

LEGAL AND INSTITUTIONAL FRAMEWORK FOR SEPARATION OF POWERS IN NIGERIA:
PROSPECTS AND CHALLENGES*

Abstract

The doctrine of separation of powers is a key principle in ensuring checks and balances within a democratic system, and is essential for upholding the rule of law and preventing abuse of power. In Nigeria, despite having a constitutional framework that ostensibly provides for the separation of powers between the executive, legislature, and judiciary, there are numerous challenges that hinder its effective implementation. These challenges include executive dominance, lack of independence of the judiciary, and weak institutional frameworks for accountability and oversight. This article examines the legal and institutional frameworks in Nigeria that are meant to enhance the separation of powers, and the challenges that impede their effectiveness and recommends ways to curb these challenges.

Keywords: Separation, Powers, Prospects, Challenges

1. Introduction

The concept of separation of powers has been an age-long concept, which has found expression in the Constitution of Nigeria. The concept serves as an antidote to the tyranny associated with absolute power. Power is the ability to create, control, make alive or bring to a dead end, in relation to beings whether real or abstract. God has power over the universe and the things or beings inside it. This is divine power. A sovereign state exercises political power over things and beings within its territory. This is sovereign power. The Nigerian Constitution acknowledges that sovereign power belongs to the people¹ of Nigeria from whom the government through the constitution derives all its powers and authority.² What the above provision contemplates is that the people have surrendered their power to the state of Nigeria in return for their security and welfare. This supports the jurisprudential theory of social contract which exists between a sovereign state and its people. There is no controversy about the fact that people, by means of choosing at the poll who becomes President of the Federal Republic of Nigeria and Commander-in-Chief of the Armed Forces, Executive Governors of States, and Local Government Chairmen, demonstrate power. A people-oriented constitution embodies the power of the people which is passed on to the government. It is clear, however, that the 1999 constitution lacks those characteristics and therefore, not a people-oriented constitution; it is a constitution made by military government of the time anchored on the 1979 constitution and established by a Military Decree.³

2. Legal Framework of the Doctrine of Separation of Powers in Nigeria

The extant legal basis for the practice and implementation of separation of powers in Nigeria is the 1999 Constitution of the Federal Republic of Nigeria, as amended, which is the *grundnorm* or the *fons et origo* from which the legal authority is derived in any legal system. The importance of a constitution cannot be over emphasized for the effective implementation of separation of powers in any jurisdiction. The principle of separation of powers rests on the idea of restraining of arms government in their exercise of power, and in most emergent African states, the experience has been that the mere existence of a constitution does not automatically translate into the practice of separation of powers, since a power may be exercised on legal authority; however, the fact is not necessarily determinative of whether or not the action was constitutional.⁴ For example, sections 4, 5 and 6 recognize the legislature, executive and the judiciary respectively. Separation of powers or classification of government powers is the division of government powers into the three branches of legislative, executive and judicial powers, each to be exercised by a separate and independent arm of government as a preventive measure against abuse of power, which will occur if the three powers are exercised by the same person or group of people. Separation of powers is the division of the powers and functions of government among the three independent and separate arms of government, that is the legislature, executive and judicial, to act as a check and balance on one another to prevent the excesses and abuse of powers.

3. Institutional Framework of Separation of Powers in Nigeria

Separation of powers is a mechanism for promoting and enhancing independence of the organs of government in building a virile and stable political environment. Mbachu argued that there can be no liberty where executive, legislative and judicial powers are united in one person or body of persons, because such concentration is bound to arbitrary despotism. A constitutional democracy that is anchored on the modern principles of liberal culture of representative democracy expresses its powers in the three forms; legislation, execution (implementation) and judicial precedence⁵.

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¹ Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), section 14(2) (a)

² *Ibid*

³ *Ibid*

⁴ MJC Vile, *Separation of powers and Separation of Powers* (2nd ed, Indianapolis: Liberty Fund Inc., 1998) 1; CJ Friedrich, *Limited Government: A Comparison* (Prentice-Hall, 1974) 13-14.

⁵ O Mbachu, *History of Political Thought: From City-State to Nation-State*, (Owerri Achugo Publications Ltd, 1998), p. 96

The Legislature

The legislature is the organ of government that comprises the elected representatives from geo-political zones whose primary function is to make laws and change laws and policies for the welfare of the citizenry. In democracy, the legislature plays a crucial role to give voice to the voiceless and ensure effective representative of all interest and cultural affiliations or segments of a country. Legislature can be described as a symbol of liberal democracy, because it is the institution or arm of government that always receive the sledge hammer of military juntas whenever there is coup *d'état*, as the executive and the judiciary continue to even function during such periods. The primary function of the legislature remains enactment of laws, modification or amendment of existing laws to make them to be effective to address the multifaceted and critical needs of populace through good governance⁶. Section 4(1) of the 1999 Constitution provides that 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 House of Representatives⁷. The National Assembly shall power to make law 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 I of the Second Schedule to this Constitution⁸. The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State⁹. Parliament is one of the three arms of government, and the highest law-making body in a country or state. In Nigeria, parliament is known as the National Assembly at the federal level and it consists of the Senate and the House of Representatives. At the State level, parliament is known as the House of Assembly. Under the Nigerian Constitution, the life of a parliament is four years, divided into sessions, with one session in a year, during which session it may go on such holidays as it may determine. Parliament law making process or legislative process is a procedure by which parliament makes laws, legislations, or statutes, otherwise called Acts of Parliament. The Nigerian National Assembly is the highest law-making body, legislature or parliament in Nigeria. It is a bicameral, that is, it is a parliament made up of two Legislative Houses or chambers, that is to say: the Senate, otherwise known as the Upper House and the House of Representatives, otherwise known as the Lower House. Section 47 of the Constitution¹⁰ establishes the National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

The Senate is the highest legislative body in Nigeria. The Senate has 109 members. Each State of the Federation is divided into three senatorial districts. A senator represents each senatorial district. Therefore, each State has three senators in the National Assembly, whilst one senator represents the Federal Capital Territory, Abuja. Representation of States in the Senate is based on the principle of equality of the States. The Senators are elected by popular vote and usually stay in office for 4 years. In respect of representation in the Senate, section 48 of the Constitution provides thus: 'There shall be three Senators from each State and one from the Federal Capital Territory, Abuja'. Section 65 of the 1999 Constitution stipulates the qualifications required to be senator of the Federal Republic of Nigeria. To be eligible to be a senator of the Federal Republic of Nigeria, the individual must be a citizen of Nigeria and he or she must have a minimum educational qualification of secondary school certificate. He must be a member of a registered political party and must have attained the minimum age of 35 years by the date of his or her election into the Senate¹¹. House of Representatives is the Lower House of the National Assembly. The House of Representatives has 360 members. Each member is elected for a 4-year term of office. Each member is elected to represent one of the 360 Federal Constituencies into which Nigeria is presently divided the constituencies are demarcated in such a way that each has about the same size and the same population. The States with larger population, with the exception of Lagos State, which has the highest population. Section 49 of the Constitution provides for the composition of the House of Representatives: 'The House of Representatives shall consist of three hundred and sixty members representing constituencies of nearly equal population as far as possible, provided that no constituency shall fall within more than one State'. Section 65 of the 1999 Constitution provides for qualifications to be a member of the House of Representatives. A member of the House of Representatives must not be less than 30 years by the date of his or her election. He or she must be a citizen of Nigeria and must have a minimum educational qualification of secondary school certificate or its equivalent. He must be a member of a political party and is sponsored by that party.

The Executive

The executive regarded as the most influential organ of government is charged with the responsibility of executing and enforcing laws. It comprises all the functionaries and agencies that are concerned with administration of the state. It consists of the president and his ministers as in the presidential system of government; the prime minister and his cabinets as in parliament (sic) system, the politicians elected or appointed to the executive arm of government, the civil servants, police and other security agencies. The functions of the executive as contained in the 1999 are as follows: budget preparation, initiation of development projects, execution and maintenance of the Constitution and laws and bye-laws

⁶ *Ibid*

⁷ CFRN 1999 as amended

⁸ CFRN 1999 as amended, s. 4 (2)

⁹ CFRN 1999 as amended, s. 4 (6)

¹⁰ CFRN 1999 as amended

¹¹ *Opcit*, pp. 150-151

made by the National. States Assembly councilors, preserving, protecting and defending the territorial integrity of the nation, ensuring the stability and security of the nation, states and local government areas and carrying-on the business of governance in all ramifications including conducting the Nation's international relations¹². Section 5(1) (a) and (b) of Constitution¹³ provides that the executive powers of the Federation shall be vested in the President and may subject as aforesaid and to the provisions of any other law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation; and shall extend to the execution and maintenance of the constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws. The executive powers of a State shall be vested in the that State and may, subject as aforesaid and to the provisions of any Law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State, and shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has, for the time being power to make laws¹⁴.

The Judiciary

In *Dapianlong & Ors v Dariye & Anor*, Per Pius Olayiwola Aderemi Jsc held thus:

The primary function of the judge is to declare the law, not to decide what it should be. The business of law making is, in my humble view, exclusively a matter for the National Assembly in Nigerian context. Though, the populace looks forward to the judiciary for dispensation of justice, a judge must always be conscious of his limitation in the discharge of his judicial duties; he must carefully but firmly set out to administer justice according to law, the law which is established for us by the National Assembly of this country or by binding authority of precedent which itself is substantially founded on the laws passes by the National Assembly.

Section 6(1) and (2) of the Constitution¹⁵ states that the judicial powers of the federation shall be vested in the courts in the courts to which this section relates, being courts established for the Federation. The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State. Section 6(4) of the Constitution¹⁶ provides that nothing in the foregoing provisions of this section shall be construed as precluding: -

- a. The National Assembly or any House of assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of s High Court:
- b. The National Assembly or any House of Assembly, which does not require it, from abolishing any court which it has power to establish or which it has brought into being.

In *Independent National Electoral Commission v Atum*¹⁷, the Supreme Court Per John Afolabi Fabiyi Jsc held that the court will continue to pronounce it that the constitutional duty of the function of a court of record is well circumscribed and defined. It is simply an arbiter. It is for the parties to present their case and it is for the court to decide the matter as presented by them.

The Court

In Nigeria, the judiciary, represented by the courts, plays a crucial role in upholding the rule of law and interpreting and applying the law. The primary role of the court is to hear, adjudicate on disputes between parties by applying the law and interpreting the law.¹⁸ The judiciary should interpret the law as it is without fear or favour. According to Lord Denning, 'the English Language is not an instrument of mathematical precision. Consequently, 'a judge should not be a ... mere mechanic in the power house of semantics. He should be the man in charge of it'. Hence, developments in the judiciary have shown that the judiciary will rather lend its weight to support substantial justice than technicalities which, supports fairness as it was in the days when the principles of equity prevailed over conflicting rule of common law. In the words of Justice Chukwudifu Oputa JSC (rtd):

The picture of law and its technical rules triumphant and justice prostrate may no doubt have its admirers. Nevertheless, the spirit of justice does not reside in forms of formalities, or in technicalities, nor is the triumph of the administration of justice to be found in successfully picking one's way between pitfalls of technicality. Law and all its technical rules ought to be but a handmaid of justice and legal inflexibility

¹² *Op cit*, p. 80

¹³ CFRN 1999 as amended

¹⁴ CFRN 1999 as amended, s. 5 (2) (a) and (b). *Lafia Local Government v Executive Governor of Nasarawa State* (2012) LPELR-20602 SC, pp. 47-49

¹⁵ CFRN 1999 as amended

¹⁶ CFRN 1999 as amended

¹⁷ (2013) LPELR-20589 (SC), p. 33

¹⁸ A.O Olawadayisi, 'The Role of the Judiciary in the application of Peacebuilding Theory and Methods of Election Dispute Resolution in Nigeria' *Journal of Law Policy and Globalization*, Vol. 45, 2016

(which may be becoming of law) may, if strictly followed, only serve to render justice grotesque or even lead to outright injustice. The court will not endure that mere form or fiction of law, introduced for the sale of justice, should work a wrong, contrary to the truth and substance of the case before it.¹⁹

However, it has been argued differently, that limiting the scope of the judiciary as the ‘hope of common man’ is not excellent because evidence of judicial intervention during the military and democratic dispensation in Nigeria clearly shows that the judex is the ‘hope of the hopeful and hopeless’. This view goes to establish the important role of the judiciary is required to play in the polity of any nation because the society comprise of the rich and the poor, the haves and the haves not. This is equally true because most often, conflict and resentment is an interplay between the two people and either of them playing the role of ‘actor’ or ‘victim’. The role and place of the judiciary cannot be underestimated. No society can survive without the input of the judiciary. If the democracy we all nurture must grow, if peace we clamour for must be achieved, then, the doctrines of separation of powers, due process of law and independence of the judiciary must form the bedrock and pillars of our democratic system.²⁰

In the past democratic dispensation, the judiciary has been playing a pivotal role in checking any arbitrary exercise of power on the part of the government. The courts have consistently championed the course of the rule of law. For example, in the celebrated case of *A. G. Lagos State v. A. G. Federation*²¹, the case relating to the withholding of the Lagos Local Council’s allocations, the Supreme Court in a unanimous decision, condemned the brazen and illegal acts of both the Lagos State Government and the Federal Government as to their roles in the entanglement. The court, while disagreeing with the opinion of the Counsel to Lagos State Government on the definition of Local Government and creation of Local Government Council the court said ‘in view of the fact that there is no constitutional provision that two Local Government Councils could be created from one Local Government Area, an exercise in dichotomizing the two is largely academic, if not totally so. The role of Courts can be itemized as follows:

Interpreting and Upholding the Constitution: Nigerian Courts are responsible for interpreting and upholding the provisions of the Constitution. They ensure that all government actions, laws, and policies comply with the constitutional framework thereby safeguarding the principles of democracy.

Protection of Individual Rights: Courts in Nigeria play a vital role in protecting the fundamental rights and freedoms of individuals as enshrined in the Constitution. Citizens can approach the courts to seek redress if they believe their rights have been violated by the government or any other entity.

Judicial Review of Legislation: The judiciary in Nigeria has the power of judicial review, which allows them to review the constitutionality of laws and government actions. This serves as a check on the legislative and executive branches, ensuring that their actions are within the bounds of the Constitution.

Promoting the Rule of Law: Nigerian courts play a central role in promoting the rule of law, by ensuring that legal processes are followed, and by holding individuals and institutions accountable for their actions, the courts contribute to a stable and orderly democratic society.

4. Challenge of the Legal and Institutional Frameworks for Separation of Powers in Nigeria

Absence of True of Judicial Independence

In any democratic society, the judiciary has often been vested with a duty of being the organ of government responsible for the dispensation of justice, and the custodian of constitutional values. The judiciary, as the guardian of Separation of Powers, ensures that the organs of government do not stray into the sphere of each other, and that powers and authority are exercised within the prescribed constitutional boundaries. Accordingly, the judiciary acts as a watchdog over the other organs of government and ensures their fidelity to the doctrine of separation of powers and respect for the supremacy of the constitution. Indeed, there can be no Separation of Powers in terms of respect for the constitution and the values and principles that underlie it if there are no secured review mechanisms, whether by ordinary courts or other specialized courts or bodies, that can independently enforce the provisions of the constitution, while checking and controlling any abuses of its provisions.²² The responsibility of ensuring that the standards and procedures laid down in a constitution are observed

¹⁹ *ibid*

²⁰ *Ibid*

²¹ (2004) 20 NSCQR 99; (2004) 18 NWLR (Pt.904)1; (2004) LPELR-10(SC)

²² *Ibid*.

rests with the courts.²³ Through the power of judicial review,²⁴ vested in the courts to check and restrain the arbitrary exercise of legislative and executive powers in the promotion of Separation of Powers in Nigeria.²⁵ It is important to stress that both legislative and executive powers are generally susceptible to abuse and must therefore be checked and restrained in order to forestall arbitrariness and promote Separation of Powers.²⁶ From the above premise, it can be safely concluded that judicial independence is not yet a reality but a mere aspiration in Nigeria today. The appointment and removal of judges are not insulated or isolated from politics, ethnicity, favoritism, and other primordial considerations. Lamenting on the constraint against judicial independence in Nigeria, Tobi²⁷ insightfully declared that there were instances in the past where appointing bodies by sheer acts of favoritism and nepotism overturned the advisory judicial committee list and planted their own by way of replacement. Other authors have also categorically noted that the appointment of judges cannot through the institutional mechanism of the National Judicial Council be insulated from political consideration and control.²⁸

Having said the foregoing, there is need for effective utilization of the power of judicial review by the courts in promoting Separation of Powers. This can be achieved when the following are present, which include but not limited to transparency in recruitment of judicial officers, continuing education and training of judicial officers,²⁹ periodic review and improvement of the conditions of service of judicial officers, independence and financial autonomy of the judiciary, liberalization of *locus standi* requirement, and public enlightenment and education on tenets of Separation of Powers. It is also suggested that efforts be made to enlist and strengthen commitment of political leaders and the ordinary citizens to Separation of Powers in Nigeria. This role can best be performed by those engaged in advocacy such as non-governmental and civil society organizations. The Nigerian Bar Association can mobilize and sensitize its members to advocate the need for continuous practice and promotion of Separation of Powers. The media, the churches and other religions organizations can also play an important role in this regard.

Problem of Disobedience to Court Orders by the Executive

Without doubt, accessibility to court by litigants is one thing, while the impartiality of the judge is another. Respect and obedience to the judgment and orders of the court is yet another important consideration. It is a notorious fact that judgments and orders of courts are not self-executing and the judiciary does not have its own body or institution charged with the responsibility of enforcing its judgments.³⁰ The implication is that the judiciary inevitably depends on the executive for the enforcement of its judgments. The executive branch, without doubt, is the greatest violator of court orders.³¹ This being the case, there is little guarantee that when an order is made against the executive branch, the same will be treated as sacrosanct. On the contrary, the unfortunate and regrettable experience has been regular disobedience of the executive to lawful and subsisting court orders.³² Often, government chooses the orders to obey. It obeys those it is comfortable with and disobeys those which are in conflict with its interest, ignoring the consequences to the individuals whose rights have been violated or the public who bear the brunt of such grave disobedience by those who ought to have implemented such orders.³³ Disobedience to court orders undoubtedly undermines the authority, dignity, and integrity of the court and can promote anarchy. But much more, it constitutes a remarkable challenge to the development, realization and promotion of Separation of Powers.³⁴

²³ IT Mohammad, 'Judicialism and Electoral Processes in Nigeria: What the Supreme Court Did and What the Supreme Court May Do', *Being a paper presented at the 2012 Felix Okoye Memorial Lecture, Organized by Nigerian Institute of Advanced Legal Studies, University of Lagos*, held at the Nigerian Institute of Advanced Legal Studies, University of Lagos, on 18th September 2012.

²⁴ Judicial review is the power of the court, in appropriate proceedings before it, to declare a legislative or executive act either contrary to, or in accordance with, the Constitution, with the effect of rendering the act invalid or vindicating its validity and so putting it beyond challenge in future.

²⁵CFRN, *opcit*, ss.4(8) & 6(6)(a).

²⁶BO Nwabueze, *The Presidential Constitution of Nigeria* (London: C.Hurst & Company Publishers Ltd., 1982) p. 309.

²⁷ N Tobi, 'Whether the Establishment of the National Judicial Council and the Set-Up Will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries of this Nation (1999), A paper delivered at the Annual Conference of Judges held at the International Conference Centre, Abuja, Nigeria, between November, pp. 1-5, 1999.

²⁸ J.A Dada and ME Ekpo, *Issues and Problems in the Establishment of National Judicial Council under the 1999 Constitution* (2006), *Calabar Law Journal*, pp.101-02.

²⁹In Nigeria the National Judicial Institute organizes regular courses and workshops for judicial officers; however, the impact on the quality and quantity of the outputs of these officers is yet to be noticed.

³⁰CFRN, *opcit*, s.5, it is the responsibility of the executive branch to enforce the law, including judicial decisions.

³¹ M Mutua, 'Human Rights: A Political and Cultural Critique' (2002) p.2, CA Odinkalu, 'Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa' (2003) 47 *Journal of Africa*, pp. 1-37.

³² This is amplified by the cases of *Military Governor of Lagos State Government v. Chief Emeka O. Ojukwu* [1986] 1 NWLR 621; *Lakanmi & Kikelomo Ola v. Attorney General Western State* (*Supra*).

³³*Attorney General of Lagos State v. Attorney General of the Federation* [2004] 20 NSCQR 99; *Attorney General Abia State v. Attorney General of the Federation* (*Supra*), wherein, although the Supreme Court declared it unconstitutional, the federal government paid deductions from the Federation directly to the local government; *Attorney General of the Federation v. Attorney General, Abia State & 35 Ors* [2002] 6 NWLR 542; *Attorney General, Ogun State & Ors v. Attorney General of the Federation* [2002] 18 NWLR 232.

³⁴ Umoh, *opcit*, pp. 47-48.

The sanctity of law depends on the respect for the judicial process through which orders according to the law are made³⁵. This is very rampant during the military regime as could be seen in *Military Governor of Lagos State Government v. Chief Emeka O. Ojukwu*³⁶ where the Supreme Court observed that the result of the disobedience of court orders would lead to the replacement of rule of law with anarchy. This trend is still being witnessed under this current democratic dispensation despite the existence of a written constitution. In *Attorney General of Lagos v Attorney General of the Federation*³⁷, Niki Tobi, JSC (as he then was) criticized the Federal Government for returning to self-help rather than the court of law over a dispute between it and the Lagos State Government. His Lordship said thus:

If the federal government felt aggrieved by Lagos State creating more Local Governments, the best solution is to seek redress in a court of law, without resorting to self-help. In a society where law prevails, self-help is not available to the Executive or any other arm of government. In view of the fact that such a conduct could breed anarchy and totalitarianism, and since anarchy and totalitarianism are antithesis to democracy, courts operating the rule of law, the lifeblood of democracy, are under a constitutional duty to stand against such action.³⁸

It needs to be added that the executive arm of the government is not the only one caught in the web of lawlessness. The legislative arm is as well culpable most especially the Houses of Assembly of some states. In *Inakoju & Ors. v Adeleke & Ors.*,³⁹ *Abaribe v. The Speaker, Abia State House of Assembly*⁴⁰ and *Dapianlong v. Dariye*⁴¹ members of the Houses of Assembly in these cases carried out impeachment processes in violation of clear constitutional provisions. It took the intervention of the courts to reinstate the affected office holders.

Other notable cases worthy of mention is *Peter Obi v INEC*⁴² and *Rotimi Amechi v INEC*.⁴³ In the former case, the Independent Electoral Commission went ahead to conduct a governorship election when the appellant, who was the incumbent governor, was still in court challenging the validity of the proposed election as his tenure was yet to expire. In *Amechi's* case, the electoral commission ignored the court action by Amechi challenging the illegal substitution of his name by the Commission.⁴⁴

Weak Oversight Capacity of the Legislature

The legislature epitomizes an aspect of the sovereign expression of the constituent representative authority of the people, whose interest is to project and protect through the discharge of the legislative functions of law making; control and protection of the public finance; oversight functions; and representation of the constituencies. Barnett observed the government, in formulating policy, and the legislature, in legitimating that policy, are accountable to the electorate on whose trust power is held.⁴⁵ The legislature performs vital roles in the practice of Separation of Powers. Indeed, the law making, and budgeting or appropriation functions constitute veritable tools for checking the excesses of the executive. However, in Nigeria, these functions are merely performed to rubber stamp the actions of the executive, instead of checking their excesses and corrupt practices.⁴⁶ In fact, the role of the legislature as the watchdog over public finance is part of its oversight functions over the executive in the management of the capital and resources of the Nigerian state that is meant to ensure good governance, accountability and probity.⁴⁷ By virtue of the 1999 Constitution⁴⁸ it is the National Assembly that gives authorization to the President for all expenditures from the Consolidated Revenue Fund, and any

³⁵DA Ijalaiye, 'Executive and Legislative Lawlessness: A Challenge to the Rule of Law in Nigeria', *Faculty of Law Lagos State University Distinguished Jurist Lecture*, p.2.

³⁶(1986) 1 NWLR (pt. 18), 621.

³⁷(2004) 12 SCJN 1.

³⁸*Ibid*, p.75

³⁹(2007) 4 NWLR (Pt. 1025) 423.

⁴⁰(2002) 14 NWLR (Pt. 738) p.466.

⁴¹(2007) 8 NWLR (Pt. 1036) 289.

⁴²(2007) 11 NWLR (PT. 1046) 565.

⁴³(2007)13 All NLR 354.

⁴⁴ The recent one is the failure of the President Buhari to release Lt. Col. Sambo Dasuki, El Zakzaki, Omoyele Sowore, among others despite several court orders for their release. Although El Zakzaki was later released, flown to India where he was repatriated back to Nigeria on the request of Nigerian government, but was discharged and acquitted by the Kaduna State High Court on the 24th July, 2021. While Omoyele Sowore could not meet up the deposit of One Million Naira as bail condition for his release. He was later released but rearrested at the premises of the Federal High Court on the 26th July 2021 he led support for the release of the embattled IPOB leader, Nnamdi Kalu.

⁴⁵ H Barnett, *Constitutional & Administrative Law* (14th edn, Routledge, 2005) p.5.

⁴⁶ JD Barkan, 'African Legislatures and the Third Wave of Democratization', Preliminary Draft of 12/30/08, at pp.2-3, *Prepared for Yale/World Bank Workshop on Governance and Development in Africa and the Middle East to be held at Yale University*, January 30-31, 2009.

⁴⁷EO Oyewo, 'Separation of Powers and the Oversight Functions of the Legislature in Nigeria', being a paper presented at the African Network of Constitutional Lawyers Conference in April 2007 held at Nairobi, Kenya. I Ibrahim and MA Mustapha, *Combating Corruption in Nigeria: The Role of the Legislature Examined*, at <http://www.unilorin.edu.ng> accessed on 5 November, 2023.

⁴⁸Ss. 80 and 81

unauthorized expenditure by the executive is unconstitutional null and void⁴⁹, thus affording the representative body an opportunity to rigorously debate and rationalize the budget. From 1999 till date, the Legislature has not really demonstrated the importance of its oversight functions in that the legislature is not only covering corrupt practices of the administration but also in collaboration with excesses of the executive in mismanaging the nation's resources by the executive. In the discharge of the functions of law-making, watchdog of public finance, conduct of investigations, control over personnel, removal powers, and policy formulation, the legislature does not only define the scope and limits of the exercise of executive powers thereby giving effect to the constitution, but also sustains the idea of the rule of law, good governance and accountability that are the very essence of Separation of Powers.⁵⁰ The legislatures must step up their oversight functions in bringing the executive organ to account. Public hearings should be held on all issues of public importance. Findings must be made available to all and where actions are needed to be taken, the people must ensure through public interest advocacy that such are not swept under the carpet.⁵¹

5. Prospects of Legal and Institutional Frameworks of Separation of Powers in Nigeria

Enhancing Judicial Independence

Efforts should be made to enhance the independence of the judiciary in Nigeria, by reducing executive interference and ensuring that judges are appointed based on merit and experience. This will help to strengthen the checks and balances system and enhance accountability in government.

Strengthening Institutional Capacity

One of the ways to improve the legal and institutional frameworks for separation of powers in Nigeria is to strengthen the institutional capacity of the three organs of government. This can be achieved through training, capacity-building, and ensuring adequate resources are allocated to each arm.

Legal Reforms

There is need for legal reforms to address the weaknesses and gaps in the current legal framework for separation of powers in Nigeria. This may involve constitutional amendment or enacting new laws to ensure the effective separation of powers and promote good governance.

6. Conclusion

The legal and institutional frameworks for separation of powers in Nigeria are still in need of improvement to ensure a more effective and efficient system of governance. The current system is marred by challenges such as interference by the executive branch in the affairs of the judiciary and the legislature, as well inadequate checks and balances between the three arms of government. It is recommended that effort to enforce strict adherence to the principles of checks and balances between the three arms of government to prevent one arm from becoming too powerful and enhancing the capacity and effectiveness of oversight mechanisms such as the National Assembly and the judiciary to hold the executive branch accountable.

⁴⁹*Attorney General of Abia State v. Attorney-General of the Federation and Ors (Supra)*.

⁵⁰Oyewo, *opcit.* p.21; *Fayemi v. Eleka* [2019] 7 NWLR (PT. 1140) 223; *INEC & Ors v. Oshiomole & Ors* [2009] 4 NWLR (PT. 1132) 607; *Mark v. Abubakar* (2008) 2 NWLR (PT. 1124) 79; *Aregbesola v. Oyinlola* [2009] 14 NWLR (PT. 1162) 42.; *Adeleke v. Oyetola* (2019) 8 WLR (PT.101) 1567SC.

⁵¹NA Inegbedion, 'Scope of Legislative Oversight under the 1999 Constitution' (2013) *NIALS Journal of Constitutional law*, pp.42-68.