

AN ANALYSIS OF THE OPERATION OF SEPARATION OF POWER IN NIGERIA'S PRESIDENTIAL DEMOCRACY

BY

OGU SUNDAY CHUKWUMA, Ph.D

Department of Political Science, Federal University Lokoja.

Email address: dr.ogusunday@yahoo.com

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VICTOR OGU ADIMCHI

Department of Political Science, Federal University Lokoja.

Abstract

The study examined the operation of separation of power in Nigeria's presidential democracy. It adopted secondary source of data which include Textbooks, Journals, Magazines, Newspapers and other documentary materials relevant to the study. Separation of power lead to specialisation among the three arms of Government, prevent tyranny and dictatorship in the state and promote rule of law. The problems the study attempts to address are the feud between the Executive and the Legislature on budget issues, the problem of passing bills into laws and delay in court processes which have negative effects on human rights. The study recommended that there should be effective cooperation and partnership between the arms of Government during budget preparation and passage of bills into laws. 1999 constitution should be review in line with the yearnings and aspirations of Nigerians. All arms of Government and Government agencies should adhere strictly to the rule of law. Government should establish more courts and recruit more Judicial officers.

Keywords: Separation of power, democracy, rule of law, presidential system, bill.

Introduction

Separation of power is one of the cardinal principles of democracy which emphasizes division of the functions of government into its three basic organs. The three basic arms of democratic states are; Executive, Legislature and Judiciary. Democracy is a system of government where the citizens of states are free to elect their representatives/leaders through free and fair elections. Separation of

powers is relevant because of its tendency to prevent tyranny and dictatorship in a state, ensure the liberty of citizens and avoid over-concentration of power in one arm of government. Separation of powers leads to specialization among the arms of government. The executive arm of government implement government policies and programmes, legislature makes laws for good governance while the judiciary interprets the law/constitutions. The three arms of government are separated both in functions and in personnel. A member of the executive cannot be a member of the legislature and a member of a legislature cannot be a member of the judiciary or executive.

Separation of power has in-built checks and balances system. The in-built checks and balances system makes it easy for the three arms of government to be careful in discharge of their schedule of duties. For instance, the legislature can impeach the executive if he/she goes contrary to the constitution of the state. The judiciary can declare laws made by lawmakers unconstitutional. The chief executive (President) can refuse to assent to bills passed by the lawmakers. Bill is a proposed law. Nigeria is one of the countries practising separation of power. Separation of power can be effectively practiced in a presidential system of government. Nigeria became a sovereign state in October 1, 1960 and inherited the cabinet system of government from Great Britain. In 1979, Nigeria departed from parliamentary system of government and started practising the presidential system of government and separation of power.

Alhaji Shehu Shagari of National Party of Nigeria (NPN) won the presidential election held in Nigeria in 1979 and became the first Executive President of the Federal Republic of Nigeria. United States of America and Nigeria are among the typical examples of countries practicing separation of power and presidential system.

In a presidential system of government, the President is both the Head of State and the Head of Government, and exercises real executive powers. The president is not chosen by the legislature, but elected by the electorates directly. The principles of collective responsibility which obtains in a cabinet system of government does not apply to a presidential system of government. The principle of check and balances is applicable as a fallout of the principle of separation of powers embedded in the presidential system of government. For instance, in the United States of America, the president can veto Acts of Congress; the Legislature can impeach and remove Federal Judges and the president, while the Judiciary can declare a law unconstitutional through the process of judicial review (Ibiyemi, et.al 2001:35).

Separation of powers which began in Nigeria's democracy in 1979 is aimed at achieving cooperation and partnership among the three arms of government, so as to ensure good governance (NILS, 2015). In Nigeria's democracy, each organs of government derive its power from the constitution. One of the features of Nigeria's democracy is supremacy of the constitution. The 1979 and 1999 constitutions of the Federal Republic of Nigeria specified the functions and powers of the three arms of the government. Delay of court process infringes on people's fundamental human rights. There are awaiting trial inmates who have been behind jail cells for longer period. Rule of law means equality before the law, supremacy of constitution and preservation of fundamental human right.

Separation of power leads to specialisation among the arms of government and also creates some challenges in Nigeria. For instance, there was Kaduna state Executive/Legislative crisis in 1981 which

finally led to the impeachment of the Executive Governor of Kaduna State. There have been feud between the Executive and Legislature on budget issues.

The refusal of the Executive President to assent to the Electoral Act (Amendment) Bill 2018 and the inability of the National Assembly to muster the constitutionally required two third votes to veto the president's veto was considered by some Nigerians to constitute setback in Nigeria's democracy.

The problems of the study are the controversy between the Executive and Legislature on issues bordering on budget estimate, passage of bills into laws and delay of court process. Are there cordial relationship between the arms of government in discharge of their schedule of duties? In the year 2000, the National Assembly of Nigeria passed the Niger Delta Development Commission (NDDC) bill with over two-third majority thereby overriding President Obasanjo's veto. The research method adopted in this study is secondary source of data. The secondary source of data includes, Textbooks, Newspapers, Journals, Magazines and other documentary materials relevant to the study. The objectives of this study are to.

- Examine the operation of separation of power and the functions of the three arms of Nigeria's Government from 1979 to present fourth Republic.
- Examine the challenges/problems militating against the operation of separation of power in Nigeria's democracy from 1979 to 2022.
- Recommend measures that will ease the problems militating against the operation of separation of power in Nigeria's democracy.

This study is expanding on the existing literature/scholarship.

Theoretical Framework

The theoretical framework adopted in this study is the theory of separation of power propounded by Baron De Montesquieu. According to Anyaele (1994:110), "it was a French Political thinkers and Jurist, Baron De Montesquieu who developed and popularised

the principle of separation of power in his book entitled “*Espirit de lois*” which means – the spirit of law published in 1748. Political Scientist like Locke, Jefferson, Rousseau, Bodin, Plato and Aristotle had earlier express their views on the principle of separation of powers. Montesquieu argued inter alia: that if right, liberty and freedom of citizens are to be maintained and guaranteed, then the three organs of government must be separated and entrusted to different people to administer. That there will be chaos, violence, dictatorship, tyranny and oppression if there is no separation of powers. That the functions of the Government of law making, execution and adjudication should be handled by different organs of Government without interference”.

The separation of power with its checks and balances help to maintain liberties of citizens, prevent tyranny and dictatorship in the state. The Separation of power in Nigeria’s democracy aims at making three organs of Government to work as partners so as achieve good Governance.

Literature Review

Separation of Power in the Nigerian Presidential System of Government

Separation of power with its in-built checks and balances operate effectively in presidential democracy. In presidential system of government, the Legislature makes the law, the Executive applies the law and the Judiciary interprets Laws. None of the three organs of Government should usurp the power or interfere in the working of the other arms. No one person or organ of Government to combine the Legislative, Executive and Judicial functions or powers (Ogu, 2021). In Nigeria, the practice of separation of power with its in-built checks and balance started in 1979 with Alhaji Shehu Shagari as the first Executive President. The three arms of government are separated both in function and personnel. The Executive President and the members of legislature are directly elected in general election by the electorates. Nigeria operates unicameralism at state level and bicameralism at the Federal level. The

Ministers/Commissioners are appointed by the President/Governors subject to the approval of the Legislature.

The Legislative bills passed by the Legislature will be signed in to laws by the President. The Executive can be impeached by the Legislature if he/she commit impeachable offence. The Judiciary can declare laws unconstitutional (1979, 1999 constitution). In Kaduna, the Executive Governor was impeached by the Kaduna state House of Assembly in 1981. The Governor was the first Governor impeached in Nigerian Presidential democracy. According to NILS (2015:61):

The doctrines of separation of power does not envisage a fierce competition for power between the three arms of Government but rather collaboration, cooperation and partnership.

Democracy is best served when partnership between Legislature, the Executive and the Judiciary is encouraged and friction minimized.

Separation of power aims at ensuring the liberty of citizens and prevention of dictatorship in the state so as to ensure good Governance. The essence of government is to satisfy the yearnings and aspirations of the citizens. Cooperation and partnership among the arms of government are necessary in Nigerian democracy. What are the functions/powers of the three arms of the Nigerian Government?

Functions of the Arms of Nigeria’s Government

The three arms of Nigeria’s Government namely, Executive, Legislative and Judiciary are important. The President, Governor, Ministers and commissioners can be classified as the Executive arm of Government charged with the responsibility of implementing policies and programmes of the country/state. The President is the head of the Executive arm of Government. According to Ibiyemi et.al (2001:36) the

powers of the Executive President are as follows:

The President is both head of state and head of Government.

He appoints Ministers and other members of his cabinet (subject to the approval of Legislature).

The President nominates for approval Ambassadors and other representatives of the country in foreign countries.

He enter into treaties with other countries subject to the approval of the Legislature.

Apart from the above mentioned powers/functions, the Executive President signs bills into laws, exercises prerogative of mercy, awards National honours to deserving citizens, attends the head of state and Government meeting of international organisations, prepares the annual budget and present them to the National Assembly for consideration and Formulates and implements the country's policies and programmes. The public service helps the Executive in policy formulation and implementation. The President may decide not to sign the bills passed by the National Assembly. The National Assembly (two third) has constitutional power to override the president's veto.

Functions of Nigerian Legislature in a Presidential Democracy

The legislature is the law making body. Nigeria operates bicameralism at federal level and unicameralism at the states level. The bicameralism at the federal level is operated by National Assembly. The House of Senate presently is composed of 109 senators while the House of Representatives is composed of 360 members. The main functions of the National Assembly of Nigeria under the present presidential democracy are as follows:

Makes laws for good governance, amend the constitution when necessary, approves political appointments made by the Executive, approves budget prepared by the

Executive, Approves treaties negotiated by the President, Carry out oversight functions and represents/express the peoples interests (Ogu, 2021).

One of the major functions of the National Assembly is making laws for good governance. The procedure for passage of bills into laws in National Assembly is rigorous. Every bill must go through first reading, second reading and third reading before it can be passed to the President for his/her assent. If the President refuse to sign bills into laws after 30 days, the National Assembly can override the President decision and pass the bill into Law if two third of the members of National Assembly signed, thereby overriding the decision of the President (1999 constitution section 58).

The National Assembly can be described as the centre of Nigerian democracy. The parliaments are the people's representatives and were directly elected by the electorates in general election. The bills passed by the National Assembly are expected to be in line with yearnings and aspirations of Nigerians. Refusal of any President to sign bill into law can be regarded as controversial. In the year 2000, the National Assembly of Nigeria passed the Niger Delta Development Commission (NDDC) bill with over third majority, thereby overriding President Obasanjo veto. In 2018 Electoral Act (Amendment bill) the President refused to assent the electoral Bill and National Assembly were not able to master the constitutional required two third votes to veto the President's veto (Yakubu and Babatunde, 2020). Nigeria now operates ninth National Assembly and bills passed by them should be favourably considered by the other arms of Government. Separation of power does not mean competition for power among the organs of Nigerian Government.

Functions of the Judiciary

The Judiciary is the arm of Nigerian Government charged with the responsibility of interpreting the constitution and adjudicating cases. The Judiciary are the

defenders of democracy/human rights. The Judicial officers are not elected but they are appointed by the Executive base on their profession.

According to Ibiyemi, et.al (2001:49), “the Judiciary interprets the law, it settles disputes between any parties- individuals, organisations and government – whether they are civil or criminal cases. The Judiciary ensures that the laws are obeyed. It determines a person, organisations or Government is innocent or guilty, and applies penalties as appropriate. The Judiciary interprets the constitution and protect it against violation. It can declare any action of Government unconstitutional and therefore null and void”. The Judicial arm of Government can also advice the two arms of Government on some sensitive matters.

In short, the functions and powers of the three arms of Government are clearly stated in the constitution of the Federal Republic of Nigeria (1999 constitution as amended). The supremacy of constitution/rule of law are the features of Nigerian presidential democracy. Separation of power which is the topic of this study aims at achieving cooperation and partnership among the organs of Government so as to ensure good governance.

Advantages of Separation of Power

The practice of separation of power with its inbuilt checks and balances in Nigerian presidential democracy has many advantages. According to Anyaele (1994:111):

Separation of power guarantees and maintain the right, liberty and freedom of the citizens. Power are separated among the organs of Government in order to avoid chaos, violence, dictatorship, tyranny and oppression in a country. Separation of power leads to division of labour and specialisation in the art of Governance. Another advantages of separation of power is that it results in one organ checking the activities of

other organs known as check and balances.

Are the Judicial arm of Government adequately protecting the rights and liberties of Nigerian citizens? Are there delay in court processes? Are there quick dispensation of Justice in fair and just manner?

Challenges/Problems confronting the Practice of Separation of Powers in Nigeria’s Presidential Democracy

There was Executive and Legislative crisis in Kaduna States in 1981. During the general elections held in 1979, National Party of Nigeria (NPN) won 69 out of 99 seats in the Kaduna State House of Assembly while Balarabe Musa of Peoples Redemption Party (PRP) won the Governorship election. The NPN members of Kaduna State House of Assembly (69) finally removed Balarabe Musa as Governor of Kaduna State in 1981 (Ibiyemi, et.al. 2001:88). The 1979 constitution of Federal Republic of Nigeria made provision for impeachment. The interests of citizens should always be taken into consideration by the arms of Government irrespective of party affiliations. Cooperation and partnership among the organs of Government in line with rule of law can ensure good governance. One of the challenges militating against the Judiciary is delay in Court process. According to Bakare (2019:10), “Till date, there are cases in court that have been pending for over 20 years. There are awaiting inmates who have been behind jail cells for longer period than they will get even if they are eventually convicted for the crimes they are charged with”.

“The Governor of Edo State, Mr. Godwin Obasaki, has solicited the support of the Nigeria Bar Association towards tackling the problems of overcrowded prisons in the state. Nothing that awaiting trial inmates account for the larger percentages of the prison population. (Ramon, 2008:37). One of the aims of separation of powers is to ensure liberty of citizens. Justice should not be delayed.

Refusal of President to Assent to Bills passed by the Parliament.

The president will assent bills passed by the National Assembly before they become laws. If the president decide to withhold assent after 30 days, Section 58 (5) empowers the National Assembly to veto the President veto and pass such bills into laws with two-third majority.

In June 2000, the National Assembly of Nigeria passed the Niger Delta Development Commission (NDDC) bill with over two-thirds majority, thus overriding President Olusegun Obasanjo's veto.

Bills that are in line with yearnings and aspirations of Nigerian citizens should be passed and signed into laws. The actions of the National Assembly of overriding the President's veto was a welcome development by Nigerians in consonance with the 1999 constitution (as amended).

In the Electoral Act (Amendment) bill 2018, the President refused to assent the bill passed by the National Assembly. The inability of National Assembly to muster the constitutional required two third vote to veto the President's veto was considered by many Nigerians to constitute setback in Nigeria's democracy.

The bill contains many provisions that are intended to address the challenges against the conduct of transparent and credible elections in Nigeria (Yakubu and Babatunde, 2020). The National Assembly as the people's Representatives should be courageous to do the needful when the need arises. The bills passed by Nigerian Legislature should be in the best interest of Nigerians and should not be easily thrown into dust-bin.

According to Elegbede, et.al (2022:2):

The Electoral Act Amendment bill, signed into law on Friday by President Muhammadu Buhari will deepen democracy, checkmate rigging and allow for more

participation in the electoral processes in the country. Top Nigerian Politicians and organisations like Yiaga Africa that reacted to the development, added in separate interview with Saturday telegraph that signing of the bill into law marked a new beginning in the Nation's democratic process, adding that it was an indication that power belongs to the people.

The Electoral Act Amendment bill 2022 was finally signed into law by the President on Friday, 26th February 2022 after several presentations by the National Assembly. The Electoral Act Amendment Bill contains issues that will help to move Nigeria's presidential democracy forward. Credible and transparent electoral process will minimize political apathy in Nigeria's democracy.

Feud between the Executive and Legislature on Budget Issues

There have been controversy between the Executive and Legislature on budget issues. According to Okoh (2018:80):

There has been constant feuding between the National Assembly and the Executive. These feud share borders on issues of the Authority to alter estimates as presented by the Executive. For instance, the Minister of power, works and Housing, Mr. Babatunde Fashola SAN during 2017 budget saga alleged that his ministry's budget was tapered with and illegal project" inserted. The Executive and its supporters have held that the National Assembly has no power to alter or insert new items in the estimates. Those who belong to this school of thought partly reason that since the National Assembly is not a revenue generating agency, it cannot control the money it does not generate. However, it could be said that the question of Authority of the parliament to scrutinize the budget and make necessary amendment has

been laid to rest by the pronouncement of a Nigerian Court on March 16, 2017 in a suit by a Lagos lawyer Femi Falana SAN. Justice Gabriel Kolawole of the Federal Court Abuja in his ruling on the matter said the whole purpose of section 81, 85 and 89 is to ensure that Executive and Agencies under its control are subjected to some form of oversight by parliament. In his words, National Assembly was not created by drafters of the constitution and imbued with the powers to receive budget estimates as a rubber stamp Parliament.

Lawmakers are expected to examine budget properly.

Appropriation bills should pass through the due process. According to Ameh (2018:3), “the National Assembly on Friday responded to the issues raised by President Muhammadu Buhari on 2018 budget, justifying the insertion of projects and cuts in the amount allocated to projects in the appropriation bill originally proposed by the President on November 7, 2017.

It explained that project and votes in 2018 budget were rejigged to correct the alleged imbalance in Buhari’s version of the bill. According to the Legislature, project as proposed in the bill reflect the needs of ordinary Nigerians”. The organs of Government are expected to discharge their schedule of duties as stipulated in the constitution of Nigeria (1999 constitution as amended).

Timing of Presentation of Budget to the Parliament.

Budget is prepared by the Executive and presented to the National Assembly for consideration. Okoh (2018), noted that the parliament does not have enough time for wider consultation. This is due to the timing of the presentation of the budget estimate by the Executive to the National Assembly. The constitution does not specify time for presentation of budget but rather obfuscates

by stating that 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 expenditures of the federation for the next financial year. The budget need to be prepared and presented to the legislature early enough so that there will be no delay in the passage of bills into law. According to Anyaegbunam (2018:17), “the current trend is that 2016 Appropriation Bill was laid by President Buhari before the Joint session of the National Assembly on December 22, 2015. The Bill was passed by the National Assembly on March 22, 2016 and received presidential assent on May 6th 2016, 2017 appropriation Bill was presented to the Joint session of the National Assembly on December 14, 2016 and was subsequently passed by the National Assembly on May 11, 2017. It received the assent of the then Acting President Yemi Osibanjo on June 12, 2017.”

The 2020 budget was presented to the National Assembly by President Muhammadu Buhari on 8th October 2019. (Legislative Digest, 2019:5). The problem is that the 1999 constitution of Nigeria did not specify the particular month the Executive President is expected to present the budget to the National Assembly.

The Issues of Constituency Projects

There has been controversy between the Executive and Legislature on constituency projects. According to Okoh (2018:82):

The issues of constituency project is one that generated controversy between the Executive and Legislature. The Executive has always accused the Legislature of including states and Local Government project thus adding financial burden on the Federal budget.

There is need for cooperation and partnership between the organs of Government so as to achieve the goals and objective of the state. According to Anyaegbunam, (2018:17), “On

June 20, 2018, President Buhari Stated, “ The Legislators made cuts amounting to ₦ 347 billion in the allocation to 4,700 projects submitted to them for consideration and introduced 6,403 projects of their own amounting to ₦578 billions. Many of the projects cut are critical and may be difficult if not impossible to implement with the reduced allocation. Some of the new project inserted by the National Assembly has not been properly conceptualize, designed and costed, and will therefore be difficult to execute”. Separation of power requires high level of Political maturity and discipline among the arms of Government so as to achieve the desired goals of the state. According to Ameh et.al (2018:3), “however the presidency on Friday insisted that members of the National Assembly deliberately distorted the 2018 budget presented to them by the President in order to increase their allocation for constituency projects”. Separation of powers requires partnership and cooperation among the three arms of government.

Over Sight Function of the National Assembly

Oversight function is one of the important roles of National Assembly. Equally on the same agonizing taste, is the reluctance of some notable parastatals and even refusal of the likes of the Central Bank of Nigeria, Nigerian National Petroleum Corporation and few others to summit and deliberately defend their budget before the committee of the National Assembly” (Anyagbunam, 2018:19).

Erring government establishment can be called to order by the law makers. National Assembly is peoples Representatives and centre of Nigeria’s democracy. “A verbal war erupted between the National Assembly and the Executive over 774,000 job planned to cushion the effect of COVID-19 pandemic on Nigerians, particularly the Vulnerable. At a public hearing in Abuja, the two arms of Government threw tantrum at each other with accusation and counter by the concerned parties. While the Minister of state for

Labour and productivity, Mr. Festus Keyamo (SAN), accused the lawmakers of wanting to own the process, the lawmaker in turn alleged that the Minister was trying to use the scheme to build Political structure across the 774 local Government Areas at 1000 per Local Government” (Odevale, and John, 2020:6). Recruitment in the Nigeria’s Public Service is the function of the Executive arm of the Government. Recruitment in Public service should be carried out according to the 1999 constitution which emphasizes the Federal character policy.

The issues relating to budget formulation need the cooperation and collaboration between the executive and legislative arms of the government. Beyond the formulation, there is need for effective implementation of the Appropriation Acts. That was the position of Onuoha and Peter (2010) when they asserted that despite the incremental budgeting, the quality of life of the people is till poor. This is because there is no commitment to the judicious implementation of the Appropriation Acts by the executive arm of the government and the failure of the legislative arm of the government to carry out adequate oversight on the executive.

Conclusion

The operation of separation of powers in Nigeria’s presidential democracy started in 1979 (second Republic) with Alhaji Shehu Shagari as the first Executive president. Separation of power helps to promote rule of law and prevent tyranny/dictatorship in the state. The system makes the three arms of Government to be careful in discharge of their schedule of duties. The three arms of Nigeria’s Government are separated both in functions and in personnel. The challenges identified in the operation of separation of power in Nigeria’s presidential democracy include, the impeachment of the Executive Governor of Kaduna state in 1981, the refusal the Executive president to assent the electoral Act (Amendment) bill 2018 and inability of the National Assembly to muster the constitutional required two thirds to veto the

President's veto, the constant feud between the Executive and Legislature on the budget estimates, the timing of the presentation of the budget to National Assembly by the Executive president, the controversy between the Executive and Legislature on the constituency projects, reluctance of some parastatals to come to National Assembly for budget defence and delay in court process. The constitution of the Federal Republic of Nigeria (1999) did not specify the particular month the budget should be presented to the Legislature. The Electoral Act Amendment bill 2022 was finally signed into law by President Muhammadu Buhari on Friday 26th February 2022 after several presentations. The development really proved that Political sovereignty reside with the Electorates and the aim of separation of powers in Nigeria's presidential democracy is to ensure cooperation and partnership among the arms of Government so as ensure good governance.

Recommendations

In view of the findings/conclusion of this study, the following recommendations are necessary.

Effective Cooperation among the Arms of Government

- i. There should be effective cooperation and partnership among the arms of Government. The feud between the Executive and Legislature on budget issues and passing of bills into law can be solved through effective cooperation and partnership during budget preparation and the period of passing bills (second and third reading). There is the need for the arms of Government to come together and agree on what should constitute "constituency projects".
- ii. **Constitutional Review:** The National Assembly should review the 1999 constitution of Nigeria in line with the yearnings and aspirations of Nigerians presently. The constitution should specify the month the Executive

president should submit his prepared budget to the National Assembly for consideration. Having specific month for budget presentation will enable the president and National Assembly to perform their schedule of duties on time.

- iii. **Recruit more Judicial officers:** Government should establish more courts and recruit more Judicial officers so as to solve the problem of delay in court processes.
- iv. **Adherence to rule of Law:** The organs of Government and other Government agencies should adhere strictly to the rule of law.

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