kebbi State	190
Aminu Musa	
CHAPTER TWELVE	
Violent-Electoral Politics and the Survival of Democracy in Nigeria: Analysis of Emerging Trend in Kogi State During the 2019 Governorship Election.....	204
Simon Aondohemba Shaapera & Ahmed Audu Yusufu	
CHAPTER THIRTEEN	
The Amalgamation of Nigeria in 1914 and the Challenges of State Building.....	223
Kamar Hamza	
CHAPTER FOURTEEN	
Interrogating the Resurgence of Ethno-Religious Conflicts in Southern Kaduna in the Nigeria's Fourth, 1999-2019.....	236
Gafar Idowu Ayodeji & Sunday Toyin Omojowo	
CHAPTER FIFTEEN	
Comparative Study of 2015 and 2019 Presidential Elections in Nigeria.....	254
Yakubu Haruna Ja'e & Nasir Tajudeen Omeiza	
CHAPTER SIXTEEN	
Assessment of the Management of Illegal Immigration on the Nigeria-Niger Republic Border: Realist and Liberal Perspectives	272
Aminu Idris & Assel Tutumlu	

44 Years of Intellectual Service

CHAPTER SEVENTEEN	
Effects of Constitutional Defects on Legislature-Executive Relations in Nigeria's Fourth Republic	291
Abdulrasheed Alada Muhammad	
CHAPTER EIGHTEEN	
Legislative Dimension in Democratic Control of the Military in Nigeria: 1999-2019	309
Mohammed Lawal Tafida	
CHAPTER NINETEEN	
An Overview of Democracy and Party Politics in Nigeria	321
RAJI, Adesina Abdulfattah	
SECTION FOUR: SECURITY STUDIES	347
CHAPTER TWENTY	
The Concept of Security and the Emerging Theoretical Perspectives.....	348
Umar Ibrahim Yakubu & Shuaibu Mohammed	
CHAPTER TWENTY ONE	
Border Management and Trafficking of Small Arms and Light Weapons (SALWS): Implications for Nigeria's Internal Security	363
Abdulmalik Jafaru Afegbua	
CHAPTER TWENTY-TWO	
The New Terrorism Phenomenon: Implications and Lessons for Nigeria.....	383
Abdul Ahmadu	
CHAPTER TWENTY- <u>THREE</u>	
Globalization, Migration and Xenophobic Attacks in South Africa: Periscoping Issues, Challenges and the Way Forward	396
Jacob Audu	
CHAPTER TWENTY- <u>FOUR</u>	
Nigerian Army Doctrine, Civil-Military Relations and Boko Haram Insurgency in the North East	413
Isaac O. Mbachu	

SECTION FIVE

PROFESSOR DUNMOYE: EPITOME OF MENTORSHIP 437

CHAPTER TWENTY-FIVE

The Great Farmer's Salutation: A Poem in Honour of Professor Rauf Ayo Dunmoye
..... 438

Rahila Yakubu

CHAPTER TWENTY-SIX

Memories and Tribute to a Great Mentor 440

Ahmadu Aliyu

CHAPTER TWENTY-SEVEN

The University System and the Place of Academic Mentorship: A Tribute to Professor
Rauf Ayoade Dunmoye..... 446

Kayode Adeniran Omojuwa

CHAPTER TWENTY-EIGHT

'Where are the Professors?': Phenomenological Reflections on the Intellectual
Tradition of Professor Raufu Ayo Dunmoye 459

Sama'ila Shehu

CHAPTER TWENTY-NINE

Professor Dunmoye, A Paragon of Mentorship: My Experience 474

Yusufu Abdullahi Yakubu

CHAPTER -THIRTY

Effective Post-Retirement Management of Life: Socio-Economic Adjustments for
Retired Academics in Nigeria 483

Maina Williams Apikins

44 Years of Intellectual Service

CHAPTER TWENTY-EIGHT

Professor Dunmoye, A Paragon of Mentorship: My Experience 474

Yusufu Abdullahi Yakubu

CHAPTER TWENTY-NINE

Effective Post-Retirement Management of Life: Socio-Economic Adjustments for
Retired Academics in Nigeria 483

Maina Williams Apikins

CHAPTER SEVENTEEN

Effects of Constitutional Defects on Legislature-Executive Relations in Nigeria's Fourth Republic

Abdulasheed Alada Muhammad

Introduction

The swearing-in of an elected civilian President in 1999, signaled the formal beginning of Nigeria's Fourth Republic. Prior to this time, Nigeria was nothing short of a garrison Republic characterized by personal rule and flagrant disrespect for fundamental human rights of the citizens. Following from the attainment of this feat in 1999, democratic structures began to take root. It is instructive to note that prior to 1999, democratic structures were either non-existent or existing in perverted form. For instance, during military rule, powers of the legislative arm were completely eclipsed by the establishment of a military council which took charge of the responsibility of legislation for the whole country. Equally, neither was the executive arm able to retain its essential democratic attributes nor the judiciary able to maintain its independence as its powers were constantly usurped through the creation of military tribunals even when they were not necessary. In other words, while the legislative arm lost its character and existence, the executive and the judiciary continued to exist in perverted forms. Political parties were non-existent and civil society groups had their activities regimented by the state. Little wonder, therefore, that the return to democratic practice in 1999 was greeted with enthusiasm from the citizens as government was expected to operate within the ambit of the law. The outcome of the 1999 elections shows that the Peoples' Democratic Party (PDP) was in control of both the executive and legislative arms at the national level.

For instance, in the 1999 Presidential election, the PDP polled 62.78% of total valid votes as against the 37.22% of the Alliance for Democracy (AD) and All Peoples Party (APP) alliance (Africa Election Data Base). Similarly, in the National Assembly (NASS) election, the PDP had 59 of 109 senators and 206 of 360 members in the House of Representatives (HoR). Although there were allegations from other parties that the outcome of the election was manipulated in favour of PDP, the feat was also recorded in the 2003 elections. Out of the over 50 political

parties that were in existence then following registration of new ones by the Independent National Electoral Commission (INEC) in 2002, only twenty partook in the Presidential election with PDP polling 61.94% of total votes; All Nigerian Progressive Party (ANPP) 32.19% and All Progressives' Grand Alliance (APGA) 3.29% (Africa Election Data Base). Similarly, in the NASS elections, the PDP dominated both the Senate and HoR by having 76 Senators out of 109 and 223 out of 360 members in the HoR. The implication of this scenario is that Nigeria operated a unified government from 1999 to 2007 in the sense that the party that was controlling the executive arm also had majority of seats at the NASS.

It is important to stress that, the swearing-in of the President on May 29, 1999 represents one leg of the process of enthroning democratic rule in the country. The second leg which completed the process was the formal inauguration of the legislature which in Nigeria is called the National Assembly on June 2nd 1999. This process was also repeated at the states' level although inauguration of the States' Houses of Assembly took place on different days. In his inaugural speech in 1999, President Olusegun Obasanjo acknowledged the series of endemic problems that have confronted the nation since the days of military rule and which have brought the country to the verge of 'chaos and near despair' (Obasanjo, 1999). He, therefore, promised to harness the nation's human and material resources towards ensuring progress, justice, harmony, unity and confidence among Nigerians for the country to occupy its prime place in the comity of nations (Obasanjo, 1999).

Following the eventual inauguration of all democratic structures, governance process in Nigeria entered a new phase characterized by high expectations for good governance from the people. The implication of this is that the new administration upon assumption of power in 1999 was confronted with multitudes of problems which were the direct consequences of military dictatorship which the country had experienced between 1966 and 1979 and between 1983 and 1999. This imperative was not only a challenge for the new administration but would have great impact on either democratic growth or regression in the country. In this context, the legislature and the executive working in consonance within the confines of the constitution are central to the attainment of the democratic ideals.

While democracy is triumphantly making wave in Nigeria, it is yet trapped in its own contradictions. A more problematic one is related to the persistent thug of war relationship between the legislature and the executive institutions in spite of the fact that there are constitutional explications on the powers and duties of each arm of

government. As the ground norm of the society, the constitution is expected to avoid ambiguities in its provisions on the powers and duties of each arm of government as well as rights and duties of citizens. However, in Nigeria, the 1999 Constitution which is expected to drive the Fourth Republic has some in built inadequacies that allow executive-legislative disagreements to fester. More worrisome is the fact that political actors often explore some of these defects to advantage thereby aggravating executive-legislative disputes. Thus, executive-legislature relations become problematic in Nigeria. It is against this background that this paper examines, through a systematic analysis of documents on the subject matter, the implications of some ambiguous provisions in the 1999 Constitution of the Federal Republic of Nigeria for the relationship between the legislative and executive institutions in Nigeria's Fourth Republic.

Theoretical Anchor

This work is anchored on the theory of separation of powers, especially Formalism model as identified by Peabody and Nudget (2003). Essentially, the classical theory of separation of powers is predicated on the necessity for entrusting governmental powers in the three branches of government thereby defining relationship between them. That is, the legislature is primarily concerned with making laws, the executive implement laws made by the legislature and the judiciary adjudicates in cases of dispute between the different arms. This is based on the understanding that governmental power is of an encroaching nature and that each ought to be effectively restrained from passing the limits assigned to it (Oellinger and Meesse, 2000) in order to avoid conflict. It should be emphasised that, a classical view of separation of powers as advocated by Thomas Hobbes and popularised by Montesquieu have always recognised the dangers which fusion of governmental powers poses to citizen's liberty and which makes it prone to abuse. For example, Montesquie noted that:

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 itTo prevent this abuse, it is necessary from the nature of things that one power should be a check on another.... 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 (quoted in Okoli and Okoli, 1990, p.115).

This position was reinforced by James Madison in the federalist paper no. 47 when he asserted that 'the accumulation of all powers, legislative, executive and

judiciary, in the same hands, may justly be pronounced the very definition of tyranny' (quoted in Eliot, Chambers and Salisbury, 1960, p.78).

However, a contemporary view by Peabody and Nugent built on the need to provide greater insight 'in explaining and understanding a variety of contemporary and historical political conflicts, dynamics and problems' (Peabody and Nugent, 2003:2). They proposed four models of separation of powers. According to them, these are Originalism, Formalism, functionalism and Fusionism. While originalism has to do with the belief that 'we can best understand the appropriate purposes and operation... of separated powers by turning to the intentions of the constitutional framers' (p.12), Formalism attempts to articulate a situation of clearly delineated boundaries between the three branches of government in which one is 'entirely free from the control or coercive influence, direct or indirect, of either of the others' (Peabody and Nugent, 2003, p.13). In this case, there is expected to be a constitutionally defined line of demarcation between the prerogatives and powers of each branch of government in such a way as to be able to pinpoint whether something is part of the legislative, executive or judicial powers. On the other hand, functionalism rejects a strict separation of powers between the arms of government and instead, emphasises the maintenance of a working government. That is, a government in which the essential powers of each branch will be preserved within an adaptable system of checks and balances. In the functionalist view, therefore, the 'separation of powers is an evolutionary system which can assume a variety of legitimate forms alongside developments in the state' (Peabody and Nugent, 2003:14). Finally, is the fused or parliamentary view of separation of powers. This perspective 'evaluates different distribution of institutional power by implicitly or explicitly appealing to a model of governance in which executive and legislative authority is closely joined' (p.14).

With regard to this paper, our emphasis is on the formalised model of separation of powers because it emphasises the necessity of constitutionally defined line of demarcation between the powers and duties of each arm of government. With such constitutional demarcation, one is able to determine under whose purview among the three branches is a particular activity. In Nigeria, the powers of the three branches of government are stipulated in sections IV, V and VI of the 1999 constitution as amended. Beyond this general provision of their powers, there are several provisions in the constitution that formally specifies what is expected of each arm. It is these other provisions that at times result in different interpretations and understanding between the arms.

The 1999 Nigerian Constitution and Separation of Powers

The Constitution is the basic law of any country above which no other law is superior. The significance of the constitution has been espoused by scholars as including defining the relationship between arms of government (International IDEA, 2014; Muhammad, 2013; Anyaegbunam, 2010). In a Presidential system, the relationship between arms of government is enshrined in the constitution with emphasis on separation of governmental powers between the three main branches of government. It is pertinent to observe that this is not peculiar to Nigeria because inherent to the presidential system is the dispersion of governmental powers between separate organs of government. In Nigeria, this is stated in sections 5, 6 and 7 of the 1999 Constitution (as amended). That is, the legislature, the executive and the judiciary. In other words, most presidential democracies have come to be anchored on the theory of separation of powers which is, no doubt, central to the understanding of the workings of government. Through the classical conception to the contemporary, the theory of separation of powers has succeeded in informing scholars of the supposed relationship between the branches of government as well as the dangers inherent in combining governmental powers in one body. This is in addition to illuminating our knowledge on the specific functions of each branch of government. As Jinadu (2010) observed, the pure theory of Separation of Powers which began in the American system broke down almost at the very beginning thereby necessitating its modification with the theory of checks and balances. By this, each arm is able to share in the function of the other. The underlying philosophy behind this act is to avoid a water tight separation among the arms of government which can ultimately lead to stalemate in governance. This thought is not lost to framers of the Nigerian Constitution as the powers of each arm are constitutionally vested in different branches of government as contained in sections 5 (legislative powers), 6 (executive powers) and 7 (containing judicial powers) of the 1999 Constitution as amended. The constitution also made provisions for each arm to act as checks on the excesses of the other and at the same time, avoid stalemate in governance. For instance, while the executive has the prerogative to appoint Ministers and Advisers, such appointments are subject to confirmation by the Senate which is the upper arm in Nigeria. Also, while the legislature is primarily saddled with making laws for the good governance of the Nigerian state, the law must be assented to by the executive arm (President) before it becomes effective. Thus, the Nigerian constitution of 1999 appears to be imbued with powers that would make the three branches of government function adequately.

Overview of Executive-Legislature Relations in Nigeria

In Nigeria, there is a growing literature on the various institutions of government especially within the context of the Presidential system (Kalu & Emeka, 2018; Ahmad, 2016; Tom, 2014; Alabi and Egbewole, 2010; Okoosi-Simbine, 2010; Benjamin, 2010; Peter, 2009; Chiafor, 2009; Haruna, 2009; Abba, 2007; Jacob and Abdullahi, 2007; Ujo, 2007; Egbewole, 2006; Benjamin, 2004; Ojo, 1998). All have emphasized the relative importance of these institutions to the consolidation of democracy in the country. With regard to the relation between the executive and the legislature, Bassey (2006) observes that one of the symptoms of the deep and unsettled contradictions in Nigeria's democratic order is the gladiatorial contest between the executive and the legislature. In spite of the differing perception of the problem as either awry and with ominous implications for democratic consolidation or as a transient and normal process of democratic consolidation in the country, consensus (Kalu & Emeka, 2018; Ahmad, 2016; Jacob and Abdullahi, 2007; Ujo, 2007) exists that executive – legislature relations in Nigeria have been problematic since 1999, a trend which started with the adoption of the Presidential system in 1979. For instance, Nigeria emerged at independence in 1960 as a parliamentary democracy. Central to this system is the fusion of governmental powers among the branches of government. In this case, there was no clear-cut distinction between, for instance, the members of the legislature (parliament) and the executive (cabinet). This practice which was equally instituted at the regional levels gave no room for any serious antagonism between the legislature and the executive. This system was however truncated with the military incursion of 1966 as it was abandoned in favour of the Presidential system at the country's return to democratic rule in 1979.

At inception of the Second Republic in 1979 under the Presidential democracy variant, there was, initially, no serious conflict between the executive arm and the legislature even though the then ruling National Party of Nigeria (NPN) was not in control of overwhelming majority in the National Assembly (NASS). The NPN had only about 37.45 percent of seats in the NASS hence, its alliance with the NPP in order to have a substantial majority. As long as the alliance lasted, the relationship between the executive and the legislature was cordial as evidenced in the hasty passage, in less than two hours, of the Economic Stabilization (temporary provisions) Bill of 1982 (Akinsanya and Davies, 2002). However, with the collapse of the alliance, conflicting situations began to emerge in executive - legislature relations. It must also be stated that the conflict that ensued between the executive

and the legislature was not borne out of constitutional defects but some politically potent variables that influenced the course of their relations.

Given the initial context and settings within which the assembly was, this trend can be attributed to the differences in party affiliation of members (divided government) rather than to any serious contemplation about the implications of a particular government (executive) action. Thus, several other proposals that would improve governmental efficiency and the general welfare of the people were blocked (Maduagwu and Oche 1992; Aiyede and Isumonah, 2002; Akinsaya and Davies 2002). In other words, the transference of party antagonism into affairs of the NASS was a major factor in the emergence of friction between the legislature and the executive under Nigeria's Second Republic rather than observed defects in the constitution.

At the state level, the situation was somewhat different and mixed. Except Kaduna and Bendel States, virtually all the states were one party state. In this case, the ruling party equally controlled majority of seats in the states' Houses of Assembly. The implication of this is that, the legislatures turned out to be mere rubber stamps for executive proposals. This was, however, not totally the case in Bendel State where a two-party house was antagonistic to the governor (Osilon, 2002). It was thus able to assert its freedom and independence in several of executive actions and proposal.

The most glaring case of executive - legislature conflict at the states during the Second Republic occurred in Kaduna State. Essentially, the state was unique in the sense that after the 1979 elections, it was the only state in Nigeria that emerged with a divided government. That is, a situation in which the party affiliation of majority of the Assembly members differ from that of the Chief Executive. While the governor, Abdulkadir Balarabe Musa, was elected on the platform of the Peoples' Redemption Party (PRP), almost twothirds of the members of the state House of Assembly were from the National Party of Nigeria (NPN). As observed by Akinsanya (2002); Oladele (2006) and Ojo (1985), this division laid the foundation for antagonism that beclouded executive - legislature relations in the state which climaxed with the impeachment of the governor in 1981. Prior to the eventual impeachment, frosty relations between the two arms had been evident in the governor's veto of several legislative proposals and the legislature's refusal to pass some of the executive's proposal as well as refusal to give approval to some of the appointment of cabinet members. The chaotic situation in executive - legislature relations at both the national and state levels of government continued

until the military terminated the Second Republic in December 1983. A common trend that is observed both at the federal and state levels in the Second Republic is that executive - legislature acrimony thrives in a divided government except where the chief executive is able to distribute patronages to Assembly members.

Under the aborted Third Republic, the fact that it was truncated did not provide ample opportunities for observing definite trends in executive – legislature conflict. Commenting on situations at the national level during this period, Aiyede and Isumonah (2002), noted that the exchanges between the NASS and the executive branch (which in this case was military) up till the period of the annulment of the June 12, 1993 election epitomizes an epoch in legislative humiliation. This stemmed from the fact that first; decree no. 53 with which the Assembly was inaugurated equally ‘castrated it by limiting the powers to debating only cultural and topographical matters’ (Aiyede and Isumonah, 2002: 9). Second, it was an era of subjugation of all democratic ethos and free will of the citizens to military autocracy because even though there were elements of democratisation, all was still subject to military fiat. Indeed, at a point, the country was operating a diarchy.

At the states level, although there were civilian heads existing alongside the State Assemblies, the military influence still pervaded. This is because, apart from the fact that some state chief executives saw themselves wielding enormous powers over the legislature, the Babangida military regime equally directed the state governors to disregard the houses of Assembly where there was clash of interest. The understanding in this context was to avoid a situation where Assembly men would be demanding for “settlements” before executive proposals were considered and approved (Aiyede and Isumonah, 2002). In effect, however, this was a continuation of the subjugation and perversion of democratic structures in which case, the legislature was the most affected. Perhaps if the Republic had survived beyond the military junta, other important trends in executive – legislature relations could have been visible.

In the Fourth Republic, relationship between the legislature and the executive at the federal level has not been smooth since 1999 when the Fourth Republic began. It is instructive to recall that the first phase of the Republic (1999 – 2003) witnessed the most conflict that threatens the foundation of Nigeria’s democracy such as conflicts over national budget and the impeachment threat against the President in 2002. This is not to suggest that the relationship between the two arms in the post 2003 period has been cordial. However, the 2002 impeachment threat not only generated

profound domestic reactions but it also generated international skepticism on the fate of democracy in Nigeria. In the second phase of the democratic era (2003 – 2007), while many Nigerians were rejoicing on the feat achieved by the synergy between the legislature and the executive over debt cancellation by the Paris Club in 2005, there were also elements of frosty relation informed by corruption allegations from the executive arm against some members of NASS and imbroglio over attempt by the executive arm to extend the tenure of the President and Governors through constitutional amendment. This fluctuating trend in legislature and executive relations at the national level continued till the time of writing this chapter and some of the explanations that have been offered include party indiscipline, ethno regional considerations, strong personality of the chief executive, corruption Nigeria's political culture, especially of primitive accumulation, the legacies and mindset bequeathed by long years of military rule and imperfections in the operation of the presidential system among others (Ojibara, 2017; Muhammad and Kinge, 2015; Bassey, 2006; Ita-Giwa, 2004; Adejokun, 2004; Abdullahi, 2004; Wader, 2004). Although some of these explanations may no longer be tenable, frosty relations still continued in legislature-executive relation even under the present administration.

To say that, there is tension in executive-legislature relations under President Buhari is not in doubt. This was recently confirmed by the President of the Senate in a statement that the APC will ensure a peaceful and robust relationship in 2018 between the executive and the legislature in order to move the country forward (Umoru, 2018). However, it may be stated that the situation cannot be classified out-rightly as conflict situation in the sense that none of the issues in contention degenerated into heated exchange of words between the two institutions either in the media or other public spaces. This is further amplified by the Head of United Nations office for West Africa and Sahel, Dr Muhammed ibn Chambers who commended the good relations between the executive and the 8th NASS (Odunsi, 2017). Similarly, it was admitted by the President of Senate that the Senate, 'irrespective of party affiliations, will continue to "work closely" with the executive to enable the President achieve his developmental agenda for the overall benefit of Nigerians' (Odunsi, 2017). The Senate President had earlier maintained that the disagreement between the Presidency and Senate was normal and is in continuation of governance process but was only exaggerated by Nigerians (Bello, 2017). All the same, it has been a frosty relationship. Some of the issues over which they have been in disagreements include appointment of Principal Officers of the NASS in the early days of the Buhari administration, executive's rejection of Senate motion to sack the former Secretary to the Government of the Federation over allegations

of corruption, allegations by the executive, through the EFCC, of forgery and false declaration of assets by the Senate President and the consequent attempt by the HoR to amend the Code of Conduct Bureau (CCB) Act, refusal of Senate to confirm some executive's nomination for appointment including that of the Economic and Financial Crimes Commission (EFCC) Chairman among others. As mentioned above, some of these issues are the product of political maneuvering by both arms of government.

Defects in the 1999 Constitution and Legislature-Executive Relations

The 1999 Nigerian constitution in an attempt to create checks and balances also created overlapping powers. For instance, it gave the legislature power of approval before the executive can commence spending of any money from the Consolidated Revenue Fund (CRF) of the federation but also granted the executive power to expend certain sum without prior legislative approval. This is evidenced in section 82 of the 1999 Constitution that gives the president power to 'authorize withdrawal of monies in the CRF of the federation' for the purpose of meeting expenditures necessary to carry on governmental functions if legislative approval did not come at the start of any fiscal year. It must be stated that while the intention of the constitution on this provision was to avoid possible stalemate in governance and although the constitution imposed a limit on the amount that could be spent by the executive, but section 82 exposes the legislature and the legislative process to exploitation by the executive which may decide to explore the situation to its own advantage. In other words, relying on this provision, the executive is more relaxed in its attempt to submit its appropriation proposal to the NASS for approval. This perhaps explains the frequent delay by the executive in submitting its annual budget estimates to the NASS as observed with national budgets in Nigeria.

Another important contradictory point in the constitution relates to section 315 (2) which empowers the President to amend any section of the law. According to this subsection:

The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.

It went further in subsection 4 (a) to clarify "appropriate authority to mean (i) the President, in relation to the provisions of any law of the Federation, (ii) the Governor of a State, in relation to the provisions of any existing law deemed to be

a Law made by the House of Assembly of that State, or (iii) any person appointed by any law to revise or rewrite the laws of the Federation or of a State. Yet, the same constitution granted exclusive power of lawmaking to the legislative arm. Indeed, the constitution was right in allowing such provision in order to make for flexibility in the discharge of executive functions.

However, the provision has often been exploited by the executive to bypass legislative scrutiny of some of its actions. This was glaring in some of the issues that led to the 2002 impeachment attempt against President Obasanjo. For instance, amendment to the revenue allocation Act in 2002 sequel to the Supreme Court judgment on the on-shore/off-shore dichotomy (second allegation); the deployment of military troops to Odi in 2000 and Zaki Biam, in 2001 without recourse to the National Assembly (Fourth and Fifth allegations) were all done, according to the President in pursuant of his powers under section 315 of the 1999 Constitution. However, the legislature still translates this to be *ultra vires*. From further analysis of section 315 (2) of the constitution, the idea of the president carrying out an act or changing a law before forwarding request regarding such to the NASS for approval preempts that the NASS will pass such law verbatim or without any delay. The reality, however, is that the NASS is not under obligation to pass such law as it may be altered or refused passage. When this occurs, it pitches the legislature against the executive who already anticipates approval. In order words, the provisions of section 315 of the 1999 constitution is susceptible to maneuvering by both the legislative and executive arms of government.

Akin to this is the peoples' perception of the constitution as an instrument that gives much power to the executive particularly the president at the national level and governors at the states level. This is evidenced in the peoples' penchant to always side with the executive arm whenever there is a disagreement between it and the legislature. While this tendency may be attributed to poor perception of the workings of separation of powers by the citizens, it not only portrayed the executive as personifying government but also made it to be domineering in the sense of not putting the legislature in its proper position in the tripartite division of governmental powers. Thus, the legislature is seen more as an irritant institution that slows down the process of governance. Consequently, the legislature too often develops some combative posture and wanting to take all manner of steps to forcefully establish their importance within the structure of government. For this reason, there is constant brinkmanship between the legislature and the executive.

Lack of specific time frame to consider and approve policies is yet another inadequacy in the Constitution. Time is an essential ingredient in planning and formulation of policies. It specifies the period within which a decision maker is to mobilize available human and material resources at its disposal towards arriving at a particular decision. Within the context of separated powers where the executive has the power to propose and the legislature is to approve, each is expected to work within a definite time frame in order for the policy to gain acceptability on the one hand and on the other hand, to avoid undue distractions that may arise out of unnecessary delay. In Nigeria, lack of specific time frame to work on some decisions or inappropriateness of the time constitutes a major source of conflict between the executive and legislative arms. This has played itself out both in the process of passing annual budgets and even the 2005 attempt at amending the 1999 Constitution. First, in the consideration of annual budgets, it is expected that ideally, such decisions would have been made before the commencement of a fiscal year. In other words, while the fiscal year in Nigeria starts at January 1 and ends at December 31, there is no constitutional dictate on when the President is to submit its budget and when the NASS is to approve it.

Of course the Constitution of 1999 envisaged this but only provided that in the event that the budget cannot be passed before the commencement of a new fiscal year, the executive may authorize withdrawal from the Consolidated Revenue Fund to keep the government going. However, the constitution failed to advance a definite time lag for both arms to work on the budget.

In order to address likely problems from lack of a definite time lag, some countries have entrenched in their constitutions; definite time frame within which budgets must be presented and approved. According to Posner and Packer (2007), the time from budget submission to the beginning of the new fiscal year ranges from eight months in the United States to a general norm of about three months in most of the other countries. In the United Kingdom, there is no specific time lag for budget submission but substantial informal consultation takes place between executive and legislative leaders

Table 1: Time Table for Budget Presentation in Selected Countries

Countries	Beginning of Fiscal Year	Deadline for Executive Proposal	Average time Available to Parliament
France	January 1	First Tuesday of October	About 3 months
Japan	April 1	During January	About 3 months
Korea	January 1	October 2	About 3 months
Mexico	January 1	September 8	About 4 months
Netherlands	January 1	Third Tuesday of September	More than 3 months
Sweden	January 1	No later than 20 September	More than 3 months
United Kingdom	April 1	None (discretionary)	-
United States	October 1	First Monday in February	About 8 months

Source: Adapted from Posner and Park (2007: 11)

In Nigeria, this time frame is lacking as the executive presents the annual budget when it feels it is ready while the legislature also approves it after it feels it has concluded debate on it. The fluidity of the time frame is one of the issues that serve to explain conflict between the two arms. This is not to suggest that wherever there is no defined time for presenting budget proposal, conflict ensues. What is being emphasized is that in an underdeveloped or emerging system such as Nigeria where there are a host of intervening variables that are likely to spring up at any time in the process of debating legislations, absence of a definite time frame may constitute a lacuna to be explored by interested parties.

From available records, the shortest period for presentation and approval of budget was just six weeks in year 2000 (for 2001 budget) while the longest budget took six Months (year 2005 budget) before it was finally approved by the NASS. Ironically, the 2005 budget was the earliest to be presented but the longest to be passed. It was presented in October, 2004 and passed in April, 2005. This discrepancy can however be traced to silence of the constitution on the specific time frame within which budget for a particular fiscal year is to be presented. This time lag between presentation and approval is often receptive to disagreements between the two arms

of government as the legislature may assume that late submission of budget proposal is a deliberate ploy by the executive to pressure it into approving the executive's estimate without proper scrutiny. In other words, it may be opined by some legislators that the executive does not always give it enough time before the fiscal year commences, for it to properly deliberate on the appropriation proposals of the government. At the same time, the executive may see failure by the legislature to pass its proposals with dispatch as amounting to tolerating avoidable delays in order to extort money from agencies of government before approving their budgets.

Similarly, there is the paradox of a dumb Judiciary in the 1999 Constitution of Nigeria. This is because constitutional delineation of responsibilities may remain lost to both actors as they tend to encroach on each other's domain. This coupled with a weak system of checks and balances allow conflict to thrive. Moreover, in a system of separate but coordinate powers as the Nigerian Presidential system showed, disagreement between the arms especially the executive and the legislature is inevitable in the discharge of their respective duties. More often than not, the NASS crosses the path of the executive, for instance, in unilaterally increasing some budgetary allocations in the executive's budget proposal while the executive too at times may take anticipatory action on some issues requiring prior legislative approval such as the deployment of armed forces to Odi and Zaki Ibiam in 2002. Ordinarily, where situations like these occur, it beholds on the judiciary to intervene. However, a situation where none of the parties is willing to approach the court, the judiciary cannot on its own, make a pronouncement in such respect. Indeed, there is no such power conferred on the judiciary in the Nigerian constitution. This position of a dumb judiciary becomes manifest during constitutional contestation. For instance, the judiciary could not make a pronouncement on the constitutionality or otherwise of the Sharia legal system adopted by Zamfara state during the Sharia debacle in Nigeria between 1999 and 2000 and during the power vacuum created by the absence of President Yar'Adua in 2010. In other words, the judiciary only resolve disputes that are brought before it and do not generate one. However, the benefit of comparative insight revealed that in Ghana for instance, chapter 1 Section 2 (1) of the constitution empowers any citizen of Ghana to approach the judiciary for right interpretation of any provision of the constitution or the action of those in authority. The section noted that 'a person who alleges that... any act or omission of any person; is inconsistent with, or is in contravention of a provision of the Constitution, may bring an action in the Supreme Court for a declaration to that effect.' The implication of this clause is that

although the Supreme Court of Ghana cannot speak by itself, any other citizen may approach it for right interpretation of any act government or its institution that seems ambiguous. By extension, any citizen may seek clarification from the court on aspects of institutional relations that brings conflict even if the main actors are reluctant to seek for such clarification. These, along with other factors, help to streamline relationship between the executive and the legislature. Unfortunately, such provision is absent in the Nigerian constitution.

Conclusion

This chapter examined some defects in the 1999 Constitution of Nigeria and how this is impacting on relationship between the legislature and the executive. No doubt, harmonious relation between both arms is central to deepening democratic practice. Equally, such relations are expected to be guided by constitutional provisions within the context of separated powers associated with the presidential system which Nigeria has opted for. It is realized that while governmental powers in Nigeria have been constitutionally entrusted in different organs in line with the practice of separation of powers, some defects in the 1999 constitution of Nigeria such as some contradictory constitutional provisions, place of the judiciary and lack of specific time frame to approve budgets and policies served to explain some disagreements in legislative-executive relations. Against this background, it is suggested that there is need for a review of the 1999 Constitution of Nigeria in order to take care of the lacuna that is explored by either party which often promote disagreements between the legislative and executive institutions. Also, self re orientation by concerned institutions on the limits of their powers needs to be taken into account. While the constitution may not be a perfect document, taking appropriate measures, through constant review and political education of citizens may be a way to maximize the efficacy of the constitution and enhance the prospect of democratic consolidation.

References

- Abba, A. S. (2007). Towards effective and efficient legislative institution in a nascent democracy: Issues, problems and prospects. *Journal of Legislative Studies* 1 (1): 5761.
- Abdullahi, Y. A. (2004). Principles and strategies for legislature/executive partnership for stable democratic development and good governance. in Mato, K. (ed.), *Legislating for Democracy Proceedings of the Retreat of House of Representatives*: 163 – 166.

- Adejokun, O. (2004). Legislative-executive relations through effective liaison in Nigeria. in Mato, K. (ed.), *Legislating for democracy*. Proceedings of the Retreat of House of Representatives: 167 – 174.
- Ahmad, A. (2016). The legislature in emerging democracies: Challenges and prospects. A lecture delivered at the maiden annual birthday lecture series in honour of Professor Epiphany Azinge, OON, SAN, held in Abuja on Monday 14th November, 2016.
- Aiyede, E. R. & Isumonoh, V. A. (2002). Towards democratic consolidation in Nigeria: Executive – legislative relations and the budgetary process. *Research Report 52* Ibadan: Development Policy Centre.
- Akinsanya, A. A. & Davies, A. E. (2002). Legislative – executive relations in Akinsanya, A. A. and Idang, J. G. (eds.), *Nigerian government and politics, 1979 – 1983* Calabar, Nigeria: Wusen Publishers: 136 – 153.
- Akinsanya, A. A. (2002). Impeachment of Governor Abdulkadir Balarabe Musa of Kaduna state in Akinsanya, A. A. and Idang, J. G. (eds.), *Nigerian government and politics, 1979 – 1983* Calabar, Nigeria: Wusen Publishers: 203 – 238.
- Alabi, M. O. A. & Egbewole, W.O. (2010). *The legislature in the government of Nigeria* Morocco: African Training and Research Centre in Administration for Development (CAFRAD).
- Anyaegbunam, E.O. (2010). *The legislator's companion* Ibadan, Nigeria: Book Builders in Association with Parliamentary Publishers.
- Bassey, C. O. (2006). Legislature-executive relations and the future of democracy in Nigeria. in Ojo, E. O. (ed.), *Challenges of Sustainable Democracy in Nigeria*. Ibadan: John Archers Limited: 128 – 139.
- Bello, K. (2017). 'No fight between Senate, Presidency – Saraki'
<https://www.today.ng/news/nigeria/282595/fight-senate-presidency-saraki>
(Accessed on 10th June, 2017).
- Benjamin, S. A. (2004). The executive in democratic Nigeria: Problems and prospects. in I. B. Bello-Imam & M. I. Obadan *Democratic Governance and Development in Nigeria's Fourth Republic, 1999 – 2003* Ibadan: Centre for Local Government and Rural Development Studies: 383 – 405.
- Benjamin, S. A. (2010). National assembly: The limit of party politics in legislative process. *Nigerian Journal of Legislative Affairs* 3 (1 and 2): 44 – 72.
- Chiafor, A. B. (2009). The legislature in Nigeria and the challenge of unconstitutional exercise of legislative power. *Legislative Practice Review* 1 (2):72 - 94

- Igbewole, W. O. (2006). Independent judiciary and sustainable democracy. in Ojo, E. O. (ed.), *Challenges of sustainable democracy in Nigeria* Ibadan, Nigeria: John Archers (Publishers) Limited: 209 – 234.
- Federal Republic of Nigeria (1999). Constitution of the Federal Republic of Nigeria. Abuja: federal Government Press.
- Haruna, B. N. (2009). The national assembly and the resolution of citizenship – indigene ship. in *Nigeria legislative practice Review* 1 (2):105 - 116.
- International IDEA (2014). What is a constitution? Principles and concepts. International IDEA.
- Ita-giwa, F. (2004). Legislature – executive relations through effective liaison in Nigeria. in Mato, K. (ed.), *Legislating for democracy* proceedings of the Retreat of House of Representatives: 159 – 162.
- Jacob, J. & Abdullahi, A. (2007). The legislature, economic reforms and democracy in Nigeria: An assessment. *Journal of Legislative Studies* 1 (1): 62 - 70
- Jinadu, L. A. (2010). Separation of power and the budget process in Nigeria: Tentative conjectures. in Olurode, L. (ed.), *Reflections on a decade of democratization in Nigeria*. Lagos, Nigeria: Friedrich Ebert Stiftung: 26 – 41.
- Kalu, P. & Emeka, O. A. eds. (2018). *Legislative studies: An introductory reader*. Aba, Nigeria: Cheedal Global Prints.
- Maduagwu, M. O. & Oche, O. D. (1992). The legislature. in Imobighe, T. A. (ed.), *The politics of the second republic* Kuru, Nigeria: NIPSS: 105 – 137.
- Muhammad, A. A. & Kinge, R. F. (2015). Executive – legislature relations in the budgeting process: A study of President Obasanjo years, 1999 – 2007. *Covenant University Journal of Politics and International Affairs (CUJPIA)* 3 (2): 52 - 67.
- Muhammad, A. A. (2013). Re-thinking the 2005 – 2006 attempt at reviewing the Nigerian constitution. *Ilorin Journal of Business and Social Sciences* 15 (2): 139 – 151.
- Nnamani, K. (2006). The national assembly in perspective, 1999-2005. *Nigerian Journal of Legislative Affairs* 1 (1): 1-89.
- Obasanjo, O. (1999). Text of inaugural speech at swearing in ceremony on May 29, 1999. Available online at: www.ngex.com/nigeria/govt/President/obasanjospeeches.htm Accessed on December 14th, 2009

- Odunsi, W. (2017). UN speaks on Nigeria's executive-legislative relations. Daily Post Online <http://dailypost.ng/2017/11/09/un-speaks-nigerias-executive-legislative-relations/>. Assessed on 10th December, 2017
- Ojibara, I. I. (2017). A governing party in disarray: Executive- legislative relations under APC government. *Global Journal of Human-Social Science: F Political Science* 17 (1): 40-50.
- Ojo, J. D. (1985). *The Development of the Executive under the Nigerian Constitution, 1960 1981*. Ibadan, Nigeria: University Press Limited.
- Ojo, J. D. (1998). The executive under the Nigerian Constitutions. in Amuwo, K., et al (eds.) *Federalism and Political Restructuring in Nigeria* Lagos: Spectrum Books limited in conjunction with IFRA, Ibadan: 299 – 315.
- Okoosi-Simbine, A. T. (2010). Understanding the role and challenges of the legislature in the fourth republic: The case of Oyo state House of Assembly. *Nigerian Journal of Legislative Affairs* 3 (1 and 2): 1- 27.
- Oladele, K. (2006). In the threshold of constitutional crises. Being text of a Speech delivered at the Quarterly Luncheon of the Nigerian Democratic Liberty forum (NDLF) at Medger Evers University, New York. November, 16. Available Online: www.saharaporter.com/da001.php?daid=158 (Assessed on February 19, 2007)
- Osion, D. M. (2002). The presidential system in Nigeria and the United States. in Akinsanya, A. A. & Idang, J. G. (eds.), *Nigerian Government and Politics, 1979 -1983* Calabar, Nigeria: Wusen Publishers:104 121.
- Peter, O. O. (2009). Judicial attitude to political controversy in Nigeria. *Legislative Practice Review* 1 (2): 15 - 30.
- Posner, P. & Park, C. K. (2007). Role of the legislature in the budget process: Recent trends and innovations. *OECD Journal on Budgeting* 7 (3): 1- 26.
- Tom, E. J. (2014). The legislature and national development: The Nigerian experience. *Global Journal of Arts Humanities and Social Sciences* 2 (9): 63-78.
- Ujo, A. A. (2007). The role of legislative assemblies in the democratic process. *Journal of Legislative Studies* 1 (1): 124 – 132.
- Umoru, H. (2018). APC'll use 2018 to meet campaign promises Vanguard Online <https://www.vanguardngr.com/2018/02/apc-ll-use-2018-meet-campaign-promises-senate-leader> (Assessed on 6th January 2018)
- Wader, M. M. (2004). Legislature executive relations through effective liaison in Nigeria. in Mato, K. (ed.), *Legislating for democracy*. Proceedings of the Retreat of House of Representatives: 175 – 180.