

## **Executive-Legislative Relations in the Fourth Republic of Nigeria 1999 - 2011: A Critical Analysis**

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**<sup>1</sup>Solomon Ogbu &  
<sup>2</sup>Osunyikanmi Pius Olakunle**  
*<sup>1</sup>Department of Political Science and  
International Relations,  
University of Abuja  
<sup>2</sup>Ministry of Foreign Affairs, Abuja*

### **Abstract**

**T**he paper took a critical look at the relationship between the Executive and Legislative arms of government during the period 1999 to 2011 in the present Fourth Republic of Nigeria. Profuse references were made to the relevant provision of the 1999 Constitution and the amended Electoral Act. It was revealed that the Executive-legislative relations during the period were frosty, and this invariably affected the smooth running of government business. Lack of adequate understanding of some of the tricky provisions of the constitution by both the Executive and legislative arms coupled with intricacies involved in the modality of operation of the presidential system no doubt contributed to the uneasy relations between the two arms of government. It was recommended that ambiguous provisions of the constitution should be reviewed for easy understanding and interpretations by both the Executive and Legislative arms of good as well as lawyers and judges.

***Keyword: Legislative Bills, Acts of Legislature, Impeachment,  
Legislative Committees***

***Corresponding Author:*** Solomon Ogbu

### **Background to the Study**

Constitutionally, policy initiation, legislation and implementation are the main responsibilities of the executive and legislative arms of government. Both arms of government can initiate policies through the introduction of bills. Even though it is the duty of the legislature to make laws, the President has a role to play in this regard, but only as an outsider (that is, not as a legislator). The core of executive job is the formulation and execution of policies. Proposals in the form of bills are sent by the President to the presiding officers of each of the houses as draft bills, requesting that the legislature considers them for the purpose of adopting them as bills and eventually passing them into laws. However, the President's proposals can be thrown out, i.e. rejected if the National Assembly so desires. The President can exert some influence on the legislature to get what he wants. How far he can go in this regard depends on his personality and charisma. The practicability of these constitutional powers was tested between 1999 and 2011 when President Olusegun Obasanjo was in the saddle as the Executive President of the country.

### **Powers and Limitations of the Executive and the Legislature in Legislative Process.**

Usually, the president routinely presents draft bills in the form of proposals to the National Assembly for consideration. Once a draft bill is tabled in each house, it becomes the property of the House; even though it came from the Chief Executive. The president has no power under the constitution to compel or force the legislature to introduce bills on any matter. The decision to make law on any matter whatsoever is at the discretion of the legislature. In section 58(1) and (2) of the 1999 constitution of the Federal Republic of Nigeria, it is stated thus:

*The power of the National Assembly to make laws shall be exercised by the bills passed by both the Senate and the House of Representatives and except as otherwise provided by sub-section (5) of this section assented to by the President. A bill may originate in either the Senate or the House of Representatives.*

Although the initiative over money bills comes from the Executive, once the President submits his budget proposals to the legislature, the executive has nothing more to do with it until the legislature approves it. It is unconstitutional for the National legislature to increase money bills submitted to it by the Executive President. Sometimes both arms overstep their bounds inadvertently while trying to perform their functions. This happens either due to lack of proper understanding of the provisions of the constitution or by a deliberate act of violation motivated by the pursuit of personal interests. When the Executive sends a draft bill to the legislature, the bill is then sponsored by the leaders of any of the chambers who proceed to introduce it to the National Assembly with due acknowledgement of the source. They do not become bills unless they are adopted by sponsors who are members of the legislature. Such a bill is thereafter listed on the calendar awaiting a place on the Order Paper. After the bill has been tabled on the order on the day scheduled for it, it receives first, and later second, reading and is therefore scheduled to the relevant Committee for further treatment. The tabling of the bill constitutes the first reading while the general debate on the principle of the bill constitutes the second reading.

Between the first reading and the committee stage, the Executive may make diplomatic moves to ensure that the bills are passed into law by the legislature. This involves lobbying, the involvement of party caucus or recourse to patronage approach. This is one of the areas that create problems between the legislature and the executive. The resort to lobbying and other unconstitutional means to cajole the National Assembly to pass a bill into law creates room for bribery and corruption.

Although the House of Representatives and Senate treat bills in different ways, the relevant committees in both chambers operate in the same way when bills get to their respective floors. The standing committees of the National Assembly operating as little legislatures determine the fate of most proposals. Committee members and staff are normally experts in the subjects under scrutiny. If a bill is going to be substantially revised, such a revision usually occurs at the committee or sub-committee level.

A Committee may dispose of a bill in one of several ways: it may approve or “report” the legislation without amendments; it may rewrite the bill entirely; it may reject and kill the bill; it may report it unfavourably or without recommendation, and this will call for the consideration of the full house; it may simply refuse to consider the bill outrightly. Sometimes, Committee members opposed to a bill may decide to report it unfavourably so as to give the House or Senate an opportunity to make a final judgment.

To become law, proposed legislation must be approved in identical forms in both the House of Representatives and the Senate. Legislative proposals are considered first at the level of Sub-Committees where the proposals are debated and adopted and finally approved by the full House. After both chambers have acted on a bill, any difference in the positions of the two houses on the bill must be harmonized before it is sent to the President for his assent. If the President vetoes the legislation, the legislature with the support of 2/3 majority may override the veto and go ahead to enact the bill into law.

### **Executive Bills**

Based on Section 148 (2) of the 1999 Constitution of the Federal Republic of Nigeria, the President is required to hold meetings with the Vice President and Ministers to formulate domestic and foreign policies of the nation when the need arises. This is, by implication, vesting in the President the power to determine or initiate policies. It follows from this that initiation of legislation is a joint responsibility of both the National Assembly and the President.

Records show that so far in the Fourth Republic so far, the Executive has introduced 136 bills in the Senate and 60 in the House of Representatives. As earlier stated, bills usually go through the two chambers before they become law. The implication of this is that most of the bills that appear in the Upper Chamber also appear in the Lower Chamber, except the ones that have not gone through the entire process.

Out of 136 bills introduced by the executive in the Senate by the year 2005, 68 were passed while 29 were at various stages of passage. In the House of Representatives, out of 60 bills introduced by the executive in the year 2005, 40 were passed, while 20 were at various stages of completion. Majority of the bills passed were on appropriation, others were on security and enhancement of the services and welfare of the ruling class. A close look at the bills passed would reveal that certain bills received prompt attention and passage, while others were not handled with the same speed and promptness.

Generally, there is a manifest trend in all the executive bills. The percentage of executive bills passed in both houses is more when compared with the total number of bills passed by the National Assembly. However, a little less than half of the total bills introduced by the executive by the year 2005 were not passed by both chambers. This situation was not unconnected with the frequent rancor and squabble between the executive and the legislature. On account of this, the Executive once accused the National Assembly of being inconsiderate and self-serving.

### **Legislative Bills**

It is the constitutional responsibility of the legislature to make laws. In Nigeria, this is contained in the 1999 Constitution Section 4 (1) and (2) which reads:

The Legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives  
(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.

Based on the above, the Fourth Republic Legislature has as its primary responsibility the mandate to make laws for the good people of Nigeria through the introduction of bills for consideration and eventual passage into laws. The bills are either sponsored by an individual member of any of the two chambers or by a group of members. Apart from the Executive, non-legislative members are not expected to introduce bills in the National Assembly.

By the year 2002, there were 204 bills in the Senate and 181 in the House of Representatives. The difference in number in the two houses was due to the fact that some bills were yet to complete the circle of passage. Out of the 204 bills in the Senate Chamber as at June 2002, 156 bills were introduced by the Senate, and out of 181 bills in the House of Representatives, the members of the House sponsored 142. There were 15 bills passed out of 156 bills introduced by the Senate, bringing the total to 34 bills passed by the Senate as at 2002. The House of Representatives also passed only 15 bills out of 142 bills sponsored by them, bringing the total to 34 bills during the same period. This scenario reveals a glaring evidence of inactivity on the part of the legislature. The legislature has been pre-occupied with oversight functions which seem to be more promising and rewarding to the members in terms of financial benefits than making laws that would improve the material well being of the citizenry.

### **Legislative Committees**

There are about 50 Senate Committees and 72 House of Representatives Committees playing legislative roles and performing oversight functions all of which constitute checks and balances on the executive. These Committees play very vital roles in ensuring that the executive performs its functions according to the provisions of the constitution. Each Committee is in charge of a particular sector or branch of specific ministries, agencies, commissions, parastatals, etc. The Committees of the legislature ensure that policies are implemented according to constitutional requirements.

### **The Relationship between the Executive and the National Assembly in Policy Initiation, Legislation and Implementation in the Fourth Republic**

The executive-legislative relation in a democratic system is based largely on the doctrine of separation of powers and the principle of checks and balances. It is this doctrine that determines the powers and functions of the principal organs of government. The relationship between the executive and legislature is constitutionally predicated on the conception and pursuance of good policies for the improvement of the material well being of the citizenry.

Nigeria's Fourth attempt at constitutional democracy is still said to be in its infancy. But there are already clear indications that the relationship has been frosty and turbulent, and this has slowed down government business generally in the Fourth Republic. The protracted frosty relationship between the Executive and the legislature can be traced to the following:

1. Withholding of allocation or financial release to the National Assembly by the Executive.
2. None or partial implementation of appropriation bills by the Executive.
3. Increases or decreases in the projected budgetary expenditure by the Executive.
4. Electoral bills: inclusion of extraneous clause by the Executive.
5. General disrespect for the rule of law by both the Executive and the legislature.

### **Withholding of Allocation or Financial Release by the Executive**

It will be useful, to begin with the recent occurrences in this aspect. In January 2002, the seating President, Olusegun Obasanjo, ordered the suspension of payment of January and February salaries and allowances to members of the National Assembly on the ground that the monthly salaries of the legislators were not known, and therefore an impediment to effective national planning. The President later wrote the leadership of each of the two chambers for detailed information on the salaries of members of their respective houses. Senate responded by furnishing the President with the required information. Thereafter, their salaries were released. The House of Representatives on their part refused to comply with the president's directive and their salaries were not released. This sparked the argument on the constitutionality of the executive's request. As a retaliatory measure, the House of Representatives resorted to probing the executive's management of the economy since June, 1999 (Sunday Vanguard, February 17, 2002). The question, in this case, is, "Is it constitutionally and rationally right for the President to withhold allocation meant for the members of National Assembly?" There are two approaches to this question.

The first approach is that as the Chief Executive of the Nigerian federation, who is saddled with the responsibility of preparing annual budget which takes account of the anticipated revenue and expenditure of the country, the president should have the audacity to demand any relevant information such as this. As observed by Ajani (2002), “it is in the discharge of the role of loco parent – i.e. the role of father figure that the President's withholding of the funds meant for members of the National Assembly became pertinent but not sacrosanct”.

The second approach to the question is that the President is not empowered under the constitution to withhold allocations due to members of another arm of government, because the arms are supposed to be separate and equal. If there is inequality, it is not explicitly stated in the constitution.

The powers and obligations of the President to authorize the release of funds are covered by the provisions of the constitution and are vested in the President. These powers may be exercised by the president either directly or through other functionaries but subject to the provisions of any law made by the National Assembly.

On the remuneration of National Assembly members, it is stated in Section 70 of the 1999 Constitution that members of the National Assembly shall receive such salaries and other allowances as the Revenue Mobilization and Fiscal Commission may determine. In the light of the words “shall receive such salaries and other allowances” to the National Assembly members, it is constitutionally mandatory and compulsory for the President to release any fund meant for the members of the National Assembly in compliance with the above section of the constitution. Therefore, the president's refusal to release the salaries of the members of the House of Representatives was a violation of this section, and therefore unconstitutional, and an affront to the much-cherished principle of the rule of law. Nothing in the constitution gives the President the right or the power to say when or when not to pay the constitutional emoluments or funds of members of the National Assembly.

Furthermore, the legitimate source of information for the President on this matter would have been the Revenue Mobilization and Fiscal Commission. It could be said that lack of experience, the vagueness of the relevant provisions of the constitution coupled with the military background of president Olusegun Obasanjo made him behave in that manner.

### **Partial Implementation of Appropriation Bills and Budgets by the Executive**

Another controversial area that adversely affected the relationship of the National legislature with the executive in the Fourth Republic between 1999 and 2011 was the non-implementation or partial implementation of budgets by the Executive. The report of the Senate Public Accounts Committee headed by Senator Idris Abubakar tabled before the Senate in June 2002 on the habitual non-implementation of budgets from the inception of the Fourth Republic in 1999 let the cat out of the bag and set the ball rolling for the strained relationship between the Executive and the National Assembly.

In the report, the President was reported to have released only 66% of the capital expenditure in 2001, no capital expenditure was released in 2002, and that in the same year only 25% of recurrent expenditure was released, and also that the Federal Government had borrowed \$107 billion to finance recurrent expenditure without due process. The Accountant-General of the Federation said that he only knew of N29 billion available out of the \$40.7 billion reportedly recovered from stolen funds. He also said that he did not know the whereabouts of the deposits from the proceeds of privatization while \$144 billion GSM licence auction fee was not reflected in the Federation Account.

The Committee also observed that provisions for capital expenditure from 1999 up to 2005 were under-funded and that the President had always recorded excess spending in the recurrent budgets. The report further indicated that the looted funds were not paid into the consolidated revenue fund in violation of the constitution. The Report concluded that the implementation of budgets from the inception of the Fourth Republic has left much to be desired.

Based on the above discoveries, the Senate made a move to impeach the President on account of non-implementation of appropriation budgets and unconstitutional execution of legislated policies. Although it cannot be disputed that there were a number of unconstitutional approaches adopted by the Executive on issues that would ordinarily require constitutional adherence, it is nonetheless important to look at the aspect of the total implementation of an approved appropriation or budget. The question that we are to answer is “Is the President under any constitutional compulsion to exhaust the budgetary expenditure as signed into law?”

According to the 1999 Constitution on Powers and Control over Public Funds Section 81(1):

*The President shall cause, to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year” sub-section (4) reads “If in respect of financial year it is found that –(a) the amount appropriated by the Appropriate Act for any purpose is insufficient; or (b) a need appropriated by the Act, a supplementary estimate showing the sums required shall be laid before each House of the National Assembly and the heads of any such expenditure shall be included in the Supplementary Appropriation Bill.*

From the above, it could be seen that the Constitution has no explicit statement on whether the Executive is under compulsion to liquidate the budgetary expenditure. It is, therefore, a matter of discretion of the president. It could also be argued that under the principle of separation of powers and constitutional provisions, the Executive would not have any excuse for refusing to execute what has been put into law. If the fund is not sufficient to implement a policy, the Constitution provides for submission of a supplementary estimate to the lawmakers. Therefore, the non-implementation of appropriation budgets is not acceptable on grounds of insufficiency of funds.

Other issues raised by the Report of the Senate Public Account Committee were failure of the Executive to give account of certain revenues, and illegal disbursement of unapproved sums of money, all of which were cases of breaches of the Constitution and flagrant abuse of the rule of law.

### **Increase in Projected Budgetary Expenditure by the National Assembly**

Another area that once generated a great deal of friction between the executive and legislature emanates from the increase in the projected Budgetary Expenditure sent to the legislature by the executive in 2002. The then Presidential Adviser (Senate), Alhaji Kashim Ibrahim-Imam, said that:

*We sent to the National Assembly a budget of about N848 billion for the year 2002. The National Assembly eventually passed a budget of about N1.06 trillion with sizeable provision for what they have christened 'Constituency Projects' (to be shared among the legislators at N500 million each). Thus, there was an increase in excess of N200 billion in projected government expenditure.*

This act caused no small controversy between the two arms and even the entire nation. But the question to ask is “Can the National Assembly raise the revenue expectation of the budgetary proposition by increasing the monetary value of the expected revenue higher than as presented by the executive”? Nwabueze (2002:9) has commented that:

*It is noteworthy to remind ourselves that the right to initiate financial legislation is covered by specific provisions in the Constitution of Nigeria, though it is not stated in very clear terms that are exclusionary or prohibitory as contained in the 1958 Constitution of France and most Francophone African countries.*

Thus “Bills and amendments introduced by members of parliament shall not be in order if their adoption will have as a consequence either a diminution of public revenues or the creation or increase of public expenditure (Article 40 France).

Although the Nigerian Constitution did not state this relationship in a very unequivocal term, the provisions are stated in Section 81(2) that only the president has the right to initiate financial legislation. Nwabueze (2002:9) had commented that “there is a very good reason for lodging exclusively in the President the right to initiate financial legislations. Orderly government requires that only those who administer the government and therefore have an intimate connection with it should propose national expenditure and how the money used for it can be raised” (The Guardian, June 18, 2002). Desirable as it may be for only the executive to propose expenditure, the effects no doubt increase the dominance of the executive in the area of policy-making and government generally, considering the importance of finance to government (Covington and Burkhart, 2000).

Commenting on the increase in the projected budgetary expenditure by the National Assembly without recourse to the executive, Nwabueze (2002:9) that:

*Not only can the National Assembly not initiate financial legislation, but it also cannot increase the total amount of the budget beyond what is proposed in the President's Appropriation Bill. It can reduce it but cannot increase it. This is because an increase in the total amount is unconstitutional.*

From the foregoing, it could be deduced that the increase initiated by the legislature could have been caused by their lack of understanding or ambiguity of the constitutional provisions, or they were simply blinded by the drive for personal interest of receiving N500 million each as constituency development fund.

### **The inclusion of Extraneous Clause 80(1) in the Electoral Bill by the Executive**

Another contentious issue that has strained the relationship between the executive and the legislature, particularly the House of Representatives, is the insertion of an extraneous Clause 80 (1) in the Electoral Bill in 2001 by the Executive. The controversial clause was insisting that associations seeking registration as political parties must win at least 15 per cent of the Chairmanship and Councillorship elections in at least two-thirds of the states of the federation and Abuja. The House of Representatives passed an amendment bill to delete that clause. In doing that, it was agreed that since the President had assented to it earlier, it had become an Act whether anything was added or not, and that it could only be altered through an amendment bill. Consequently, at its emergency session on January 3, 2002, the House passed an amendment bill. Before that, the Senate had in December 2001 merely passed a motion asking the President to sign the original bill without the extraneous clause 80 (1).

The implication of that action was that, besides the fact that the motion could not have affected the Electoral Act signed by the President, there would have been two electoral Acts if the President had gone ahead to sign the original bill passed by the National Assembly. This is because even the motion did not ask the President to discard the Act he had signed. The Senate later in January 2002 sent a fresh Electoral Bill to the House for deliberation and amendments, perhaps because of the grave consequences of the lapses that had been observed.

The new bill had about 95% content of the discredited Act and was silent on the controversial clause of the previous one. The amended clause simply required every political association seeking registration to field candidates in at least two-thirds of the states in Nigeria and Abuja. After a heated argument, majority of the members of both houses agreed that it could be included. The Senate added in Section 165 that the previous Act be repealed. The Bill was then passed by both chambers.

### **General Disrespect for the Rule of Law**

In the month of August 2002, the rancor between the legislature, especially the House of Representatives, and the executive nosedived as the House of Representatives, as a follow-up to the Public Account Committee Report of the Senate, moved a motion at a special session on the State of the Nation. The motion was moved by 19 Honourable members and was

adopted by the House which consequently advised the President to resign honourably as President and Commander-in-Chief of the Federal Republic of Nigeria within two weeks from 13th August, 2002, being the date of the motion. Among other things, the House alleged that the National Assembly passed an appropriation bill which was not fully implemented by the President, despite the fact that all budget projections were met and even surpassed, especially in 2000 and 2001 when the country earned the sum of \$14.9 billion and \$14.5 billion respectively from the sale of crude oil.

The House of Representatives argued that in spite of all budgets passed by the National Assembly in the previous years, Mr. President had engaged in a lot of extra-budgetary expenditure, including the Review of National Stadium Contract, provision of more money than budgeted for the National Identity Card Programme, an award of \$1 million to the Ghana Police Force, purchase of 1,500 vehicles for the Nigeria Police without budgetary approvals, spending more money than approved for his rampant trips abroad, amongst others.

The President only said that he had been communicating the lawmakers, and had also defended the allegations when his PDP party asked him to do so. He added that most of the accusations were political talks and not constitutional breaches. What can be deduced from the above is that there have been monumental acts of misconduct, ineptitude and constitutional breaches attributable to lack of knowledge of democratic imperatives, and constitutional provisions, and persistent disrespect for the rule of law on the part of the President in particular, and generally, in the course of transactions between the executive and the national legislature. The refusal of President Goodluck Jonathan to sign the Constitution Amendment bill is now the most contentious issue rocking the Executive-legislative relations in the Fourth Republic.

### **Conclusion and Recommendations**

In conclusion, the number and degree of breaches of the constitution, abuse of office and disrespect for the rule of law in the course of official transactions between the executive and legislature in the Fourth Republic between 1999 and 2011 cannot be totally exhausted. Perhaps, the nature of the presidential system of government and its modality of operation, which Nigeria adopted from America, are all too sophisticated for Nigeria's nascent democracy. There is an urgent need for a review of certain provisions of the 1999 constitution for a clear understanding in order to avoid its misinterpretation by lawyers and judges, considering the fact that the judiciary is the custodian of the constitution.

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