



**FOSTERING SMOOTH LEGISLATURE – EXECUTIVE
RELATIONS IN NIGERIA’S GOVERNANCE STRUCTURE**

BY

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PRESENTED

AT

THE

**INAUGURATION OF THE COMMITTEES OF THE
9TH HOUSE OF REPRESENTATIVES**

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The Rt. Hon. Speaker,
The Deputy Speaker
Principal Officers of the House
Honourable Members
Former Speakers and Deputy Speakers
Clerk of the National Assembly
Clerk of the House of Representatives
Honourable Ministers
Deans of the Diplomatic Corps
Heads of Departments and Agencies
Staff of the National Assembly
Members of the Non-governmental Organisations
Members of the Press
Ladies and Gentlemen

INTRODUCTION

It is my singular honour and esteemed privilege to have been invited to make a presentation on this auspicious and historic occasion of the inauguration of the **Committees of the 9th Assembly of the House of Representatives of the Federal**

Republic of Nigeria. It is axiomatic that the Legislature is the foundational basis and the fulcrum of any democracy, the world over. In fact, when you take away the Legislature, there is nothing that can, in point of fact, be called a democratic system of government. No wonder, for instance, that when military intervention in government was fashionable, the first, and perhaps, the only casualty as soon as that infamous announcement, "Fellow Countrymen, we members of the Armed Forces of the ... blah blah blah..." came through the airwaves it was usually the Legislature, that was immediately suspended, while the other two Arms of government, namely the Executive and the Judiciary continued to function almost seamlessly

Types of Legislature

The type of Legislature can determine the relationship or partnership that exists between the executive and the Legislative arms in a given governmental system. There are four variants of the model, namely:

i. Rubberstamp Legislature: The simplest of Legislatures. It simply endorses decision made by parties and/or the executive branch.

Example: The Dumas of the former Soviet Union and the Mexican Congress.

Features: Make use of little internal structure or expert staff; do not conduct long Legislative sessions; non-democratic; communicate with citizens extensively; do not process great quantities of information; do not hold public hearings; do not amend laws and budgets; resource requirements are few; and are expensive to run.

ii. Arena Legislatures: These are more powerful than rubberstamp Legislatures, and are places of real discussion, speech, and debate.

Example: The British House of Commons today is an Arena Legislature.

Features: Do not initiate or amend policy proposals; the information needs are greater than rubberstamp Legislatures. They require sufficient internal capacity to

organize debate; utilize a Committee system to channel the business of the house; capacity to analyze proposals in order to comment on them critically, and make some technical amendments.

iii. **Transformative Legislatures:** This kind of Legislature represents the diverse societal interests and shape budgets and policies.

Examples: US Congress is a transformative Legislature.

Nigeria falls into this group.

Features: Amend Legislation and budgets received from the executive branch; initiate own policy proposals; reach out to citizens, and conduct public hearings; expensive to operate; highly complex internal structure including strong Committee system; utilize information greatly, and depend heavily on highly trained professional staff.

iv. **Emerging Legislatures:-** These are in the process of change from one type to another. Exercise greater influence over government policies and carry out oversight responsibilities more effectively. Emerging Legislatures

cause major Legislative changes such as amending rules and procedures, building stronger committee, expanding professional staff, developing improved information systems, and others

Examples: Mexico's Congress, Kenya's and Uganda's Parliaments.

Features: Play an assertive role in the budget process using the Parliament Budget Office; Independent of executive and set their own budgets. They require new kind of professional staff, better information systems, additional office space, and other capacities to help in carrying out representation, lawmaking, and oversight roles more effectively. Legislators demand more Parliamentary staff members, who must respond more quickly, work faster, and do more than they have in the past.

Important Note: Emerging Legislatures are under significant stress, the managers and staff struggle to meet the increasing demand.

THE RELATIONSHIP BETWEEN THE LEGISLATURE AND THE EXECUTIVE IN THE GOVERNANCE STRUCTURE OF NIGERIA

It is gratifying that after a long period in the history of Nigeria which was marked by intervention of the military in the governance of the country, the nation, a couple of months ago, marked an unbroken period of twenty years of civilian democratic rule! This is a milestone because prior to this, the longest we had ever experienced was six years, after independence between 1960 and 1966. And after twenty years, Nigeria's democracy can no longer be called nascent, but a couple of years ago, it was rightly so described, having just emerged from authoritarian military rule. And by happenstance, the person who emerged as the President, following a return to civilian rule, was a retired military general. So, a combination of authoritarianism, which was the dominant political culture, which values, norms and attitudinal dispositions many Nigerians had internalized and the emergent political wheel being driven by a former General, was a perfect recipe for constant friction between the Executive Arm of government that sought to impose its will on a Legislative Arm which it saw as an irritant. Given that majority of Nigerians had known only

military rule up until that time, democratic culture was alien to them. Therefore, the Legislature and Executive relationship was characterized by friction, acrimony and mutual suspicion, especially in the area of budgetary appropriation which has remained unresolved to date as the argument has continued to rage on whether the Legislature has powers to raise or reduce a budgetary figure that is submitted to it by the Executive.

THE RELATIONSHIP OF THE LEGISLATURE AND THE EXECUTIVE IN THE CONTEXT OF SEPARATION OF POWERS.

The relationship of the two Arms of government can best be understood and analysed within the context of the Doctrine of Separation of Powers as propounded by the French Philosopher, Montesquieu. It is the practice of allocating the powers of government among branches to avoid concentration of powers on one Arm as to enable it overwhelm the others to the point of abuse or tyranny. The doctrine therefore advocates the separation of governmental powers into the Legislative, Executive and Judicial Arms where the Legislature is saddled with the function of making laws for the order and good governance of the country, while the Executive implements the laws

and the Judiciary interprets those laws in order to settle conflicts where they arise.

In Nigeria, the doctrine of separation of powers was first introduced by the Presidential Constitution of 1979 and was retained in 1999. It is instructive, and I dare say, perhaps for a reason that in allocating powers to the three Arms of government, the Constitution of the Federal Republic of Nigeria, 1999 listed the Legislature ahead of both the Executive and the Judiciary. The framers of the Constitution allocated powers in Section 4, 5, and 6 of the Constitution to the Legislative, Executive and Judicial Arms, in that order.

Section 4 of the Constitution vests Legislative powers of the Federal Republic of Nigeria in a National Assembly which shall consist of a Senate and a House of Representatives.

Although Constitutions usually provide for separation of powers explicitly as if each branch of government remains inviolate with separate and distinct roles, however the complexity of governance necessitates growing inter-relationship among the branches of government in practice. Thus, through checks and balances, they can

work harmoniously in a bid to ensure that no single branch gains absolute powers over the other.

Legislative Powers

➤ **Express Powers** i.e. provided for in the Constitution, **Section 4**

Exclusive list i.e. For NASS

- i. Section 4(7) for SHoAs, Concurrent Legislative List
- ii. Powers and Control over Public Funds (**Section 80 - 83 & 120 - 123**)
- iii. Approval of Executive and Judicial appointments (by the Senate), **Sections 147(2), 171(4), 153(1) and (2); 238(1) and 250(1)**
- iv. Approval of the appointment of a new Vice President in a situation where the President-elect dies or is unable to be sworn, wherein the Vice President earlier on elected with that President had been sworn in and then another Vice President was nominated, **Section 136**
- v. Power to impeach the President or Vice President, **Section 143**
- vi. **Section 143 & 188** Powers of Impeachment

- vii. Alteration of the Constitution **Section 8 & 9**
- viii. Oversight (**Section 88, 89, 128 & 129**)
- ix. Ratification of Treaties and Executive Appointment
(**Section 12**) SHoAs can domesticate treaties
- x. Powers to regulate its own procedure – **Section 60 & 101**

Implied Powers

Powers necessary for the effective execution of express powers

- i. E.g. Powers of appointment also indirectly means powers to recommend for removal

Privileges and Immunities

Conditions necessary for the Legislature to prosecute its powers i.e. not just unnecessarily given

- i. 'Privileges' i.e. rights enjoyed by the Legislature collectively and by members of House individually conferred by the Legislative Houses (**Powers and Privileges**) ACT CAP 208
L.F.N 1990 - ACT CAP L12 L.F.N 2004
- ii. Section 101 applies to SHoA – within the ambit of the SHoA Constitutional powers

Scope of Privileges

- i. **Freedom of Speech** – Free to speak what is fit at debate.
This also covers any document circulated by a Legislator in the form of report or motion i.e. Members are insulated from liability
- ii. **Freedom of Arrest or Molestation** - Derived from customs and conventions, no arrest or molestation during sitting and when journeying to or returning from Parliament. Though, not against treason, felony and breach of peace
- iii. **Privileges of Evidence before Committees** – Powers to order attendance of witness, Issue and Service of the Summons to produce documents before any Committee, etc. – **Section 4 - 13** of Legislative Houses (**Powers and Privileges**) Act
- iv. Powers to compel attendance of witness by means of issuance of a warrant of arrest directed at a police officer for the apprehension of the witness or person. Check

Legislative House (Powers and Privileges) Act Section 6,
8, 9, and 13

- v. **Restriction on Evidence as to Certain Matters – Section 23** of the Legislative House (Powers and Privileges) Act.
i.e. debates, minutes of Committee meeting unless permitted by authority of the House
- vi. **Restriction on Access to Legislative House – Section 2** of Legislative House (Powers and Privileges) Act
- vii. **Restriction of Service of Court Process within Legislative Chambers or Precincts**
- viii. **Others** - E.g. regulates own affairs, right to expel unfit members, direct Attorney General to prosecute persons guilty of contempt of the House, etc.

LEGISLATIVE OVERSIGHT OF THE EXECUTIVE ARM

Of all the powers conferred on the National Assembly by the Constitution perhaps the most widely and more commonly deployed is the investigative power, which it exercises through its various Committees appointed under the power derived from **Section 62** of the Constitution. The Section provides that the Senate or the House of

Representatives may appoint a Committee of its members for such special or general purpose as, in its opinion, would be better regulated and managed by means of such a Committee, and may by resolution, regulation or otherwise, as it thinks fit, delegate any functions exercisable by its to any such Committee.

The power to conduct investigations conferred on the Senate or House of Representatives by **Section 88** of the Constitution is only for the purposes of exposing corruption, inefficiency or waste in the execution or administration of laws within the Legislative competence of the National Assembly. And for the purposes of any investigation under Section 88 above, the Senate or the House of Representatives is empowered under **Section 89** of the Constitution to:

- i. procure all evidence, written or oral, direct or circumstantial and examine all persons as witnesses whose evidence may be material to the subject matter;
- ii. require such evidence to be given on oath;
- iii. summon any person to give evidence or produce any document or other thing in his possession or under his control; and

iv. issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House or the Committee in question and to order him to pay all cost which may have been occasioned in compelling his attendance or by reason of his failure, refusal, or neglect to obey the summons, and also to impose such fine as may be prescribed for any failure, refusal or neglect; and any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law.

The Senate or the House of Representatives can summon any person to appear before it at plenary or before any of its Committees. Most times, however, the oversight functions are conducted through the Committees of both Houses. And in the course of carrying out those oversight activities, conflicts arise between some Committees and some Ministries, Departments and Agencies (MDA's) of the Executive Arm on the extent of investigative powers of the Committees and to what purpose. At certain times officials of the Executive Arm had

either refused to attend hearings when invited or stonewalled when they attended, all which have impeded investigations.

The failure, refusal or neglect of Agencies or Officials of the Executive Arm to respond to summons only serves the purpose of straining relationship between the Legislature and the Executive, and invariably hurts the smooth relationship required to build a strong polity and a vibrant economy for the nation.

It amounts to a serious act of disrespect to ignore summons to appear before the Legislature which could lead to the issuance of a warrant of arrest, a development that could worsen the already strained relationship between the two Arms of government. This can clearly be avoided and should be avoided.

CONCLUSION

It is therefore advisable that Ministries, Departments and Agencies should honour summons to appear before either the Senate or the House of Representatives at plenary or before any of its Committees as failure, refusal or neglect to do so would not ensure a smooth relationship necessary for orderly and efficient governance and this

could tempt the Legislature to apply its powers fully, as provided by the Constitution to enforce appearance before it.