EXECUTIVE-LEGISLATURE FEUD IN NIGERIA: AN EXAMINATION OF SERVICE CHIEFS CONFIRMATION, 1999-2014

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Abstract
Until not very long ago, the literature on legislative-executive relations was bifurcated. It had evolved into two separate and independent bodies of work. One thesis focused on parliamentary and the other on presidential systems, which were considered to represent two completely independent and alternative ways to organize the political world. Today a more integrated view of executive-legislative relations in democratic regimes exists. The emergence of this new perspective owes a great deal to the appearance of two seminal books, which, perhaps in a way unintended by the authors, questioned the premises upon which the bifurcated view of parliamentary democracy and presidential democracy rested. Kaare Strom’s Minority Government and Majority Rule (1990) demolished on empirical and theoretical grounds the basic office-seeking assumption that informed studies of parliamentarism. John Huber’s Rationalizing Parliament (1996), in turn, questioned the appropriateness of the conflict model at the root of most thinking about executive-legislative relations in democracies. The specific contribution of each of these authors may be traced to studies of legislative politics that focused on the United States of America congress. As a consequence of these shifts, legislative organization came to the forefront of analyses of executive-legislative relations. In Nigeria, since the transition to civilian rule in May 29, 1999, the country has witnessed conflicts between the legislature and the executive over budget, oversight, and vote allocation matters. These conflicts are not only restricted to the federal level but also a common phenomenon at the state government level. This paper discusses the poor relationship over the confirmation of service chief’s matter and offers suggestions on how to improve the process. The paper concludes by positing that until strong democratic institutions are built and elected officials better understand their roles, the search for harmony between the executive and the legislature will continue to elude Nigeria. The new chiefs must put their best foot forward as they set forth to tackle the insecurity in the North-East zone of the country. This is not the time for rhetoric. They must frontally confront the security problems facing the country, especially the Boko Haram insurgency which President Jonathan recently described as the biggest challenge his administration has faced since inception.

Keywords: Executive-Legislative Feud, The Constitution, Security and Insecurity, Boko Haram and Separation of Powers
Introduction

There is the popular belief that the business of government usually suffers whenever the relationship between the executive and the legislature is strained. To observers in Nigeria, the constant feud between the two critical organs of government usually affects the effectiveness of the government in its bid to deliver the dividends of democracy to the electorate. Besides, the constant conflict between the executive and legislature could put the nation’s democracy in danger, if not properly tackled. During the days of former President Olusegun Obasanjo, there were several attempts to muzzle the legislature. But the attempt to assert the independence of the legislature, considering its constitutional role in the political arrangement, invariably brought it on collision with the executive. This led to frequent frictions between the two arms of government.

The protracted face-off took a life of notoriety under the Obasanjo administration, with the removal of three Senate Presidents in three years. In the circumstances that led to the removal of Senators Evan(s) Enwerem, Chuba Okadigbo or Adolphus Wabara, as senate presidents, the connivance, collusion or involvement of the executive arm of government was always alleged. Most National Assembly watchers at the time saw the Presidency as the unseen hand behind the crisis of confidence that almost wrecked the Senate. But President Olusegun Obasanjo was resisted by the House of Representatives where attempts to unseat former Speaker Ghali Umar Na’Abba was aborted.

The executive arm, with its awesome powers, was more inclined to overturning the leadership of any Senate President or House Speaker that refused to bend to its dictates. Such was the situation that pervaded the hallowed chambers of the National Assembly in the eight years when Obasanjo held sway.

However, the situation has since improved substantially, with the departure of Obasanjo from the seat of power and the inauguration of President Umaru Yar’Adua and the Goodluck Jonathan presidency. The Office of the Special Adviser to the President on National Assembly Matters, apparently, had this in mind when it decided to host a two-day conference recently in Abuja on the executive-legislature relations. Tambuwal praised the organizers when he said the huge attendance of members was an indication that the House could go for anything that would guarantee political stability. To underscore his interest in the talk-shop, Tambuwal lauded the conference, describing it as a forum for the executive and the legislature to learn new ways of relating with each other to stimulate harmony in governance. The former Special Adviser to the President on National Assembly Matters, Senator Joy Emodi, who set the tone for the conference, said the interaction became necessary, given the complementary role the two arms of government were expected to play in governance. The conference, with the theme: ‘Strengthening Executive-Legislature collaboration in governance,’ Mrs Emodi said, was part of the efforts of her office to consolidate the gains of the past and to explore new and more meaningful ways of strengthening executive-legislature relations in the country. Participants believed that building a better understanding between the executive and the legislature is a dynamic process, and underscored the essence of the conference.

Since 1999, the rule of law and constitutionalism and due process was always mentioned as key aspects of governance, but the practice of governance itself shows very little linkage to the general demands of constitutionalism and the rule of law. A foremost example is the civilian regimes penchant for disregarding and outright disobeying of court orders and judgments and not seeking the approval of the National Assembly on confirmation of Presidential nominees. The presidency recently advised members of the public to disregard insinuations in some quarters that the sack of army service chiefs, the director general of the State Security Services (SSS) and the Inspector General of Police by President Goodluck Jonathan was politically motivated.
Jonathan in a surprise move effected major changes in the top hierarchy of the army and security agencies. The changes led to the appointment of new service chiefs: Maj-Gen. Onyeabo Azubike Ihejirika (Army); Real Admiral Ola Saad Ibrahim (Navy) and Air Vice Marshal Mohammed Dikko Umar (Air Force). Alhaji Haffiz Ringim became acting inspector-general of police while Mr. Ita Ekpeyong was appointed the new director-general of the SSS.

However, some political monitors and observers had in 2010 said that the president's action was informed by his deliberate move to consolidate his political grounds in preparation for his 2011 presidential bid. But responding to the insinuation then, senior presidential aide told LEADERSHIP that the insinuation is not correct. The insinuation that the sack of army service chiefs and heads of the police and the SSS was politically motivated is not correct, he said,

The service chiefs served their full term; this is the first time it is happening for a very long time. When President Goodluck Jonathan assumed office, he was under suffocating pressure to sack them. But he resisted the temptation and allowed them to finish their term. Their term ended in the first week of August this year (Odaudu, 2007:2).

The presidential aide said the president's action was based on the need to consolidate ongoing professionalisation of the army and prepare them for their huge role in the sustainability of democracy. The presidency advised those pending the rumour not to drag the army and security agencies into partisan politics. According to him, “President Goodluck Jonathan on his part will make sure that they are not dragged into politics” (Odaudu, 2007:2).

Meanwhile, Festus Keyamo, recently said he was vindicated on the need for legislative approval for appointment of service Chiefs. He noted that the statement of the spokesman to President Jonathan relieving the service chiefs of their appointments and announcing the new appointees stipulated that the appointments will only take effect subject to approval by the National Assembly. Keyamo said, “I have shouted myself hoarse in the last few years that the previous appointments of service chiefs without legislative approval is patently illegal” (Ige & Fadeyi, 2013:1).

His case challenging their appointments is still pending at the Federal High Court, Abuja. The letter which he wrote August 31, 2008, was ignored. The content of the letter indicated the illegality of the appointment of service chiefs by the president on August 20, 2008. The then president, Umar Musa Yar’Adua had announced the appointment of new service chiefs. Air Marshal Oluseyi petinrin (Air force), Major General A. Bello Dambazau (Army), Rear Admiral Isaiah Ibrahim (Navy). Which was approved with immediate effect. He said the powers of the president to appoint service chiefs is provided for in section 218 (1,2,3,and4) of the Nigerian 1999 Constitution which states that the powers conferred on the president by sub section1 of this section shall include power to appoint the heads of any armed forces of the federation as may be established by an Act of the National Assembly. Does the president have the powers to appoint service chiefs without recourse to the National Assembly? That was the question Lagos lawyer, Festus Keyamo, put to a federal high court in Abuja, presided over by Justice Adamu Bello.

President Goodluck Jonathan, recently, effected some key changes in the nation’s military high command with the retirement of some service chiefs and the appointment of new ones. Rights activist Festus Keyamo had continuously criticized President Goodluck Jonathan’s refusal to sack the nation’s Service chiefs-chief of Air Staff, chief of Army Staff and chief of Naval Staff-five months after their appointments were voided by a court.
In a letter he wrote to the presidency before the sack, the lawyer claimed that since no one appealed the judgment delivered on July 1, last year, by justice Adamu Bello of the Federal High Court, Abuja, the court’s decision remained valid and subsisting.

He said: “As it is today, all official actions taken by the service chiefs since the July 1, 2013, judgment was delivered, are null, void and of no effect in law. It only needs someone who is affected by their official actions to challenge their authority in a court” (Ikhialae, 2014:4).

Justice Adamu held that the appointments of service chiefs without the approval of the Senate and the House of Representatives is null and void, in line with Section 18(1) and (2) of the Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria, 2004.

The suit was initiated by Keyamo. The lawyer’s letter, titled: Refusal to obey and comply with judgment in respect of appointments of Service Chiefs, was addressed to President Jonathan; Senate president and the House of Representatives speaker. Till now, no appeal has been filed against that judgment. It goes without saying that all the present service chiefs; Lt-Gen. Azubuike Ihejirika (chief of Army Staff): Air Vice Marshal Alex Sabundu Badeh (chief of Air Staff) and Rear Admiral Dele Joseph Ezeoba (chief of Naval Staff), were appointed without the confirmation of the National Assembly. Their appointments are, therefore, null and void abilitation.

He regretted that the National Assembly, whose power to confirm the appointment of service chiefs was activated by the judgment, refused to demand that President Jonathan obey the judgment. The lawyer threatened further court actions should the President and others refuse to act within 14 days. This paper examines Executive-Legislative relationship using Service Chiefs confirmation as a case study. It also discusses the agenda for the presidency and the New Service Chiefs.

**Theorizing Executive - Legislative Conflict**

One basic concept of modern democracy is derived from the theory of separation of powers as propounded by Baron Montesquieu. This theory has been assumed to be the cornerstone principle of democracy in the last three centuries. In 1748 Montesquieu published the Spirit of the Laws (Espirit de Lois) in which he reformulated an ancient idea in political theory. In Book XI of Spirit of Laws, Montesquieu ascribed liberty in England to the separation of legislative executive and judicial powers, and to the balancing of these powers against each other (Sabine and Thorson, 1993:513). In mediaeval European constitution making the idea of division of powers came to be a counterforce against the divine sovereign powers claimed by monarchs. And in England, the long struggle between the crown and both parliament and courts of common law, which climaxed in the Glorious Revolution of 1688, underscored the importance of separation of powers and checks and balances (Beano, 2002:2).

The genius of Montesquieu lay in reformulating an idea connoting a political balancing of economic and social interests or sharing of powers by corporations, communes and municipalities, into a system of legal checks and balances between parts of a constitution (Sabine ad Thorson, 1973:514). Montesquieu proposed that all political functions are necessarily classifiable into legislative, executive or judicial. In other words, Montesquieu conceptualizes a system of government in which each traditional arm of government (i.e executive, legislature and judiciary) maintain clear and distinguished functions of its own as allotted to it by the constitution with checks and balances from the other two arms. To safeguard liberty, each of these sets of functions must be separate and act as checks and balances on one another. American federalists later adopted the propositions of Montesquieu especially Madison as the organizing framework of the American constitution (Fabrini, 1999:95) cited in Beano). Madison, defending the newly proposed constitution in 1788, noted underlying principles of competition and rivalry among the branches as means of limiting and controlling government. The constant aim is to divide and arrange the branches of government in such a way that each may be a check on the other to check tyranny in government.
A fundamental understanding of separation of powers and the changes it has undergone in specific countries lies in the character of capitalist production and the capitalist state. Being a market-oriented, commodity-driven system the capitalist society invariably evolves an executive force seemingly standing above society and appearing as the guarantor of the collective interests of the people-nation (Beano, 2005:3). The principles of separation of powers—checks and balances, and rule of law—are the political equivalents of the market ethics of division of labour and collective subordination of commodity bearers to the impartial forces of demand and supply (Beano, 2002). In the West, separation of powers was particularly important at the phase if competitive capitalism for it served to balance conflicting interests of factions of the ruling class, for example, the estates in medieval Europe, because these interests were usually inscribed in the arms of government. At the same time, by concurrently limiting and balancing the arms of government, the liberal state, which corresponds to competitive capitalism, appears as non-arbitrary, impartial and therefore capable of guaranteeing both the interest of the dominant and dominated classes and factions.

Two critical points about the executive-legislative relation have to be made from the foregoing remarks about competitive capitalism and the liberal state. First, the political function of the state, which consists of exercise of legitimate violence and the reproduction/inculcation of the dominant ideology, takes precedence over its economic function. Indeed, the liberal state rarely intervenes directly in the market. Its economic function was principally indirect insofar as it consisted in maintaining order and eliciting the consent of the dominated classes to the hegemony of capitalist power bloc. Second, the legislature which symbolizes popular representation and popular power tends to be dominant over the executive and administration (Beano, 2002). This dominance arose because parliament as the sanctuary of law and legislative power incarnated general norms whose universal and formal character constituted the essential feature of modern law. In the United States, notwithstanding the founding fathers’ design to prevent the abuse of legislative powers by constituting an independent executive, “throughout the republic’s first century, congress maintained its position as the centre of governmental power” (Mba, 2003:21).

However, at the stage of monopoly capitalism, the above logic changes fundamentally. The liberal state is superseded by a monopoly capitalist state, a process marked by a progressive movement away from separate/coordinate powers of the organs of government to a preponderance of the powers of the organs of government to a preponderance of the powers of the executive and administration. This condition is explained by an unprecedented rise in the direct involvement of the capitalist state in the economy and the extraordinary expansion in the state’s economic apparatuses. Consequently, rather than the role of maintaining and reproducing the ‘external conditions’ of production, the state is at the very heart of directing the economy (Poulantzas, 1980:167). It was in the phase of monopoly capitalism that the Nigerian state emerged, albeit as its peripheral type. As such, this state shows all the interventionist character of the monopoly capitalist state in addition to its unique form, especially its underdevelopment and dependence, its authoritarianism and its low autonomy (Ake, 1985; Beano, 2002).

It was at this stage also, that its present class formation emergence of the Nigerian ruling class at the stage of monopoly capitalism, which has been shaped by it, also focused attention exclusively at the level of superstructure and were no where controlling the system of production on which politics has been anchored as in advanced capitalist state (Nnoli, 1986:13). What followed was that the class resorted to the use of state power to themselves. The state becomes an instrument for the achievement elite uses the state power for that purpose, conflicts become inevitable, and the executive-legislative conflict in Nigeria emanates from this process. Consequently, the state power has assumed a major means for primitive accumulation of capital and the governing class while pursuing its economic and political interests sometimes do clash with one another. Due to the nature of their origin, they sometimes have opposing economic and
political views. The implication is that there has been multiplication of conflicts to serve personal and sectional interests within the ruling class. And in this regard, the tenets of separation of powers and the provision of the constitution are disregarded. Thus, the peripheral capitalist state has itself become a means of production for those who control it (Ekekwe, 1986:35). So executive and legislature in a regime of personal rule is uncertain and problematic because they are largely contingent upon men, their personal and sectional interest and ambitions, their desire and aversions, their hopes and fears.

The consequences of the foregoing for executive-legislative relations are two fold. First, the quest by Nigerian ruling class to use state power as means of primitive accumulation of capital and its colonial past is rooted in the capitalist economy since in such an economic system, the drive and competition for private profit and capital accumulation of capital are the motor. Second since colonialism and imperialism had introduced economic distortions, it has equally created the economically weak political leaders in Nigeria (Ekekwe, 1986). The two jointly lead to the weakening of political institution such as political party necessary for moderating relations among politicians and between the two arms of government to acquire value and stability. Thus, the present phase of monopoly-peripheral capitalism as we find in Nigeria is conducive to the sharpening of contradictors within the dominant classes and personalization of rule and personality clashes. The end product is mega corruption among its leaders and arbitrariness of state officials. These factors would in themselves led one to expert considerable conflicts as actors in both executive and legislative branches seek to pick up key reins of government power.

According to Sidgwick, the relation between the legislature and executive is one of the knottiest problems in the constitutional structure. Montesquieu and Blackstone maintained that the three organs of government should be kept separate and distinct and one should have no relation with the other. But strict separation of powers is neither desirable nor practicable. The government is an organic unity and the legislature and the executive must work in co-operation and collaboration. One cannot be strictly separate and independent of the other. It is observed in practice that in every state the legislature partakes in the work of the executive and vice versa.

In a parliamentary system of government the legislature controls the executive through a vote of no-confidence, interpellation (asking of questions) and adjournment motion. The life of the executive depends upon the will of the legislature since it continues in office so long as it enjoys the confidence of the majority of members in the legislature. The moment a cabinet loses the confidence of the majority, it is liable to be thrown out of office by a vote of no confidence. Again certain legislatures perform some direct executive functions e.g., the Senate of the United States shares with the President his power of making appointments and treaties.

Just as the legislature performs certain executive functions, similarly, the executive enjoys some legislative powers, which may be discussed as follows:

1. The chief executive head in all parliamentary governments has the power to summon and prorogue both the Houses of the legislature. He may also dissolve the Lower House and order for fresh elections.
2. The Bills passed by the legislature are submitted to the chief executive head for final approval. A Bill cannot become an Act unless it has been assented to by him. The chief executive, heads enjoy varying degrees of veto in this respect in different countries of the world.
3. The chief executive head may issue ordinances during the recess of the legislature though the nature and life of ordinances differ from state to state. The ordinance issuing power, enjoyed by the executive, is a direct legislative authority in its hands.
4. The executive head may address the legislature at any time. Specially under the cabinet form of government. The sessions of the legislature open with the speech of the chief executive head.
(5) A parliamentary executive has more or less complete control over the legislative work of the legislature. It initiates and pilots all the important measures in the House. A Bill moved by a private member has very little chance of success if it does not enjoy the support of the ministry. In a presidential form of government, however, the executive has very little direct control over legislation.

(6) The executive exercises powers of 'delegated legislation'. The parliament makes laws in general broad terms and delegates the powers to the executive to fill in the details. The power takes the form of rules and regulations issued by the administration under a law of the parliament. This power has become so enormous that Chief Justice Haldane described it as 'new despotism.'

(7) The executive controls the finance, prepares the budget and presents it to the Parliament. No money bill can be introduced in parliaments like those of England and India without the previous consent of the Executive.

In fact, the executive provides leadership to the legislature whether it is cabinet system or presidential one. The U.S. President is not only chief executive but also has become the 'chief legislator' too. The executive initiates, formulates and explains the legislative and financial policy and urges the parliament to accept it. In fact, in democracies, the general principle has come to be accepted that legislature performs one function, that is, to elect the executive and then entrust it with powers. It exercises only supervision lest the executive betrays the trust. These are thus two wheels of the cart of the state and must move in harmony and cooperation. The executive has, in practice, become more powerful.

Former Senate President Joseph Wayas declared that a legislature that exists to rubber-stamp all the pronouncements of the executive cannot be said to be democratic. He said that absolute separation of powers does not exist anywhere. “If there was absolute separation of powers, there will not be government”, Wayas added. President Goodluck Jonathan, who inaugurated the talk shop, declared that the executive and legislature were neither competing nor in battle for supremacy. Represented by Vice-President Namadi Sambo, Jonathan said the members of the two arms of government were only messengers elected to bring democratic goods. “Our roles, duties and responsibilities are well defined and there is no reason, whatsoever, for us not to work together for the greatness of our country” he added. For Jonathan, there was no need for any rivalry between the two arms as both arms were not competitors but part of the same government elected by the people to deliver the dividends of democracy.

He added that, while the presidential system of government had separation of powers as one of its cardinal principles, it did not mean that the arms of government should work at cross purposes. “The executive and legislature are not in competition; we are not in a battle for supremacy. We are all messengers sent on an errand to bring democratic goods to the people. “I have maintained a policy of non-interference in the activities of the National Assembly. “But let me correct the impression that any disagreement between the executive and legislature amounts to a fight. “Parties may differ on issues but national interest must be collective and overriding.” Jonathan submitted.

The President did not end his address without adding that “today, we have a stable National Assembly and a cordial atmosphere suitable for the conduct of parliamentary business. “What Nigerians want and deserve is good governance to the highest standards. The relationship between the executive and the legislature is not about the two arms but it is about the governed. “It is about harnessing our constitutional powers and God-given talents, and deploying our positions as public servants to drive our progress as a nation,” the President said. Senate President David Mark said the executive and legislature operates on the same wavelength except that sometimes each arm sees things from different perspectives. Mark was however, quick to add that the occasional friction between both arms was necessary to put each
other in check and prevent tyranny in the system. He underscored the fact that what the system needed was not competition but the collaboration of the two arms of government.

Senate Leader, Victor Ndoha-Egba, noted this in a recent interview, when he declared, “The unusually high turnover of legislators has not helped the system. Each time you bring in a new set of lawmakers, they begin to learn the ropes from the beginning and this takes time.” While the executive is accused of suffering from a hangover from the military era, the legislature is often accused of trying to usurp executive functions. This is without prejudice to the fact that the 1999 Constitution explicitly defines the roles of each arm of government.

The nation’s Constitution confers enormous powers on the President, who is at the helm of affairs at the executive branch; it also takes into cognisance the need for checks and balances to prevent abuse. Part II 4 (1) of the 1999 Constitution specifically states that legislative powers shall be vested in the National Assembly for the Federation which shall consist of a Senate and the House of Representatives.

Section 4(2) reads: “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 I of the Second Schedule to this Constitution.” However, over the years, occupants of positions at both levels of government and to some extent, the judicial arm of government have in the performance of their functions, stepped out of their constitutionally recognized territories. For instance, although using proxies, the executive has shown more than a passing interest in the composition of the leadership of the two chambers of the National Assembly.

Theoretical Framework

In this study, shall anchor its analysis and discussion on the theoretical foundation and persuasions of the theory of separation of power as our theoretical framework of analysis. The phrase “separation of powers” actually means that whatever the amount of the political powers that exists in any given state, it should not be monopolized or concentrated in one person or a group of persons. This means the existing powers must be separated into different organs, and that whatever power occurring to any organ it should not be interfered with by another organ.

By this doctrine of “separation of powers” the functions of government in any particular state or country can be divided into three, legislative, executive, and judiciary. The legislative power is power to make laws; the executive power is the power to enforce the laws; and the judicial power is the power to interpret and apply the laws to individuals whom the executive charged with the violation of the laws. The idea of separation of powers means that the three functions of government must not only be separated but must also be exercised by different persons or body of persons; i.e. these powers must not be combined in the same persons or body of persons, but that they should be entrusted to three separate agencies, coordinate and mutually independent.

Though the concept of separation of power has been used frequently as a principle of doctrine, yet, it could still be adequately applied as a theoretical framework of analysis. The legislative-executive relation in modern political systems finds its most lucid expression in the concept of separation of powers of the three arms of government. The theory of separation or power was developed by Charles Louis Baron de Montesquieu in his “the spirit of law” (1748) to address the tyrannical tendencies of political leadership. The theory assumes among other thing the following:

1. That no one person or group should exercise all the powers of government.
2. That separation of government powers prevents tyranny.
3. That each branch of government if independent and equal to the others.
4. That separation of power performs the function of checks and balances.

The three arms of government –the legislature, executive and the judiciary should each possess constitutional power, which it shall exercise without interference from the other two
arms. According to Davies (1995), the doctrine of separation of power was developed to protect the liberty of the ruled and prevent tyranny. He stated that the doctrine was originally developed by John Locke but protection and the only way to guarantee that was to distribute governmental powers into different arms. This buttresses the position of Locke that if in any state, the three arms of government are in the hands of one person, the evident that the credibility of the government depends on balance between among the three arms of government as powers are separated in persons performing governmental functions. It is a veritable instrument for checking the excesses of the theory, Olisa (2003:40), stated that with the theory of separation of power each of the three arms of government should limit its powers and functions to its mandate and boundaries and should not intrude into the boundaries and mandate of each other. This non-intrusion eliminates the tyrannical tendencies of political leadership and enthrones accountability in governance.

Accordingly, the essence for the adoption of the principle of separation of power in the constitution of the Federal Republic of Nigeria (1979 and 1999) is to ensure public accountability through effect checks and balances. The theory of separation of powers as contained in the Nigerian constitution distributes government powers to each arm of government and empowers the legislative council to exert a certain level of checks on the executive, and in extreme situations to impeach or remove the executive. On the other hand, the executive is to checks the excesses of the legislature by overriding its decisions or denying assent etc.

In the application of the principle of separation of power in the parliamentary/cabinet system, there is little or no separation of powers. The functions of the executive overlap with those of the legislature in particular and the judiciary in general. The parliamentarians are under the full control of the executive. The lawmakers passed almost all the bills initiated by the executive. However, some legislators are backbenches and could attack policies or bills during question time or during debates. Secondly if the executive misrule, the parliament can pass vote of no confidence on them. Instances can be given with Nigeria. Under the Republican Constitution of Nigeria of 1963, Ministers who were members of parliament also formed the executive council. The executive now appoint the judges. In Britain, the House of Lords is the Highest Court of Appeal and is still a branch of the legislature. The principle of checks and balances are distinctly in existence here (Ujam and Agbo, 1997).

Generally, without the application of the theory of separation of power in governance, the executive will tend to appropriate bills or resources to itself, appoint its political appointees without scrutiny and account to nobody but itself at the local tyrannical tendency that the intends to address. The idea of separating the three arms of government from one another enhances credibility of government only if each arm is independent of the other. If however, any of the arms depend on the other for survival as it is observed in the administration of Nigeria, where the legislature is dependent and dominated by the executive because of its (executive) capacity to disburse funds and other resource, the legislative council loses its capacity to exert its oversight functions on the executive. This implies that merely separating the powers of government is not in itself the panacea for accountability, but ensured that no arm should depend on the other for its survival. Accountability can be ensured if the various arms of government follow the rules and regulations guiding accountability, rule of law and constitutionalism.

The Chairman of the African National Congress (ANC), Ms Baleka Mbete, agreed that a collaborative executive-legislature relations could be achieved in a country like Nigeria. Mbete spoke on the topic: “Parliamentary majority, the party and the executive: A tripartite for mandate delivery.” The ANC chair harped on the principle of social contract as fundamental, irrespective of the electoral could result in approaches that would be beneficial to the State, the party and the country. She noted that the nexus was to ensure the achievement of the desired
societal outcome based on a common policy platform. Mbete said the interaction by members of the majority party in the executive and legislature, respecting their respective state responsibilities, is embedded in the deep notion of democracy, promoting the separation of powers, the rule of law and the achievement of the growth and development objectives. “It is inherent in the design of the modern democratic state that there are sufficient checks and balances that will moderate any excesses, thereby completing the cycle of having a balanced, well oiled and well functioning democratic state.” Also, she said that parliament must ensure that it provides an enabling environment for all parliamentarians to do their work and for the executive to implement parliament policy decisions.

**Causes of Executive-Legislative Conflict in Nigeria**

The National Assembly, from 1999, set about doing its work including law making, budgeting, oversight functions, confirmation and investigation. Crises developed over these and they became the centres of controversy, and some of which went very far, and will be referred to very briefly. It seems as if the real issues in legislative/executive relationship are personally driven. The Senate changed its president twice before 2003. The House had two speakers in the first term. In nearly all cases of such legislative upheavals, with loss of office, alleged personal misconduct was what was cited. But, somehow, people tell you that they could see the hand of the executive there. It is not as if the legislature was always the victim either. Starting from the House of Representatives, a very serious attempt was made in 2001 to impeach the president. The joke that went too far looked like it was going somewhere, but was fortunately nipped in the bud by the intervention of two former presidents: Yakubu Gowon and Shehu Shagari. There was argument over everything.

The presidency blocked the release of funds to the House, which responded with the impeachment threat. The fact is, someone looking for a fault will always find it. There is always something that the presidency does, or fails to do, round which a case for impeachment can be built by those eager to do so. Similarly, the presidency can always find something wrong with the way the legislature behaves particularly in managing their own finances. Each side was gleeful whenever it could score points against the other. The executive was accused of using the recall clause, in collusion with some governors, to harass legislators. Peace was only brought about by the end of the first term, and the respective heads and, in the case of senate, three quarters of the members, did not return. Again, the executive was rightly or wrongly fingered on this matter. It can be said that the first term from 1999 was characterised by the typical Nigerian over-assertiveness, of one side trying to establish dominance over the other as the two sides discharged their constitutional responsibilities. It is fair to say that the problem was the operators, not the constitution, not the environment. Significantly, there was no bloodshed, in spite of dramatic moments like when the senate mace was removed in order to forestall what was perceived to be an unFriendly meeting.

The crises of the first term were sometimes very acrimonious. But they served to clearly define areas that needed attention in terms of improving the relationship between the legislature and the executive and achieving maturation of the system. The execution of constituency projects which the legislature said it was not being carried along is another issue.

Legislators often complain that the executive sites and executes projects without taking into account the more pressing areas of need. They also query the envelop system of budget allocation where they allege funds are allocated to ministries, agencies and departments without regard to their most challenging areas of needs. Civil society groups and public commentators are of the opinion that disagreements between the executive and legislators are healthy because the ordinary person stand to benefit in the long run. Executive Secretary of the Civil Society Advocacy and Legislative Centre, Mallam Auwual Musa, said, Such disagreements are healthy to the extent that reason prevails and Nigerians get the services for which they pay taxes and elect these officials into office. Our experience has however been that most of the disagreement
is not about the people but what will go to officials (Eme & Ogbochie, 2013:25). Until strong
democratic institutions are built and elected officials better understand their roles, the search for
harmony between the executive and the legislature will continue.

The Appointment and the Sack of Service Chiefs: The Background and the Verdict

As Eme (2010) noted in a case exclusively reported by The Guardian, on Monday June 2,
2008, titled “General in Court, Queries Service Chiefs Appointments” the Yar’Adua
administration has refused to comply with section 18 of the Army Act (2004), which provides
that Service Chiefs must be confirmed by the National Assembly before they can assume office.
The issue came to light in 2008 through a retired General’s quest for justice against the military
authorities that never confirmed the appointments of service chiefs that allegedly retired him.

Section 18 of the Armed Forces Act CAP A20 Laws of the federation, 2004 Provides in
Sub-section:

1. The President may after consultation with the Chief of Defence staff and subject to
confirmation by the National assembly, appoint such officers in this Act referred to as the
service Chiefs as he thinks fit, in whom the command of the Army, Navy, and Air Force, as the
case may be, and their Researches shall be vested.

Subsection 2 states: The Service Chiefs shall be known:

(a) In the case of the Nigerian Army, as the Chief of Army Staff
(b) In the case of the Nigerian Navy, as the Chief of Navy Staff, and
(c) In the case of Air Force, as Chief of Air Staff.

It would be recalled that this paper noted that, the National Assembly had confirmed no
service chief since 1999, when this democratic dispensation began, not even since 2004. And
the ones that the President Yar’Adua appointed shortly after the revelation of the lacuna in court
in 2008 have not been confirmed till date. No names were submitted to the National Assembly.
Inquiries too to the President of the Senate and the Speaker of the House on why they have not
asked the President to send his nominees to the National Assembly for confirmation has not
received any response since 2008. This explains how the elites have circumvented the
constitutional provisions on issues pertaining to the appointment of service chiefs in Nigeria
since 1999.

But on Monday, July 1 Justice Bello threw shock waves around the polity with his
landmark ruling which nullified the unilateral appointment of service chiefs by the president.
The first civilian president of the Fourth Republic, Chief Olusegun Obasanjo, had commenced
the practice in 1999 when he appointed his service chiefs. He continued the trend all through his
eight years as president. His immediate successor, the late President Umaru Yar’Adua,
continued in the same way, appointing service chiefs, including the Chief of Defence Staff,
Chief of Army Staff, Chief of Naval Staff and Chief of Air Staff. Keyamo picked up his muse
and headed for the court. He listed as defendants, the president, the Attorney-general of the
Federation and all the service chiefs. The suit, which had lingered since 2008, came to an end
on July 1 2013 when the court ruled that the appointment of the military top brass was illegal
and not in accordance with the provisions of the law.

In the contentious suit with reference number: FHC/ABJ/CS/611/2008, Keyamo had asked
the court to determine: whether, by the combined interpretation of the provisions of Section 218
of the Constitution of the Federal Republic of Nigeria, 1999 and Section 18 of the Armed
Forces Act, Cap. A.20, Laws of the Federation of Nigeria, 2004, the president can appoint the
service chiefs of the federation without the confirmation of the National Assembly first sought
and obtained. And whether Section 18 (1) and (2) of the Armed Forces Act, Cap. A.20, Laws of
the Federation of Nigeria, 2004 is not in conformity with the provision of the 1999 Constitution
so as to fall within the category of existing laws under Section 315 (2) of the Constitution of the
Federal Republic of Nigeria, 1999, that the President, may, by order, modify its text, to bring it
into conformity with the provisions of the constitution. The judge, Justice Adamu Bello, which
frowned at the breach of the 1999 Constitution (as amended) also, issued a separate order restraining “the President from further appointing service chiefs without first obtaining the confirmation of the National Assembly.”

Yar’Adua had inherited the illegality from his predecessor. President Jonathan had also towed their path when he was elected to office. The suit, which specifically faulted the practice, was, however, not regime specific and time bound. By implication, all such appointments made before now without the confirmation of the National Assembly were affected by yesterday’s verdict of the court. Keyamo had argued that the practice of sidestepping the constitutional requirement of getting the consent of the National Assembly in the appointment of service chiefs was unconstitutional. He said he was worried because the provisions of the organic law of the land were being breached with impunity. Keyamo had in the suit marked: FHC/ABJ/CS/611/2008 sought a determination of the following questions:

* Whether by the combined interpretation of the provisions of Section 218 of the Constitution of the Federal Republic of Nigeria, 1999 and Section 18 of the Armed Forces Act, Cap. A.20, Laws of the Federation of Nigeria, 2004, the President can appoint the service chiefs of the federation without the confirmation of the National Assembly first sought and obtained.

* Whether Section 18 (1) and (2) of the Armed Forces Act, Cap. A.20, Laws of the Federation of Nigeria, 2004 is not in conformity with the provision of the 1999 Constitution so as to fall within the category of existing laws under Section 315 (2) of the Constitution of the Federal Republic of Nigeria, 1999, that the President, may, by order, modify its text, to bring it into conformity with the provisions of the Constitution. He also sought the following orders:

* A declaration that the appointment of service chiefs for the Federal Republic of Nigeria by the President, without the confirmation of the National Assembly is illegal, unconstitutional and void.

* A declaration that Section 18 (1) & (2) of the Armed Forces Act, Cap. A.20, Laws of the Federation of Nigeria, 2004, is in conformity with the provisions of the 1999 Constitution so as not to fall within the category of existing laws under Section 315 (2) – of the Constitution of the Federal Republic of Nigeria, 1999, that the President, may, by order, modify its text, to bring it into conformity with the provisions of the Constitution.

* An order restraining the President from further appointing service chiefs for the federation without first obtaining the confirmation of the National Assembly. Parties to the suit had filed written briefs on the legal issues raised and adopted same (Adisa, 2013:4-5).

In the judgement, Justice Bello upheld Keyamo’s arguments and determined all the questions in his favour even as he granted him the two declaratory and one of the injunctive reliefs sought. The lawyer secured the court’s nod on the two questions, with the judge giving further orders, including a declaration that “Section 18 (1) and (2) of the Armed Forces Act, Cap. A.20, Laws of the Federation of Nigeria, 2004, is in conformity with the provisions of the 1999 Constitution so as not to fall within the category of existing laws under Section 315 (2) - of the Constitution of the Federal Republic of Nigeria, 1999, that the president, may, by order, modify its text to bring it into conformity with the provisions of the constitution an order restraining the President from further appointing service chiefs for the federation without first obtaining the confirmation of the National Assembly.

According to the judge, the appointment of service chiefs without the clearance of the Senate was illegal, null and void. He also restrained the president from further appointing service chiefs without first seeking and obtaining the confirmation of the Senate. While Keyamo’s suit was subsisting, there was thinking within the government circles to the effect that the president could write the Senate for confirmation of service chiefs. On assumption of the role of acting president in February 2010, President Goodluck Jonathan had toyed with the idea of sending letters to the Senate for the confirmation of service chiefs. It was learnt then that the process was to start with the appointment of the Inspector-General of Police. Sources,
however, stated that the government could not locate a constitutional provision to back up the bid and the president had to jettison the plan (Adisa, 2013:5).

The Presidency on the judgement, however, said it had yet to get a copy of a Federal High Court Abuja ruling that declared the appointment of service chiefs solely by the President as unconstitutional, illegal, null and void. Special Adviser to the President on Media and Publicity, Dr. Reuben Abati, said this in a telephone interview with our correspondent. Abati said it would be wrong for the Presidency to comment on a ruling that was yet to be in its possession. In a swift reaction, the President and Commander-in-Chief of the Armed Forces, Dr Goodluck Jonathan, has said the Minister of Justice and the Attorney-General of the Federation to obtain the copy of the judgment, study it and then advise whether the Presidency would accept the verdict or proceeds to the appellate court. He however said upon receipt of a copy, the Ministry of Justice would study the ruling with a view to advising the President appropriately. The presidential spokesman said: “no serious person will comment on a ruling he has not seen. We are yet to see a copy of the ruling. By the time we receive it, the Ministry of Justice will study it and advise the President accordingly”(Adetayo & Chiedozie, 2013:2).

Since the case was instituted during the era of the late President, Umaru Yar’ Adua, all those directly affected had ceased being in office but no doubt, the verdict is binding on the President especially when next he is considering appointing new service chiefs. Speaking with defence focus, an impeccable presidency source said, it would be dangerous for the President to rush the names of the incumbent service chiefs to the National Assembly for the approval instead this is because the Senate is not compelled to approve all the names sent by the Presidency. And this could constitute a threat to the security of the country. According to this source:

I read the judgment on the pages of newspapers this morning (Tuesday) and I was taken aback that a case instituted in 2008 had been pending before the Federal High Court until this week. Justice delayed is justice denied, as they say. Those who were in office when the case was instituted are no more there and we don’t even know what (Barrister) Festus Keyamo was after, for example, if he did not want a particular officer to be that ruling has failed. But be that as it may, it would be dangerous for President Jonathan to rush to the National Assembly to seek their approval. If they reject any name, that becomes a problem. Instead, the Presidency should appeal the ruling and exploit every opportunity available to the apex court by then, all the service chiefs would have completed their tenure (Oladeji, 2013:4).

The source explained further that appealing the ruling will also help to standardise the ruling and the judicial system would be better for it. According to him, most of the rulings of the lower courts have been upturned by the Supreme Court and this might be another one. What I can tell you now is until the matter gets to the Supreme Court; the last has not been heard. What would follow first is to ask for a stay of execution of the ruling then we proceed to the appellate court. A security source who spoke with defence focus on the same issue corroborated the presidency source. According to him, “you can sack the service chiefs because of the ruling and if the verdict is not appealed then their appointments have been nullified and whatever they are doing become illegal and unlawful. And with the state of insecurity we are in, that ruling must not be allowed to stand” (Oladeji, 2013:4).

Checks showed that it was only former President Shehu Shagari that sought the appointment of all his service chiefs from the National Assembly and it was this loophole that led Keyamo to institute the case.

The Implications of the Judgment on Executive-Legislative Relationship

In Nigeria, each time the executive and the legislature are at daggers drawn over issues of mutual concern, the political temperature is, more often than not, brought to a fever pitch
with actors embroiled in bickering. The quest for building a strong and cordial relationship for both arms to act as allies and partners in the nation’s search for good governance apparently informed the Presidency recently organized a conference on executive-legislature relations. Declaring the conference open, President Goodluck Jonathan pointed out that he had been looking to it due to its significance to his governance philosophy. Jonathan, represented by Vice President Mohammed Namadi Sambo, was quick to emphasize that the executive and the legislature were neither in any competition nor in any battle for supremacy. According to him, they are rather messengers sent to bring democratic goods as their roles, duties and responsibilities are well-defined. In a sermonizing tone, Jonathan cautioned that occasional disagreements between the legislature and the executive should neither be a dividing force nor be blown out of proportion. For him, “the relationship between the executive and the legislature is not about both arms of government, but about the governed. It is about harnessing our constitutional powers and God-given talents and deploying our positions as public servants to drive our progress as a nation.”

Claiming to have maintained a policy of non-interference in the affairs of the legislature, Jonathan said: “There is no reason whatsoever for us not to work together for the greatness of Nigeria. Today, we have a stable National Assembly and a cordial atmosphere suitable for the conduct of parliamentary business. Although there could be disagreements once in a while and political parties might differ, that should neither be a dividing force nor be blown out of proportion. What Nigerians want and deserve is good governance to the highest standards.” But in the view of Senate President David Mark, disagreements between the executive and the legislature are vital ingredients for strengthening democracy. He considers friction necessary for the survival of democracy, fearing that allowing excess power in one direction will breed tyranny as well as misuse and abuse of power. The National Assembly and the Presidency, in his conviction, are on the same wavelength, though they sometimes perceive issues differently. “So, it is this minor difference that occasionally gives an impression that there is friction”, Mark clarified.

Describing checks and balances as an appropriate constitutional provision which both arms must religiously adhere to, Mark averred that once a decision is reached in the parliament, it is the consensus of the ruling and the opposition parties, noting however that “when a decision is reached in the executive, it is the decision of the party in government. Whereas in the parliament, all those involved (in a decision) have the mandate of their people and they come with different views and ideas. Once the views are collated, they represent the overall interest of the nation. The executive also has the same mandate; its views represent the overall interest of the nation, but viewed from just one perspective, of the executive”.

For the Speaker of the House of Representatives, Aminu Tambuwal, attempts by the legislature to ask questions are always misconstrued as confrontation. He described the executive-legislature relationship as one of most topical issues in the current dispensation. His words: “We have suspended plenary session because we believe in learning and acquiring knowledge to improve on what we have learnt, we are not averse to learning. It is only through leather best to this country and we are determined to bring in the best to this country.” Earlier in her opening remarks, the convener of the conference and Special Adviser to Assembly Matters, Senator Joy Emodi, said the conference was a high water-mark in the good governance as it came at a time the executive and legislature showed a genuine, interest in working cooperatively to promote good democratic governance. Emodi maintained that both arms of government had valiantly and successfully labored attitudes that soured their relationships in the past, adding that occasional difficulty now handled with care, dexterity and political maturity.

The chairman of the African National Congress (ANC) and South African former deputy president, Ms Baleka Mbete, spoke on “Parliamentary Majority, the Party and the Executive: A Tripartite for Mandate Delivery”. Describing the tensions encountered in the political sector as normal, she submitted: “It is inherent in the design of the modern democratic state that there
are sufficient checks and balances that will moderate any excesses, thereby completing the cycle of having a balanced, well-oiled and well functioning democratic state”. In her opinion, the policy-making function is shared between the legislature and the executive thus creating an inherent necessary structural working relationship that has a built-in tension as both arms sometimes have different perspectives. Ms Mbete advocated the independence of the legislature’s political leadership and its competence to measure up to the rigors of the executive, adding that the parliament must be given enough resources in terms of its budget and adequate facilities for its members to perform their duties.

Also speaking, American former legislator, Senator Norm Coleman, cited a study conducted over 20 years ago by the National Academy of Public Administration. The study, he said, reflected on the negative impact of gridlock on the American political system as it highlighted distrust, gridlock and lack of interest in management issues and noted that both the Congress and the executive have adopted the fire alarm approach. “The result, whether in the US or in Nigeria, is a public that becomes increasingly dissatisfied and distrustful of government. Surveys then and now show a majority of citizens think most money spent by government is wasted, and the perception of gridlock between the Congress and the executive feeds that distrust”, he said. To improve the executive-legislature relations, Coleman said the study recommended a bipartisan bicameral workgroup comprising the representatives of both arms to serve as a forum for identifying and resolving issues of mutual concern as well as a bridging or linking mechanism that would provide continuing attention to the executive-legislature relations which would serve as a forum to, among other things, create effective oversight processes in the legislature, develop a system to coordinate executive officials’ testimony before parliamentary committees, identify opportunities to reduce congressionally mandated reports and facilitate the sharing of executive branch information.

He told the conference: “So, I present them (the recommendations) to you with the recognition that 20 years later, Washington is still faced with the same executive-legislative gridlock and partisan divide. And yet, in spite of its imperfections, American remains the world’s most prosperous democracy. It remains the centre of innovation. It continues to be a place where your future is not dictated simply by who your parents are. And as much as we appropriately focus in this conference on structural reform in the executive-legislature process, such reform is meaningless if the players in the political process do not have the support of an informed electorate”. Coleman concluded: “I began my speech by talking about a Nigerian musical bow, remarking that both tension and friction are essential to the quality of the music. My hope is that from this conference, you identify and strengthen mechanisms of government that maintain the necessary tension and friction so as to enhance the quality of executive-legislative relations”.

The implication of Justice Bello’s judgment is unmistakable. First, the president should re-present the names of the service chiefs for approval/ratification by the National Assembly. Otherwise, their appointments are null, void and of no effect, as pronounced by the court. Secondly, all key appointments by the president that require confirmation by the National Assembly must henceforth be presented to it for approval. In the present instance, it will serve the public interest and the image of the government better, if this judgement is accepted in good faith. The government must decline all entreaties to appeal against the decision of the court. The relevant sections of the Constitution on the nomination and confirmation of service chiefs are unambiguous on where the power of the President begins and stops, and where that of the legislature takes off. The implication of the case is simply that under the military resume the head of state and commander in chief can run a one-man show but in a constitutional democracy as we operate, where the doctrine of separation of powers and checks and balances are firmly rooted and the principle of the rule of law is the pivot on which the constitutional democracy
stands, the presidency cannot run a one-man now. Such appointment must set a constitutional imprimatur of the Senate as part of the senate’s oversight constitutional responsibility.

The judgement is valid until it is upturned. What it seeks to address really is the unnecessary arrogation of the power that does not belong to the presidency to the president. If a constitution say that make reference to the National Assembly, it is unheard if, it is unreasonable and least expected that a president would not heed such constitutional requirement; in that wise, the judgement is valid. It is not saying that the Service Chiefs are not entitled, it is only saying that procedure must be proper and that the culture of impurity while is what act of seek end to in on system. If ordinarily there is a requirement that he can appoint so, so person into a particular office, he must follow certain procedure, to the extent, the appointment of the service chiefs by the presidency is null and void. And I think that the most significant thing for a government that believes in the rule of law to do is to recall the appointees and forward the request to the National Assembly for ratification. Pending their ratification, the presidency may even call then acting. This is the own was the rule of law can be enhanced and the integrity of our constitution protected.

What makes it more nebulous is that the government has not responded to the judgement. It is incredulous that a government that has an Attorney-General would just ignore the judgement of a court without winking. This position confirms the hypothesis that their regime does not believe in the rule of law like its predecessors. Since the beginning of the Fourth Republic, it has been one breach of the right of the people or the other. The policemen and the military men have remained untamable and terrible bastardized human dignity. Last year, there was a very peaceful protest over fuel subsidy removal and what the government did was to send troops to the streets of Lagos.

**Agenda for the Presidency and the New Service Chiefs**

However, one of the erstwhile service chiefs, chief of Air Staff, Air Marshal Alex Badeh, was elevated to the position of Chief of Defence Staff (CDS). He takes over from admiral Ola Sa’ad Ibrahim. With this appointment, Badeh has become the third air force chief to be promoted to the rank of CDS. Other air force chiefs that made the mark in recent Nigerian history are air chief Marshal Paul Dike and Air Chief.

Maj-Gen. Kenneth Minima is the new Chief of Army Staff, replacing Lt-Gen. Azubuike Ihejirika. Similarly, Rear Admiral Usman Jibrin takes over from Vice-Admiral dele Ezeoba as the Chief of Naval Staff, while Air Vice-Marshals Adesola Amosu replaces Bade as Chief of Air Staff.

The president has briefed the leadership of the National Assembly on the appointment of the new service chiefs and promised to request the parliament to formally confirm the appointments in keeping with the provisions of Section 218 of the Nigerian Constitution.

No reason was given for the sudden change of guards at the top echelon of the military. The president apparently simply exercised his constitutional power, which allows him to make such changes. Considerations which may have informed the decision include mandatory service retirement age, the need for more promotions in the military and the quest to add more verve to the prosecution of the war against terrorism.

However, without any prejudice to the wisdom or otherwise of the latest shake up in the military, there is the need for the Presidency to give careful consideration to the penchant for frequent changes of service chiefs in the country. Apart from the exercise robbing Nigeria of the services of these experienced officers, it always leaders to premature retirement of all military personnel senior in rank to those elevated. While it is good to make changes to better secure the country and reinvigorate the war on terror, it should be done in a way that does not dampen the morale of officers of the Nigerian Armed Forces whose military careers are liable to sudden termination on account of these new appointments.
All the same, we congratulate the new service chiefs on their appointments and commend their predecessors in office for their service to the country. We sincerely wish them well in their retirement.

We charge the new service chiefs to regard their appointment as a call to higher service that demands the best from them, especially now that the war on terror is entering a decisive stage, and anxiety is mounting over the 2015 general elections. They should ensure that the general insecurity in the country is tackled decisively.

The new chiefs must put their best foot forward as they set fort to tackle the insecurity in the North-East zone of the country. This is not the time for rhetoric. They must frontal confront the security problems facing the country, especially the Boko Haram insurgency which President Jonathan recently described as the biggest challenge his administration has faced since inception.

It is not in doubt that the change of guards in the military is aimed at quickening the pace of the war on terrorism. The new men in charge should, therefore, design realistic strategies to ensure a speedy end to the menace. They should take security issues more seriously and deal decisively with the raging insurgency in the North. The security situation in that part of the country does not call for grandstanding or ego massaging. Let the service chiefs set realistic targets and work hard to achieve them. In that regard, the vow by the chief of defence staff to end the Boko Haram insurgency within three months must be matched with action.

The military can, however, only achieve success if there is a shift from the way the war on terror is currently being prosecuted. If the military wants the desired results, the operational tactics must change. The various security operatives currently prosecuting the war on terrorism must embrace teamwork and share intelligence. Inter-agency rivalry should be eliminated. The anti-terrorism war should be tackled with utmost sense of mission, urgency and patriotism.

We urge the new service chiefs to continue from where heir predecessors stopped, improve on their achievements and contribute their own quota in professionalizing the Nigerian military.

It is also recommended that only the executive should be responsible for the implementation of the budget, adding that there was the need to build the capacity of the members of the legislature on the budget process. Political parties should be supreme and demonstrate their supremacy over their members in the executive and the legislature. There must be synergy between political parties, the legislature and the executive in order to promote better executive legislature relations. Every political party should develop clear manifestoes which should be the basis of soliciting for the votes of the electorates and which should be implemented by the executive and the legislature if elected to power. Oversight functions should be exercised with integrity and responsibility and only for the purpose of exposing corruption and abuse of power. There should be adequate space for the opposition to operate at both the federal and state levels. There should be positive measures to enhance the independence of the legislature at the state level.

Legislators are to concentrate on their work and their dignity. Their constituency projects should be substantially and promptly funded. These projects spread development into nooks and crannies, they thus accelerate national development. If they are given generous allocation for constituency projects, legislators will reduce their unwholesome practice of going to the ministers in their offices looking for little personal and constituency favours, a situation fraught with the danger of ruining relations between the Executive and the Legislature.

Conclusion
President Goodluck Jonathan, recently, effected some key changes in the nation’s military high command with the retirement of some service chiefs and the appointment of new ones. Rights activist Festus Keyamo had continuously criticized President Goodluck Jonathan’s refusal to sack the nation’s Service chiefs—chief of Air Staff, chief of Army Staff and chief of Naval Staff—five months after their appointments were voided by a court.

In a letter he wrote to the presidency before the sack, the lawyer claimed that since no one appealed the judgment delivered on July 1, last year, by justice Adamu Bello of the Federal High Court, Abuja, the court’s decision remained valid and subsisting.

He said: “As it is today, all official actions taken by the service chiefs since the July 1, 2013, judgment was delivered, are null, void and of no effect in law. It only needs someone who is affected by their official actions to challenge their authority in a court” (Ikhilae, 2014:4).

Justice Adamu held that the appointments of service chiefs without the approval of the Senate and the House of Representatives is null and void, in line with Section 18(1) and (2) of the Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria, 2004.

The suit was initiated by Keyamo. The lawyer’s letter, titled: Refusal to obey and comply with judgment in respect of appointments of Service Chiefs, was addressed to President Jonathan; Senate president and the House of Representatives speaker.

Till now, no appeal has been filed against that judgment. It goes without saying that all the present service chiefs; Lt-Gen. Azubuike Ihejirika (chief of Army Staff): Air Vice Marshal Alex Sabundu Badeh (chief of Air Staff) and Rear Admiral Dele Joseph Ezeoba (chief of Naval Staff), were appointed without the confirmation of the National Assembly. Their appointments are, therefore, null and void ab initio, Keyamo said.

He regretted that the National Assembly, whose power to confirm the appointment of service chiefs was activated by the judgment, refused to demand that President Jonathan obey the judgment.

The lawyer threatened further court actions should the President and others refuse to act within 14 days. He added: in fact, that is why the real intent of section 18 of the Armed Forces Act is to subject the Armed Forces to civil authority.

It is also pertinent to observe that neither the president nor the service chiefs are constitutionally superior to the National Assembly.

As a result, the appointment of Service chiefs, which is political, cannot be different from other political appointments that require the confirmation of the National Assembly, e.g. the chief justice of Nigeria, justices of the Supreme Court and Court of Appeal, the chairmen of the Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and Other Related Offences Commission (ICPC), ministers and ambassadors.

The most embarrassing of this scenario is that the National Assembly has refused to do anything to comply with the judgment when a court of law has clearly given life to that power. It is sad for our democracy. In the case, the lawmakers turned a blind eye to an obvious breach of the law on such sensitive appointments by the president. President Goodluck Jonathan ought to have obtained approval for these appointments from the National Assembly. Section 218 (2) of the Constitution which confers the power to appoint service chiefs on the president says this power will be exercised “as may be established by an Act of the National Assembly.” Subsection (4) of this section states that “The National Assembly shall have power to make laws for the regulation of (b) the appointment, promotion and disciplinary control of members of the armed forces of the federation.”
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