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## EXECUTIVE-LEGISLATIVE RELATIONS IN CONTEXT OF THE GOVERNOR'S POWER OF PROCLAMATION IN NIGERIA: A CONSTITUTIONAL ANALYSIS

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**Abstract:** *For over two years now, a federating unit in Nigeria called Edo state has been enmeshed in a constitutional crisis wherein the Governor and 14 lawmakers-elect of the House of Assembly, has been locked in a battle of wit, which has seen lawmakers-elect frozen out of legislative activities. At the centre of the crisis is the exercise of the Governor's power of proclamation under Nigeria's 1999 Constitution and how this destabilised executive-legislative relations in the state. The matter has had a deleterious effect on the country's constitutional practice, given that at the height of the power tussle, it did bring the peace and stability of the state, and in extension that of the country to a tipping point. The key issues in this crisis are worthy of scholarly examination, in order to forestall similar occurrences in the future, as well as deepen the country's constitutional practice. This presents a constitutional analysis of the Governor's proclamation power under the Constitution, the novel issues it has thrown up, and the dangers it poses for Nigeria's developing constitutional practice. It canvasses the urgency of amending problematic parts of the country's Constitution which deals with the exercise of this power. The goal is to trigger far-reaching constitutional reforms which won't just only be useful in resolving this crisis but would, more importantly, be key in strengthening democratic governance in the country.*

**Keywords:** Constitution, Executive-Legislative Relation, Power, Proclamation, Nigeria

**Research Area:** Constitutional Law

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### 1. INTRODUCTION

Bangladesh The constitutional democratic practice provides that the different arms of government i.e., the executive, legislature, and judiciary, operate in a balanced relationship of separation of powers, as well as in an atmosphere of constructive engagement. Their relationship vis a vis the law can best be described in this manner – while the legislature makes the law, the executive implements and the judiciary interprets it. The fluidity with which the three are able to function in their office and perform their function, without let or hindrance, is indicative of progress in terms of determining how much a country has developed democratic norms. More importantly, relations between the executive and legislature, help define the proper functioning of a political system.<sup>1</sup> An atmosphere of harmony amongst the three arms of government is central to respect for the Constitution and the rule of law.<sup>2</sup> Nigeria operates as a federal state, with a constitution that horizontally shares powers amongst the three arms of government identified above, and vertically distributes powers amongst the three levels of government i.e., the federal, state, and local government councils. The horizontal distribution of powers amongst the three arms is also replicated at the state level, while local government councils simply consist of an executive

and legislative arm. Each of the three arms plays important role in the socio-economic and political development of the country.

The legislature is critical to national growth and development. It is a domain of rich intellectual debates, which ensures that quality legislations are enacted, and also an important influencer in the distribution of constituency projects, such as electricity, health facilities, industries, rails, roads, pipe-borne water, schools, etc which ultimately facilitates development.<sup>3</sup> As the primary law-making institution of the state, the legislature directs governments' policies and also serves as a check on the executive towards accountability and good governance.<sup>4</sup> The Constitution also vests power in the federal legislature to ratify treaties and agreements entered by the Federal government before such can have the force of law domestically.<sup>5</sup> It must therefore be considered an aberration, where such an arm of government is put in abeyance for whatever reason. Under Nigeria's constitutional framework, the legislature is captured in sections 4, 47 – 79, 88, and 90 - 119, which encompasses, in a rather extensive manner matters such as the powers, functions, rights, composition, summoning, qualification of membership and attendance of members of this institution, at the federal and state level.<sup>6</sup> The current legislature resumed on 29 May 1999 when the fourth republic commenced, this was after about two decades of military dictatorship under which it was frozen out of governance.<sup>7</sup> Indeed, it is the longest in the country's democratic history, having operated uninterruptedly for more than twenty years.

Since the country's fourth republic began, a common but disturbing trend has been recurring crisis between the executive and the legislature, mostly at the federal and state level. Rather than a harmonious relationship, the reality has been one of rancour which has at different times impacted on government business and frustrated the development of democratic practice. The ongoing constitutional crisis in the Edo state House of Assembly, regarding the exercise of power of by the Governor is one of such situations. In this crisis, a significant number of members of the state legislature have been frozen out of governance by the executive for over two years now, on the ground that they didn't make themselves available at the time of the inauguration of the house. This crisis broke out when the Governor of the state, Mr. Godwin Obaseki, in line with enumerated powers under Section 64 (3) of the Constitution,<sup>8</sup> issued a proclamation order for the inauguration of the newly elected member of the House of Assembly of the State. While the inauguration proceeded with 10 lawmakers deemed to be loyal to the Governor, and who were eventually sworn in and proceeded to elect a Speaker and Deputy Speaker, 14 other lawmakers-elect backed by an erstwhile Governor Mr. Adams Oshiomhole, reportedly stayed away. This state of affairs has seen a 10-man House of Assembly carry on as the validly recognised legislature for the state, while the 14 lawmakers-elect shut out of legislative business, have been pushing to have the Governor issue a second proclamation for their inauguration. For over two years running, the stalemate has refused to abate, even with the re-election of the Governor for a second term in office. This issue, which is the central focus of this article, is at the intersection of the concept of executive-legislative relations and the challenge of constitutionalism in the country.

Whereas, there is a robustly developing literature on Executive-legislative relations in Nigeria, research attention on the phenomenon in the context of the exercise of the constitutional power of proclamation is less prominent. Yet it holds a crucial dimension in understanding the significance of a subnational legislature in the country's journey towards democratic development. The crisis presents a green opportunity to put this issue on the front row. Since Governor Obaseki's action, both sides have tussled continuously about who is right and wrong, with each asserting that the Constitution is on its side. There is a need for an environment of constitutional order, in which beyond state actors arguing about the legality of their action on the basis of express constitutional texts, executors of the constitution at different levels of government, can choose to exercise power on the basis of shared

commitment to established moral codes, leading to an understanding of how and for what purpose power is to be deployed. This article probes the Edo House of Assembly crisis, drawing out serious issues that must agitate the mind of those in government, while canvassing a review of key problematic portions of the Constitution. To achieve this goal, this article is divided into seven parts. While first part deals with the introduction, second part provides an overview of the concept of executive-legislative relations in Nigeria and the constitutional framing of a State House of Assembly. While third part examines the bitter political feud between Mr. Godwin Obaseki and Mr. Adams Oshiomhole, fourth part covers the exercise of power governing the proclamation of a state assembly under the Constitution. Final part provides for recommendations majorly on the need to amend certain provision of the Constitution and Part VI deals with the Conclusion.

## **2. EXECUTIVE-LEGISLATIVE RELATIONS AND THE LEGISLATURE IN NIGERIA - THE STATE HOUSE OF ASSEMBLY IN VIEW**

Executive-Legislature relations refers to interaction between the executive and legislative arms of government, within the framework of their constitutional powers and functions. It is also the total transaction between the executive and legislative arms at a particular level of government where both institutions exist.<sup>9</sup> Executive-legislative relations can manifest either in a collaborative sense, in which the executive and legislative work harmoniously, or conflictive manner, a situation where rancour and conflicts is the order of the day. For a long time, the challenge of conflictive executive-legislative relations was deemed to be more peculiar to presidential systems of governments, where the doctrine of separation of powers holds sway.<sup>10</sup> The high stratification of power in such a system, demanding that each arm of government serve as a check on the other, was seen as responsible for the gridlock in executive-legislative relations.<sup>11</sup> Most times this gridlock arises when different political parties control the executive and the legislature.<sup>12</sup>

Though in Nigeria, executive-legislative relations has been collaborative and conflictive, even transcending relations at the federal level and also occurring at the state and local government levels,<sup>13</sup> much of the interaction have been more conflictive than collaborative.<sup>14</sup> According to Aiyede, conflictive executive-legislative relations at the federal level in Nigeria's fourth republic, has largely been in three key areas namely, the struggle for prestige and influence by each arm of government, conflict from opposing views of power by each arm of government and disagreement over policy issues.<sup>15</sup> Essentially, key players in this conflict connect it to moves by the executive to undermine the powers of the legislature or to cause a change in its leadership, in order to turn it to a 'rubber stamp'.<sup>16</sup> Factors perpetuating the phenomom include the underdeveloped state of each arm of government, weakness of political parties and their resort to militarised approaches in resolving issues.<sup>17</sup> Notable areas in which such conflict has manifested include impeachments of state governors, removal of heads of legislative houses, intransigence over national and state budgets, confirmation of appointments, invasion of legislative assembly by armed thugs, takeover of houses of assembly, etc. This kind of relations imposes gridlock on the policies of government to the end that socio-political development is frustrated.<sup>18</sup> It creates distraction in governance, relegating the business of government to the background.<sup>19</sup> It also leads mutual suspicion and hostility between the arms of government involved, encouraging a culture of impunity and disrespect for the rule of law.<sup>20</sup> A limited understanding of the constitutional responsibilities of each arm of government has been a major factor underpinning executive-legislative relations.<sup>21</sup>

While, each of the three arms of government play important roles in the socio-economic and political development of any country, it goes without saying that the legislature holds a central place in the pursuit of constitutional democratic development. Highlighting the

importance of the legislature Jombo notes that, “*the need for legislatures, also known as the parliament or peoples’ assembly, is reflected in the very meaning of democracy, ‘rule by the people’*”.<sup>22</sup> Barkan also observes that the legislature is important in the context of multiparty politics, as it is the engine room for achieving horizontal and vertical accountability of the rulers to the ruled.<sup>23</sup> The legislature warehouses the wealth of a country’s diversity, captured in members representing different ethnic nationalities at the federal level and different communities at the state and local government levels. As correctly observed by Omitola and Ogunnubi, the legislature is central to democratic sustainability and consolidation, as it is the most representative and closest to the people.<sup>24</sup> It has core constitutional functions such as law making, budgetary consideration and approval, confirmation of appointments, oversight functions, etc.<sup>25</sup> Its importance also rests on the fact that it is an arena for aggregating voters’ interest and expressing policy preferences.<sup>26</sup> Members of the legislature push agenda on behalf of their constituencies, employing the tools of bargaining and horse-trading to have their way. For legislators, transparency and openness is of great value,<sup>27</sup> because the representative mandate they acquire from the people demand that they are accountable.<sup>28</sup> This accountability framework requires that the legislator provides regular feedback to his/her constituency on progress made.<sup>29</sup>

The primary function of the legislature is however law making. This entails making of new laws, as well as review of existing ones, to reflect current realities and the peoples’ condition in life.<sup>30</sup> This power is vested exclusively in the legislature, though it can also delegate some aspect such as rule making and regulatory functions to agencies in the executive arm.<sup>31</sup> Likewise, the executive arms exercises a part of this power, as it is permitted to initiate bills that can later become laws.<sup>32</sup> According to Nyewusira and Nweke the, “*task of making law for ‘for the peace, order and government’ vested in the legislature by the Constitution, at all tiers, appears to be the most ‘critical assignment’ in a democracy*”.<sup>33</sup> With respect to the power of law making, Section 4 of Nigerian Constitution states that the National Assembly shall have, “*powers 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 the Constitution*”.<sup>34</sup> Furthermore, Section 4 (3) provides that, “*the power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States*”.<sup>35</sup>

Delineating the law making powers of the National Assembly, Section 4 (4) states that “*in addition and without prejudice to the powers conferred by subsection 2 of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say; (a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution, to the extent prescribed in the second column opposite thereof; and (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution*”.<sup>36</sup> The Legislature, at the federal, state or local government level discharges these function through constitutional and legislative procedures such as several reading of bills, public hearings, legislative committees and sub-committees, and deliberations and publicity.<sup>37</sup> These procedures are in tandem with the dictates of constitutionalism and also promote nation building.<sup>38</sup>

In addition to law making, the legislature has the power of oversight. Though the legislature is a separate arm of government, it also shares in the responsibility of governance.<sup>39</sup> This responsibility is accomplished through the exercise of its oversight powers. As stated by Nyathela and Makhado, oversight involves, “*supervision, watchful care, management or control, strategic and structured scrutiny exercised by legislatures in respect of the implementation of policies and regulations, the application of budgets and strict observance*

of statutes and the Constitution'.<sup>40</sup> It allows the legislature to respond to tardy conduct by public officials concerning issues that border on citizens' welfare.<sup>41</sup> Oversight allows the legislature collect information towards developing an evaluation of the performance of governmental agencies and to galvanise debate amongst members.<sup>42</sup> For instance, Section 88 of the Constitution empowers the National Assembly to expose corruption, waste and other forms of inefficiency in the country.<sup>43</sup> The legislature performs oversight through its committee system, with different committee overseeing different MDAs. Section 62 and 103 of the Constitution provides for the nature of such committees, their purpose, procedure as well as the limit of powers they can exercise.<sup>44</sup>

As the primary law-making institution of the state, the legislature directs governments' policies and also serve as check on the executive, in order to engender accountability and good governance.<sup>45</sup> Also, as noted by Okoeguale, the powers of the legislature to oversight the executive is a power inextricably linked to the power of law making and it's a power constitutionally recognised in sections 88, 89, 128 and 129.<sup>46</sup> For Wang, the power of oversight is especially critical with respect to accountability.<sup>47</sup> Ogundiya on his part notes that the function of a legislature in democratic governance goes beyond just law-making and representation, but also extends to administrative and financial matters.<sup>48</sup> In this wise, its main role is to debate and review the drafts of the appropriation bill i.e., national budget, presented by the executive and authorise spending accordingly.<sup>49</sup> Accordingly, an effective legislature aids good governance, especially in the area of oversight over government's finances.<sup>50</sup> As Fagbadebo observes, since fiscal appropriation is within the competence of the legislature, it means that it has a right to prevent waste of public funds.<sup>51</sup>

With respect to legislative framework, Nigeria operates a bicameral system at the federal level called the National Assembly, made up of a Senate or upper chamber and a House of Representatives or lower chamber.<sup>52</sup> Members of these chambers i.e., 109 Senators and 360 federal legislators are elected every four years in a general election.<sup>53</sup> While Senatorial seats ensure equally representation amongst the 36 states with each having 3 senators and one from the Federal Capital Territory FCT Abuja, the House of Representatives is structured based on federal constituencies created in terms of population.<sup>54</sup> Under this framework, larger states are likely to have more federal legislators, than smaller ones. As noted by Fessha, in most federations with a bicameral legislative framework, the lower chamber is designed to serve as the voice of different interest groups.<sup>55</sup> In addition, given its composition, the House of Representatives has the character of being closer to the people than other holders of power at the federal level.<sup>56</sup>

Within the 36 states, a subnational legislative framework is embodied by the House of Assembly, made up of members according to delineated state constituencies. In every federal system of government, with a central government co-existing with federating units which have a measure of autonomy, there is often a replication of the structure of government at the centre, at other levels of government, particularly at the level of the federating units. In Nigeria, a similar framework exists, with the federating units called states also having the three branches of government i.e., the executive, legislature and judiciary, as constitutionally created entities. The subnational legislative is captured in Section 4 (6) of the Constitution which states that, "*the legislative of a State of the Federation shall be vested in the House of Assembly of the State*".<sup>57</sup> Section 4 (7) then adds that:

*The House of Assembly shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say – any matter not included in the Exclusive Legislative list set out in Part I of the Second Schedule of the Constitution; any matter included in the Concurrent Legislative list set out in the first column of Part II of the Second*

*Schedule to this Constitution to the extent prescribed in the second column thereto; and any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.*<sup>58</sup>

The Constitution not only created formal democratic institutions in the country, it also defines the scope and limits of power exercisable by each of them.<sup>59</sup> It is in this light that it imposes certain limitations on the state legislature's law making power, in its co-existence with the federal legislature, a limitation correctly alluded to by Madubiike-Ekwe and Mbadugha, who bring it under the well-established doctrine of covering the field.<sup>60</sup> Specifically, it states in Section 4 (5) that, "*if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of its inconsistency, be void*".<sup>61</sup> This principle was affirmed in *Attorney-General of Ogun state v. Attorney-General of the Federation*,<sup>62</sup> where Fatai-Williams, JSC noted that:

*It is of course, settled law, based on the doctrine of covering the field...that Parliament enacts a law in respect of any matter in which both Parliament and any regional parliament are empowered to make law and a regional legislature enacts identical law on the same subject matter, the law made by the Parliament shall prevail. That made by the regional legislature shall become irrelevant and therefore impliedly repealed.*<sup>63</sup>

Additionally, the State Assembly just as the National Assembly is subject to jurisdiction of courts of law and judicial tribunals established by law,<sup>64</sup> while in the exercise of its law-making powers, it also cannot make any law having retrospective application.<sup>65</sup> As can be gleaned from the above provisions, the place of the State House of Assembly cannot be overemphasised. Regrettably, in Nigeria the legislative arm is dimly viewed, as against the executive. The vast functions allotted to the Executive arm, emboldens it to dominate other arms, especially the legislature.<sup>66</sup> This situation isn't helped by the public, who clearly interprets 'government' to mean the executive, and regard the legislature as simply a law-making body and an appendage of the executive.<sup>67</sup> For instance, the extensive appointment powers of the executive provide for it a wide level of patronage, which isn't the same with the legislature and judiciary.<sup>68</sup>

A number of factors have made it challenging for the legislature to perform its core functions. First, is the fact that the legislature has remained weak and unable to fulfil this mandate because of lack of institutional capacity. This refers to instruments that give the legislature the ability to perform its key functions of law making, oversight and representation.<sup>69</sup> Legislative capacity is seen in the level of autonomy the parliament enjoys and the infrastructural, financial and human resources available to it.<sup>70</sup> Second, is what Osunkoya and Adeniyi call the 'prebendalization of politics', in the country.<sup>71</sup> This is a political order in which a few elites, who occupy positions of power in public institutions deploy the opportunities offered by the amoral state, to divert favours and resources for themselves and their cronies.<sup>72</sup> In fact since 1999, legislative arms at different levels of government have been at loggerheads with the executive over sitting allowances and other issues.<sup>73</sup> Osumah notes for instance, that the self-motivation of most of the federal legislators between 1999 and 2013 was traced to the internal politics of the political parties, characterised by predatory opportunism, money influence and patron-clientelism.<sup>74</sup> In addition to earning bogus salaries and allowances, federal lawmakers use their oversight powers over Ministries Departments and Agencies MDAs of the government, to extract funds.<sup>75</sup> Consequentially, there has been continuous public uproar over the lawmakers' fat remuneration and the misuse of their oversight powers, which has greatly eroded societal confidence in the legislature.<sup>76</sup> In most states that make up the Nigerian federation, a similar prebendal order is replicated, with most

members of the State House of Assembly operating at the behest of the Governor, who wields enormous powers, to whose interest everyone is expected to align. Anyone who does otherwise necessarily faces political persecution. It is within this context that the legislature, for the purpose of accessing fringe benefits and ensuring political survival, has rendered itself a tool in the hands of the executive. Consequentially, this weakness makes it difficult for the legislature to make the executive accountable, or where they manage to, it is compromised.<sup>77</sup>

The above analysis clearly shows the importance of the legislature in the democratic set up. It also reveals the challenges that has relegated an ordinarily lofty institution to the state it is at the moment. It is this eye of disdain with which the legislature is viewed, that has emboldened State Governors to treat them as mere appendages, rather than a co-equal arm of government. Recent events in Nigeria, attest to this fact. Edo state, which is the focus of this article, mirrors the extent to which disregard for the legislature has matured. Like the rest thirty-five (35) states in the federation, the state has a House of Assembly made up of 24 members, representing different and diverse parts of the state. Since the return to democratic governance in 1999, the Edo State House of Assembly has remained in operation, with several lawmakers having cut their legislative teeth at the assembly, before moving up to the federal parliament. In the last 4 years, and perhaps beyond, the assembly has abandoned its relative obscurity, occupying a frontline position in a constitutional crisis that has nearly brought democratic governance in the state to a standstill. In the days leading to the now concluded gubernatorial election, the state remained on tenterhooks as political gladiators following the protracted constitutional crisis concerning the inauguration of the House of Assembly, deployed every weapon to outwit each other. As the crisis festered, a constitutional crisis took on political coloration, particularly because the crisis had in fact been engineered in pursuit of political ends. Putting these issues in context is important for subsequent analysis in this work and that will be the focus in the next section.

### **3. THE OSHIOMHOLE-OBASEKI POLITICAL FEUD: AN OVERVIEW**

Power is powerful. It moves the possessor, driving him to act in a way and manner, though inconsistent with laid down rules, regulations and even to the fundamental law of the land, is thrilling enough to massage his inner cravings. Yale Political Science Professor Robert Dahl sees power as relations among people,<sup>78</sup> but Barnett and Duvall takes the matter further defining the concept as, “*the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate*”.<sup>79</sup> Contextualizing the same concept, Mann observes that, “*human beings are restless, purposive and rational striving to increase their enjoyment of the good things of life and capable of choosing and purposing appropriate means for doing so*”.<sup>80</sup> He explains that these characteristics are the main sources of power.<sup>81</sup> While all forms of power are toxic, political power stands in a class of its own. Describing it as an elusive concept, Neumann notes that political power compasses two separate relations i.e., the control of nature and the control man.<sup>82</sup> Going forward to define the concept, he states that, “*it involves control of other men for the purpose of influencing the behaviour of State, its legislative, administrative and judicial activities*”.<sup>83</sup> An instructive part of the definition by Neumann is the hint that the goal of a power monger, for example, the head of the executive branch, is the control of other branches of government namely the legislature and judiciary. On the part of Chiou and Rothenberg, power (which in this context means political power), “*involves the chief executive's ability to move policy status quo through unilateral action for his gain without at least tacit acquiescence from other political actors*”.<sup>84</sup> This definition appears to be vastly more insightful, as shows that ‘control’ as an objective of those who wield power is majorly towards securing ‘personal gain’. The contest for power is at the centre of the Edo state House of Assembly crisis. While the Governor desires a house that will be subservient to him, so as to help deliver on his electoral promises, the 14 lawmakers-elects aided and abetted by outside forces, are also bent on having their

way. To understand the several dimensions of this clash of wills, a background knowledge of the crisis is sacrosanct.

### **3.1 Start of the Crisis**

While the Edo crisis has at its centre, the constitutional issue regarding the validity of the Governor's proclamation order, inaugurating the State House of Assembly, behind the curtain lies the bitter political feud between the Governor and his political benefactor as well as erstwhile Governor of the state, Mr. Adams Oshiomhole. The fracas is symptomatic of the struggle for power between political benefactors and their beneficiaries. This is against the backdrop of Nigeria's unique politics in which elections into public office has become monetized, in a manner that better qualified persons are fenced out of the system.<sup>85</sup> The crisis began with a move by Governor Obaseki to checkmate Mr. Oshiomhole in their battle to outwit each other. Mr. Godwin Nogheghase Obaseki succeeded Mr. Adams Oshiomhole as 10<sup>th</sup> Executive Governor of Edo State. Prior to that time, he had been an active member of inner cabinet of Mr. Oshiomhole, holding the position of Special Adviser on Economic Affairs and head of the Governor's economic team.<sup>86</sup> He is acclaimed as been a major part of Mr. Oshiomhole's team that worked on turning around the finances of the state and developing an economic blueprint. This is not strange, given that before joining Mr. Oshiomhole's government Mr. Obaseki has spent several years accumulating experience in the Nigerian private sector. At the twilight of Mr. Oshiomhole's time as Governor, it became clear that he favoured Governor Obaseki to succeed him as Governor, despite the fact that his deputy at that time, Mr. Pius Otubu had also declared interest in the same position. In fact, in his bid to ensure that Obaseki emerged victorious at the polls, Mr. Oshiomhole had to prevail on the political elites in the state, thereby truncating the ambition of Mr. Odubu.<sup>87</sup> Things were all rosy between the two all through this time, up unto Mr. Obaseki's assumption of office, when cracks begin to emerge, with insinuations in the media that the new Governor may in fact have begun to give Mr. Oshiomhole a cold shoulder.

Matters came to a head after the 2019 general elections, following which 24 new members were elected into the State House of Assembly, to function as one of the three branches of the government. In an apparent move to outfox Mr. Oshiomhole, in terms of control of the Assembly, on 17 June 2019 some lawmaker-elects loyal to the new Governor gathered at about sometime in the evening, to elect a Speaker and Deputy-Speaker, following which the Governor issued the constitutionally-mandated proclamation, and inaugurated the Assembly. While the inauguration of the pro-Obaseki group was ongoing, the other group of 14 lawmakers-elect loyal to Mr. Oshiomhole, were reported to have also gathered in another location perfecting plans concerning the leadership of the new Assembly. With the new Assembly coming into effect, the 14 lawmaker-elects stayed away on the ground that the Governor's proclamation had not been properly issued and that the purported inauguration was calculatedly done to ensure that that they were not a part of the process.

### **3.2 The Assembly post-inauguration**

Since the Governor's proclamation and the inauguration of the Assembly, the House of Assembly has remained in limbo. This is because the lawmakers, both the few lawmakers that were eventually inaugurated and the group of 14 lawmakers-elect that stayed away, have been at loggerheads using different platforms to push their case. While the Governor continued government's business with the lawmakers loyal to him, the other side relocated to the Federal Capital Territory (FCT) Abuja where Mr. Oshiomhole was then based as the National Chairman of the ruling party i.e., the All Progressives Congress (APC). At a point in the matter, two significant things happened - while on the one hand the National Assembly intervened in the matter, attempting to procure an amicable resolution, parties on both sides also approached the judiciary, asking the courts for a determination of several issues.



Following a motion by three members of the House of Representatives representing federal constituencies in Edo state namely Julius Ihonvbere, Peter Akpatason, and Johnson Oguma, the House of Representatives set up an ad hoc committee to investigate the matter.<sup>88</sup> Hon. Ihonvbere who moved the motion noted that, “*the house notes with concern the improper, clandestine and nocturnal inauguration of the 7<sup>th</sup> Edo State House of Assembly, on the 17<sup>th</sup> of June 2019, wherein nine out of the 24 members elect were purportedly sworn in without the knowledge of the of the other 15 members-elect*”.<sup>89</sup> The three federal lawmakers sought the National Assembly to take over the affair of the Edo state House of Assembly in line with Section 11 (4) of the Constitution.<sup>90</sup> The Committee later submitted its report, which *inter alia* recommended that Governor Obaseki issue a fresh proclamation, stating the time, date and venue of inauguration with a week.<sup>91</sup>

Following these steps, the Senate also directed the governor to issue a fresh proclamation letter for the State's House of Assembly within one week, failing which it will invoke Section 11 (4) of the Constitution.<sup>92</sup> This action was met with severe criticisms, as it was viewed as the Senate going outside the boundaries of its constitutional powers. Indeed, the Edo state government described the directive not only as unconstitutional, but a total disregard for the principle of separation of powers.<sup>93</sup> In a statement signed by the Secretary to the State Government, Osarodion Ogie, he noted that the ad hoc committee of the Senate that visited the state in an attempt to resolve the crisis was informed of the existence of three (3) suits.<sup>94</sup> Ogie added that, “*it is unfortunate that the Distinguished Senate would act in flagrant breach of these various Court orders and purport to come to factual and legal conclusions concerning a matter in which the parties are already before the Courts and therefore subjudice*”.<sup>95</sup> He concluded that Section 11 (4) of the Constitution doesn't empower any House of Assembly, inclusive of the Edo State House of Assembly.<sup>96</sup>

In the course of the back and forth, a Federal High Court in Port-Harcourt altered the legal dynamics, when it gave judgement holding that Governor Obaseki's July 17, 2019 proclamation had been validly made.<sup>97</sup> Delivering judgement in the matter, *Hon. Yekini Idiaye & Anor v. Clerk of the NASS & 5 Ors*,<sup>98</sup> Justice J.K. Omotosho made some rather important points, amongst which are that - the Governor does not have the powers to issue a second proclamation, after the first one has been made and that the National Assembly lacked the constitutional powers to issue a directive to a Governor in the exercise of his constitutional functions.<sup>99</sup> According to the judge, “*The Edo State House of Assembly is not an appendage of the National Assembly*”.<sup>100</sup> He further noted that “*the NASS cannot unilaterally that a State House of Assembly is unable to perform its legislative functions. It is after such determination by the courts that the National Assembly can exercise its powers under Section 11 (4). It is not the duty of NASS to interpret the Constitution; that is the exclusive preserve of the court*”.<sup>101</sup> He then submitted that “*the NASS directive to seal of the ESHA is ultra vires the NASS, as it is like the President ordering the sealing off of a State's Governor's Office*”.<sup>102</sup> Following this judgement, and the continued absence of the group of 14 lawmakers-elect from the Assembly, the group of 10 lawmakers, who had been inaugurated as members of the Assembly and who were loyal to the Governor, declared the seats of their truant colleagues vacant and forwarded a letter to the Independent National Electoral Commission( INEC), asking that fresh election be conducted into those positions.

On the road to the September 19, 2020 governorship elections in the state, and with the APC governorship primaries in which Governor Obaseki was a candidate approaching, some governors of the party again tried to intervene in the crisis, by meeting with the National Leader of the Party, but not much was achieved.<sup>103</sup> After much drama, Governor Obaseki was disqualified from participating in the party's primaries by the screening committee, on the ground that there were certain errors in some of the credentials he presented.<sup>104</sup> The Governor alongside his deputy Phillip Shuaibu subsequently defected to the opposition People's

Democratic Party (PDP), a move that further escalated the crisis to monstrous proportions. The former Governor, Mr Adams Oshiomhole also came out to say that he apologises for supporting Governor Obaseki to emerge as governor in 2016.<sup>105</sup>

Matters however took a dangerous turn, when on August 7, 2020 a detachment of policemen attempted to take over the State House of Assembly premises, on the ground that it was doing so to secure the facility and forestall a breakdown of law and order.<sup>106</sup> With the news of an impeachment plot becoming rife, the group of 14 lawmakers-elect also convened at a private location, administered oath of allegiance on themselves and went ahead to elect a new Speaker and Deputy, while also declaring that they had impeached the Speaker loyal to Governor Obaseki, Hon. Francis Okiye. The Governor condemned the attempted takeover of the Assembly premises, describing it as a treasonable act and one contrary to the Nigerian Constitution.<sup>107</sup> The Governor further recalled that after the September 12, 2019 judgement of the Federal High Court in Port-Harcourt affirming the legality of his proclamation, the group of 14 lawmakers-elect still stayed away from the house and did not present themselves for inauguration.<sup>108</sup> He also added that after their seats were declared vacant, the lawmakers approached a Federal High Court in Abuja to challenge the constitutionality of this action, and that the matter was still pending in court.<sup>109</sup> As the political drama between both parties continued, critical stakeholders continued to express concern. While Patrick Obahiagbon, the Vice-Chairman Media and Publicity of the party national campaign council referred to the Governor's action as 'executive recklessness' and 'an affront on the constitution',<sup>110</sup> the Rivers' State Governor, Nyesom Wike warned that the PDP would resist any attempt to remove Governor Obaseki from office or rig the September 19 gubernatorial elections.<sup>111</sup> The US Consulate in Nigeria also expressed concern over what it describes as the "*deteriorating political climate*" in the state.<sup>112</sup> It equally condemned the role some of political actors in the crisis, while also highlighting alleged interference by security agencies.<sup>113</sup> Since then, the state has remained on the edge, as the incendiary behaviour on both sides, continue to overshadow the need to put a quick conclusion to the constitutional crisis that has resulted from the rift.

Interestingly, the same constitutional power of proclamation that became an albatross in Edo-state was successfully exercised in other states of the federation, leading to the seamless inauguration of several state assemblies in June 2019. For instance, in Cross Rivers State, following the proclamation by the Governor Ben Ayade providing that the 9<sup>th</sup> Assembly be inaugurated on June 11, 2019, proper inauguration took place when the Clerk Bassey Ekpeyong swore in the principal officers.<sup>114</sup> The Assembly also elected Eteng Jonas-Williams and Joseph Bassey as Speaker and Deputy Speaker respectively.<sup>115</sup> In Anambra state, the clerk of the house Mr. Pius Odoh also oversaw the inauguration of the Assembly where Rt.Hon. Uche Okafor a two-time member of the house representing Ayamelum state constituency emerged as Speaker.<sup>116</sup> In Enugu state, a former Speaker Edward Uchenna Ubosi was re-elected to pilot the affairs of the newly inaugurated 7<sup>th</sup> Assembly,<sup>117</sup> while in Kaduna state the same scenario occurred, with the re-election of 37 year old Aminu Shagali at the inauguration of the 6<sup>th</sup> Assembly.<sup>118</sup>

For over 2 years now, 14 lawmakers-elect of the Edo House of Assembly have not been able to perform the functions of the office for which they were elected at the polls.<sup>119</sup> This leaves the people of the state constituencies which they ought to represent at a loss in terms of representation in government. The 14 lawmakers-elect are Vincent Uwadiae, Ovia North-East II; Ugiagbe Dumez, Ovia North-East I; Washington Usifo, Uhumwode; Victor Edoror, Esan Central; Kingsley Ugabi, Etsako East; Michael Ohio-Ezomo, Owan West; Sunday Aghedo, Ovia South-West; Chris Okaeben, Oredo West; Crosby Eribo, Egor; Aliyu Oshiomhole, Etsako West II; Oshomah Ahmed, Etsako Central; and Ganiyu Audu, Etsako West I.<sup>120</sup> While the expectation is that the parties will see reasons to sheath their swords, at least before the

end of the second term of the Governor, forestalling future occurrences require an analysis of the core issues that the exercise of this power has thrown up. This is important for contextualising how those who wield power ought to behave and also to highlight aspects of the constitution in need of reforms. The ultimate benefit is that this will help facilitate more robust and flourishing executive-legislative relations.

#### **4. THE EDO HOUSE OF ASSEMBLY CONSTITUTIONAL CRISIS: CORE ISSUES.**

At the root of the Edo House of Assembly is the conflict between the Governor and the estranged 14-lawmakers elect on the exercise of constitutionally-guaranteed power of proclamation. This power is a derivative of the concept of constitutional power, which refers to governmental authority or capacity that, in government formed under a constitution, is enumerated or implied as being vested in a particular branch or official; a legislative, executive, or judicial granted by or deriving from a constitution.<sup>121</sup> The term proclamation on the other hand is defined as, “*a formal public announcement made by the government*”.<sup>122</sup> The power of proclamation under the Nigerian Constitution is within the broader framework of constitutional granted executive powers. These are powers granted the executive branch of government under Section 5 for the execution of all laws validly made, with the Constitution being *primus inter pares*. Providing a clear guide to the exercise of this power by the executive at the federal level, a part of this section states that this power, “*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*”.<sup>123</sup> In recognition of the federal structure that Nigeria operates, a similar provision is made concerning the exercise of the same power at the state level, with the provision stating that the power in question, “*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 laws*”.<sup>124</sup> The phrase, ‘*execution and maintenance of this constitution*’, presuppose that in running the affairs of the state, the executive arm would be charged with several functions that would proceed from the Constitution, and that would be expected to be executed in line with what the Constitution stipulates.

One of such functions is the responsibility of the executive to issue a proclamation for the inaugural session of the legislative arm. This duty is provided for in respect of the inauguration of both the federal and state legislatures. Accordingly, section 64 (3) provides that;

*Subject to the provisions of this Constitution, the person elected as the President shall have power to issue a proclamation for the holding of the first session of the National Assembly immediately after being sworn in, or for its dissolution as provided in this section.*<sup>125</sup>

Again, with due regard to the distribution of powers in the Nigerian federation, a similar provision is found in section 105 (3) which states that:

*Subject to the provisions of this Constitution, the person elected as Governor of a State shall have power to issue a proclamation for the holding of the first session of the House of Assembly of the State concerned immediately after his being sworn in, or for its dissolution as provided in this section.*<sup>126</sup>

The first point to understand in relation to these two provisions is that it relates to ‘constitutional power’. The Black’s Law Dictionary defines power as “*the ability to act or not to act, especially a person’s capacity for acting in such a manner as to control someone else’s response*”.<sup>127</sup> In addition to sections 64 (3) and 105 (3), the power of proclamation also

comes up in section 305 where the President has the power to issue a proclamation of state of emergency.<sup>128</sup> Whenever proclamation is in view, it is often in the context of exercise of power. It is however important to establish that the power in this context is one 'to act' as the *donee* cannot refuse to act. This is reflected in the fact that the power in question doubles as power as well as obligation. The second point is that the power in question is not qualified or circumscribed, by being made subject to any other authority, except to the Constitution itself. The meaning is that except the exercise of this power conflicts with another provision of the Constitution, it would be deemed validly exercised. Third point is that though the power in question appears personal, as it is vested in the person elected and sworn in either President or Governor of a State, it can be exercised by any other person to whom he/she may delegate it to in line with section 5 of the Constitution.<sup>129</sup>

What the above shows is that the power of proclamation is clearly provided for under the Nigerian Constitution and it is domiciled in the executive arm. For the purpose of this article, our business is with section 105 (3), as that is the provision that deals with the Governor's power of proclamation in respect of a State House of Assembly, which is directly related to the Edo state House of Assembly crisis. What then is this purpose of this power? It may be said that in line with established principle of separation of powers, the intention is to provide an interconnection between the executive and legislature, both of whom though separate, are not expected to be totally independent of each other, as to become arbitrary in operation. A look to the 1999 Constitution will show that this principle is firmly entrenched in Nigeria's constitutional set up.<sup>130</sup> Where a legislature could proclaim its inaugural session for example, it may open the leeway for any group of persons to assert to be lawmakers and assemble to carry out actions inimical to the wellbeing of the democratic state. Thus, within the framework of checks and balances, just as a Governor has the power proclamation, the Legislature holds the power of oversight and impeachment. The intention behind this power appears salutary, up until when the Edo-state House of Assembly crisis broke. The crisis, which has reached fevered proportions, has for the first time called out Section 105 (3) of the Constitution. It has exposed inherent mischiefs that may have evaded the consideration of the drafters at the time of constitution making in 1998. It has also provided a unique opportunity to test the strength of this constitutional provision in the law courts. While parties have crossed the first hurdle at the Federal High Court in Port Harcourt, the unsatisfactory outcome for the legislators means that there is still a long way to go. The dilemma with the prolonged legal tussle however is the fact that a sizeable proportion of the people of the state are left without representation in the state assembly. Well over three months after the Governor and his deputy were sworn in for a second term, individuals from the 14 state constituencies that these legislators ought to represent have cried out over their non-representation in the state assembly for close to two years.<sup>131</sup>

Since this crisis began, the Governor and the legislators have been tossing the Constitution around to excuse their conduct. Understanding the core constitutional issues can only happen by examining what the Constitution says as regards becoming a member of a State House of Assembly. On this, Section 94 (1) of the Constitution provides that:

*Every person elected to a House of Assembly shall before taking his seat in that House, declare his assets and liabilities in the manner prescribed in this Constitution and subsequently take and subscribe before the Speaker of the House, the Oath of Allegiance and oath of membership in the Seventh schedule to this Constitution, but a member may, before taking the oaths, take part in the election of the Speaker and Deputy Speaker of the House of Assembly.*<sup>132</sup>

Following the inability to assuage warring parties, the seats of the lawmakers was declared vacant by the Speaker of the House, Hon. Frank Okiye, on the ground that they have been

absent from legislative proceedings for the mandatory 181 days.<sup>133</sup> This provision binds these lawmakers and continues to hold up their transition from being lawmakers-elect to constitutionally recognised members of a State House of Assembly. With this in view, it is most likely that, following the judgement by the Federal High Court in Port-Harcourt, irrespective of which direction the matter on appeal goes, both sides will pursue the matter all the way to the Supreme Court of Nigeria. When it happens, this move must be commended, as it demonstrates a growing tendency among the political class, to follow through with democratic values when disputes arise, instead of the often-rapid motivation to resort to self-help. However, one must say that far away from the simplicity that trailed the matter at the Federal High Court in Port Harcourt, the issues so far joined, may in fact become a hard nut to crack at the level of the appellate courts. This is due to novel arguments that counsels are certain to make, based on points of law. Challengingly, counsels on both sides would be making these arguments on the basis of Section 105 (3) of the Constitution, which appears to be silent on a number of important points, and being an uncharted terrain, this is likely to put the judges in a quagmire. As Katyal has rightly observed, “*one of the hardest questions in constitutional law has been what should judges do when the text, history and structure do not provide clear guidance in a given case*”.<sup>134</sup> A likely outcome therefore is that judges on both appellate benches may just end up creating new legal precedents in this area of the country's constitutional jurisprudence.

What is clear is that the exercise of constitutional proclamation power in the current scenario is obviously problematic. It is important to establish that in line with the provisions of Section 105 (3), issuance of proclamation is a constitutional function that the Governor is obligated to perform. As a constitutional obligation, what is the prevailing position on the discharge of constitutional functions in a democracy? Also, is the issuing of the proclamation a mere political act that can be carried out at the discretion of Governor, or is it a legal act that is based on specified procedures? Can a lawmakers-elect become a member of the Assembly, not having been duly sworn in in line with the procedure provided by the Constitution? Where a lawmaker-elect is not inaugurated following the Governor's proclamation, can such be sworn in outside a valid proclamation and what is the legal implication? Within the context of the issues before us, additional questions, particular as regards the operation of ‘time’ beg for answers.

One must start by rhetorically asking, what is the mind of the Constitution on the issue of the ‘time of the day’ when the Governor's proclamation is expected to be issued. Does the Constitution provide any guide in this respect or give any restriction, whether expressly or impliedly? Are there judicial/legal precedents as regards what time of the day the Governor's proclamation can be issued? In fact, did the drafters of the Constitution envisage that a Governor would issue a proclamation late in the night? In the exercise of executive powers, a Governor carries out other notable constitutional obligations, that directly connects with the legislature such as presentation of the appropriation bill, requesting the confirmation of appointees, etc. The question to ask is, can any of these obligations be carried out outside official working hours? In the event that they cannot, should the same reasoning not guide a court in determining whether a proclamation issued by a Governor at night is valid. Sound reasoning appears to support the position that the Governor's proclamation and the constitutional act to be carried out in line with the proclamation, is expected to be carried out during official working hours. A good example is seen in the proclamation issued by the Governor of Enugu-state, Ifeanyi Ugwuanyi, which happened in the same period when the Edo inauguration crisis started. The Enugu Governor in line with powers under Section 105 (3) of the Constitution, issued proclamation for inauguration of the state's 7<sup>th</sup> Assembly expected to take place on June 10, 2019.<sup>135</sup> A letter signed by the Governor in this respect, dated June 6, 2019 and titled ‘Proclamation for the Holding of the First Session of the

Seventh Assembly of Enugu-state House of Assembly', which noted that the inauguration will hold 10am at the Enugu-state House of Assembly complex, stated as follows:

*Whereas it is provided in Section 105 subsection 3 of the Constitution of the Federal Republic of Nigeria 1999, as amended, that the person elected as Governor of a State shall have powers to issue a Proclamation for the Holding of the First Session of the House of Assembly of the State concerned immediately after being sworn in. Now, therefore, I, Rt. Hon. Ifeanyi Lawrence Ugwuanyi, the Governor of Enugu State of Nigeria, in exercise of powers bestowed upon me by Section 105 Subsection 3 aforesaid, and of all powers enabling me in that behalf, hereby proclaim that the First Session of the Seventh (7<sup>th</sup>) Assembly of Enugu State of Assembly shall hold on Monday 10<sup>th</sup> June 2019, at 10 am in Enugu State House of Assembly. Given under my hand and the public seal of Enugu State of Nigeria at Enugu, this Thursday 6<sup>th</sup> Day of June 2019.<sup>136</sup>*

An important point that can be drawn from this letter is that the proclamation by the Governor is expected to clearly and unambiguously stipulate essential and material information, to guide the inauguration of the first session of State House of Assembly. Such information that the letter would state include the constitutionality of the power so exercised, the day of the inauguration, as well as time and venue. The fact that the letter is under the hand of the Governor and the public seal of the state, makes it an official document that is expected to be accorded proper publicity, usual with such correspondence. Thus, it is not as simple as a Governor asserting that he has issued a proclamation, both the substance and the form of the issuance must be present, for the power to be deemed as properly and validly exercised. In his point of order challenging the Senate resolution which ordered Governor Obaseki to issue a fresh proclamation, Senator Emmanuel Okerjev cautioned that Section 105 (3) of the Constitution does not mandate the Governor to publicise his proclamation in newspapers.<sup>137</sup> In his reaction to the Senate order plenary, the Speaker loyal to Governor Obaseki, Hon. Francis Okiye has noted that:

*Granted that upon proclamation of the house by Governor Godwin Obaseki and invitation by the Clerk, nine members were available to be inaugurated as provided by section 105 (3). The nine members took the oath of office. Other members did not give reasons for not being available for the inauguration. To avoid a constitutional crisis, the house had to be inaugurated on June 17, 2019 as stated in the proclamation letter.<sup>138</sup>*

This statement from Hon. Okiye alludes to the fact that Governor Obaseki indeed issued his proclamation in a letter addressed to the new Speaker. In line with established legal processes, the issuance of the proclamation in a letter, can be said to be reasonably sufficient in formalising the proclamation. However, a further question may be asked – instead of the letter being addressed to just the Speaker, ought it to be addressed to all lawmakers-elect, so as to serve as proper notice of their impending inauguration? One may answer this question by saying that in line with Section 105 (3), the election of leadership of the new house by all newly elected members is expected to have preceded their inauguration. To this end, the expectation is that all new members having participation in the house elections, are deemed to be abreast of the fact of the impending inauguration. However, the Edo crisis presents a novel situation, i.e., that it is indeed possible that not all members would have participated in the first act of electing the new leadership of the house, yet these lawmakers ought not to be deprived their right to notice of the proclamation that would trigger their inauguration as legislators. The Federal High Court in Port Harcourt in its judgment barred the Governor from issuing a second proclamation, an order that obviously puts the 14 lawmakers-elect in a legal quandary, as to what will become of the mandate given them by their constituencies.

And as it has been correctly observed, the Constitution provides no answers, as it is again silent on whether the Governor can issue a fresh proclamation.<sup>139</sup> All of these definitely create a vacuum in the current framework, that requires quick legislative action.

Now, it is important to make the clarification that even as we make these arguments, it is not known to anyone the exact time the Governor signed the proclamation that was issued. However, from the fact that the inauguration took place late into the night, the inference is that the proclamation came at about the same time, just a little earlier. Let us for the sake of argument, assume that the proclamation was issued by Governor Obaseki during official working hours, only for the inauguration to be discreetly delayed till night, this still throws up difficult questions. According to Nwabuoku, the Constitution is silent on what time of the day the inauguration of a State's House of Assembly should take place.<sup>140</sup> What is the place of official working in a constitutionally recognised inauguration process? For instance, the current Governor of Imo-state, Hope Uzodinma was sworn in at night, following the judgement of the Supreme Court which stated that he and not Emeka Ihedioha of the PDP, had been validly elected governor of the state. The question is, does this night inauguration affect the validity of the inauguration?

A number of things are clear from the analysis - It appears to be a binding argument that Governor Obaseki's proclamation is not only valid, but constitutionally in order. The proclamation is one of the ways the Governor exercises executive powers in line with Section 5 of the Constitution. Also, the legal validity of the inauguration following the Governor's proclamation cannot be refuted, given that it follows the provisions of Section 105 (3). However, is this sufficient to totally validate a process of such magnitude. While the Governor's proclamation through a letter fulfils the requirement of formality, the entire process seems *inchoate* given the assumption that all members ought to have notice of their inauguration. This vacuum clearly leaves the proclamation process within the discretionary machinations of the Governor and the newly elected Speaker, which may not augur well for building the norms needed for democratic inclusivity. As Glen notes, the exclusion of a broad spectrum of societies from governance in African countries, is a major impediment to realising full democratic system.<sup>141</sup> The Legislature as an arm of government is often made up of members across political divides, providing representation to people from different parts of the society. In any democracy, the legislature given its importance, is an indispensable arm of the government.<sup>142</sup> Therefore, for an act as important as the proclamation of a major arm of government which the legislature represents, it is extremely important that such process is all encompassing and broad-based.

## **5. WAY FORWARD**

The current era is one where all official acts particularly by elected officers of the State, and the exercise of all forms of power is expected to follow laid-down structures, a known pattern of things within an acceptable framework. Modern constitutional democratic rule prescribes a form of government comprising three branches, with each branch designed to be a full-fledged robust unit discharging its constitutional functions, without fear ill will or favour. This form of government is captured under the Nigerian Constitution with the legislature,<sup>143</sup> executive,<sup>144</sup> and judiciary<sup>145</sup> well clearly spelt out. The idea is that to indeed form government, all three must be present. One must add that the necessary interpretation that must follow the idea of each branch being present, is that each is fully and properly constituted. Sadly, the Nigerian constitution does not capture this idea. It simply states that "*the legislative powers of a State of the Federation shall be vested in the House of Assembly of the State*".<sup>146</sup> It doesn't state that where an Assembly is less than half as constituted in Edo state presently, it can still function. It appears the issue of composition is left to the House to decide within the confines of the house rules on procedure. There is some kind of mixed

messaging in the Constitution, as on the one hand it guarantees the place of the legislative arm, but on the other hand ties it to the apron string of the Executive.

At the moment, the Government of Edo state Nigeria is operating as a ‘*two and a half-legged stool*’, an allusion to the state of affairs in which there are executive and judicial branches, both operating in full capacity, and tagging along is what can be referred to as a seriously vandalised legislative arm, operating with less than half of its elected members. This is a clear violation of the internationally accepted normative framework governing the form of government. It is also unhealthy for the deepening of democratic norms and inimical to constitutional development. As things stand now, with both sides having dug in their heels, the eventual casualty is the people of the state. A short-term solution lies in both sides accepting the burden that their individual offices carry and shift their positions to accommodate the interest of the people. Now that the Governor has been re-elected into office, it is time to demonstrate charity and largeness of heart by extending the olive branch to the 14 lawmakers-elect. On their part, the lawmakers must also recognise the futility in holding on to their earlier position and pandering to the agenda of external actors. They must realise that the political tide in the state has indeed changed and only a government of compromise can return it to the path of constitutional order.

At a more fundamental plane, a long-term solution to this crisis lies in the urgent need to amend the two problematic provisions i.e., Sections 64 (3) and 105 (3) of the Constitution. Section 1 of the Constitution declare it as ‘supreme’, and that “*its provisions shall have binding force on all authorities and persons throughout the Federal Republic Nigeria*”.<sup>147</sup> This notion of supremacy, when interpreted, means that constitutional provisions stand head and shoulder above all other laws. This extraordinary dominance of constitutional rules is summed up by Kay who observes that, “*constitutional law regularly involves the application of rules what are fundamental in the sense that they control and authorise other law but are, themselves neither controlled not authorised by any other law*”.<sup>148</sup> While the Nigerian constitution proclaims supremacy in name, it is difficult to see how a document can exert its supremacy and bound ‘*all authorities and persons*’, where some of its provisions lack appropriate limits and control? Proclamation power as presently designed under Sections 64 (3) and 105 (3) lacks appropriate constitutional limits and control, and this vacuum has contributed in no small measure in tending the garden of the Edo constitutional crisis. Importantly, the current design of the power weakens the legislature’s capacity to function as an arm of government, as it basically ties its inauguration to the political shenanigans of the Governor.

To start with, there is obviously a lack of transparency in the crafting of the power in Sections 64 (3) and 105 (3) of the Constitution and this lack of transparency resides in the inconsistent nature of both provisions with the well settled principle of separation of powers. For instance, one needs to ask whether domiciling a power so far-reaching as that of the proclamation of the inaugural session of one arm of government, solely in a co-equal arm, isn’t itself a violation of the principles of separation of powers? How can the Legislature, an arm of government deserving of respect, expected to serve as a proper check on the Executive arm, have power regarding its inauguration tied to the Governor, who clearly represents the interest of the Executive arm? Isn’t this tantamount to handing over the proverbial yam and knife to the Governor? With a Governor having both the yam and knife in his custody, it would require a high sense of integrity for such an individual not to divert such an opportunity to feather his political nest. For instance, even where the proclamation is not of the problematic character as seen in Edo state, a Governor seeing that he wields such enormous power, may simply just delay the legislature’s inauguration, until his political permutations in terms of the required number of loyal lawmakers to make for a rubber-stamp legislature, is met.



What this comes down to is that the current structure of Sections 64 (3) and 105 (3) is destructive to the ideals of building a constitutional normative framework expected to deliver on democratic goods. We can't continue to act as if we cannot be bothered given the importance of the legislative branch in governance. A President or Governor shouldn't be allowed to simply issue proclamation order and walk away as if nothing has happened, as is the case in Edo-state. Two important functions of the legislature are law making and oversight of the Executive branch. While law making is important in the life of any democracy, the power of oversight goes to the root of the survival of democratic norms as it ensures that state actors do not carry on arbitrarily. With the ongoing crisis in Edo state, such power of oversight has been significantly weakened, if not totally shut down. Did the drafters of the Constitution, at the time of its making envisage such state of affairs? This is one reason why the current structure of this power demands a second look.

A greater worry lies in the fact that ambition-driven political actors in a neighbouring state in the country, can in the future simply text-lift the Edo script, and drive their state to an even more dangerous precipice. These are matters inimical to the growth of constitutional norms in the country and convey signals that must guide the polity. To curb such morbid use of power, as well as deter future behaviours, the provisions of Section 105 (3) need immediate amendment to address the vacuum already identified in this article, and whatever amendment finally takes place must equally be extended to Section 64 (3). Such amendment will place emphasis on such issues such as notice of proclamation, time of proclamation, and the legal importance of inaugurating a full assembly. Expounding on the principle of precautionary constitutionalism, Cachalia notes that a democratic constitution has two purposes i.e., to ensure the exercise of good power, while also imposing limit on the exercise of bad power.<sup>149</sup> He also notes that this principle is a major determinant in insulating the institution of self-government and democracy, from the toxic impact of corrupt exercise of power.<sup>150</sup> Ultimately, an amendment to Sections 64 (3) and 105 (3) will help make the Nigerian constitution more democratic, impose necessary boundaries on the exercise of such powers, and deepen the country's democratic culture.

## 6. CONCLUSION

This article has examined the crisis of constitutional power of proclamation in the Edo state House of Assembly. Importantly, it traced the crisis all the way from the imposition of Mr. Godwin Obaseki as Governor of the state by Mr. Adams Oshiomhole, to the collapse of relations between the two politicians. The article has canvassed the immediate need for an amendment of Sections 64 (3) and 105 (3) of the Constitution. One is not unaware of the difficulty in interrogating the issue at hand, particularly given that the matter is still an ongoing crisis. This is however the more reason why a conversation should begin now, which can culminate in a body of ready knowledge for any constitutional amendment in the future.

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<sup>1</sup> Petr Kopecky, 'Power to the Executive! The Changing Executive-Legislative Relations in Eastern Europe' (2004) 10 (2-3) *The Journal of Legislative Studies*, 142 – 153 at 142.

<sup>2</sup> Raymond C. Adibe and Casmir C. Mbaegbu, 'Executive-Legislative Relations and Governance Trajectories in Nigeria: The Road Not Taken' (2017) 1 (1) *South East Political Science Review*, 49 – 69 at 49.

<sup>3</sup> *Ibid* at 50.

<sup>4</sup> *Ibid* at 51

<sup>5</sup> Joseph O. Fasagba, 'Legislative Oversight under the Nigerian Presidential System' (2009) 15 (4) *The Journal of Legislative Studies*, 439 – 459 at 449.

<sup>6</sup> 1999 Constitution.

<sup>7</sup> Oarhe Osumah, 'Responsibility and Rascality: The Nigerian National Assembly, 1999 – 2013' (2014) 10 (2) *Taiwan Journal of Democracy*, 115 – 140 at 115

<sup>8</sup> Constitution of the Federal Republic of Nigeria 1999 (*Hereinafter* '1999 Constitution').

<sup>9</sup> Adibe and Mbaegbu, note 2 above at 56.

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