

## **PRESIDENTIAL EXECUTIVE ORDER AND DECREE ISSUING AUTHORITY UNDER THE NIGERIAN AND TURKISH PRESIDENTIAL CONSTITUTIONS: A COMPARATIVE ANALYSIS\***

### **Abstract**

*The Republics of Nigeria and Turkey operate presidential constitutions. A necessary incidence of presidentialism is the entrenchment of the doctrine of separation of powers, which is characterised by the division of governmental powers among the three core branches of government, namely legislature, executive and the judiciary. This paper therefore examined the presidential power to participate in law-making function in Nigeria and Turkey. The doctrinal research methodology was utilised and the method of data collection was through textual analysis of both primary and secondary source materials. The paper found that the Constitution of the Federal Republic of Nigeria 1999 (As Amended) [CFRN] grants to the president the implied power to issue executive orders in the implementation of policies of government while the Turkish Constitution expressly empowers the president to issue presidential decrees and by-laws which operate as primary law. It further found that there is a clearer delineation of the scope of presidential decree issuing authority under the Turkish model than is the case in Nigeria. Since it is impracticable to reasonably expect the president to faithfully execute the laws and policies of government without issuing instruments that have the force of law, the paper recommended that the CFRN should be amended to include express provisions authorising the president to issue executive orders within clearly defined parameters, as is the case under the Turkish Constitution.*

**Keywords:** Presidential Decree, Executive Order, Nigeria, Turkey, Constitutions, Comparison

### **1. Introduction**

The Republics of Nigeria and Turkey operate presidential constitutions. A necessary incidence of presidentialism is the entrenchment of the doctrine of separation of powers, which is characterised by the division of governmental powers among the three core branches of government, namely legislature, executive and the judiciary.<sup>1</sup> The primary purpose of separation of powers is not merely to promote efficiency in government administration, but to prevent the concentration of governmental powers in a single person or body of persons, and thereby prevent arbitrariness and absolutism in the administration of public affairs.<sup>2</sup> The end point of this prevention of arbitrariness is to protect the liberty of the common man.<sup>3</sup> A necessary fall out of this constitutional division of power is the allocation of law-making responsibility to the legislature, the vesting of responsibility for execution and implementation of all laws and policies of government on the executive arm of government, and the assignment of judicial powers to the judiciary.<sup>4</sup>

The Constitution of the Federal Republic of Nigeria<sup>5</sup> is founded on the principle of separation of powers. Accordingly, the CFRN provides for the legislative, executive and the judicial powers of the Federal Republic of Nigeria. It vests the legislative powers of the federation in a National Assembly (NASS) established for the federation<sup>6</sup> and also vests the legislative powers of a State of the Federation in a House of Assembly (HoA) established for each State.<sup>7</sup> The CFRN similarly vests the executive powers of the federation in the President of the Federal Republic of Nigeria<sup>8</sup> while the executive powers of a State of the Federation are vested in a governor of the State.<sup>9</sup> The primary function of the president is to implement the CFRN, the Acts of the NASS and to execute and maintain any matter within the legislative province of the NASS.<sup>10</sup> Furthermore, the judicial powers of the Federation are vested in the courts established for the federation<sup>11</sup> while the judicial powers of a State are vested in the courts established for each State.<sup>12</sup>

The Republic of Turkey follows closely the same scheme of distribution of power observed under the CFRN. For instance, the Constitution of the Republic of Turkey<sup>13</sup> (CRT) creates three distinct powers of government – the legislative, executive and

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<sup>1</sup> F C Uwakwe, 'Separation of Powers: Panacea for Good Governance in Nigeria' (2019) (10) (1) *NAUJILJ*, 140-150, 141; F O Anyim-Ben and Others, 'The Doctrine of Separation of Powers and Checks and Balances in the Nigerian Executive-Legislative Relationship' (2017) (9) (1) *Nnamdi Azikiwe Journal of Philosophy*, 77-84, 78

<sup>2</sup> A Oore, 'The Doctrine of Separation of Powers over Time and a Case for the Review of Nigeria's Power Separation Model' (2021) (5) (1) *Unilag Law Review*, 1-34, 2

<sup>3</sup> W O Ezeodili, 'Evaluation of the Application of Separation of Power in Nigeria: How Applicable Is It?' (2023) (14) (1) *Journal of Policy and Development Studies*, 175-186, 176

<sup>4</sup> O B Adegbite and Others, 'Separation of Powers under the 1999 Nigerian Constitution: The Core Legal Dilemmas' (2019) (3) (2) *Sriwijaya Law Review*, 235-252, 236

<sup>5</sup> 1999 (as Amended), Cap C23, Laws of the Federation of Nigeria, 2004 [CFRN]

<sup>6</sup> CFRN, s 4(1)

<sup>7</sup> *Ibid*, s 4(6)

<sup>8</sup> *Ibid*, s 5(1)(a)

<sup>9</sup> *Ibid*, s 5(2)(a)

<sup>10</sup> *Ibid*, s 5(1)(b)

<sup>11</sup> *Ibid*, s 6(1)

<sup>12</sup> *Ibid*, s 6(2)

<sup>13</sup> 1982 (as Severally Amended up to 2017) [CRT]

judicial. The CRT vests the legislative powers of the Republic of Turkey in the Grand National Assembly of Turkey (GNAT);<sup>14</sup> while the executive powers of the Republic are vested in the president.<sup>15</sup> The judicial powers of the Republic are vested in the courts.<sup>16</sup> However, despite what would appear to be a clear demarcation of governmental function, especially between the legislative and the executive branches in Nigeria and Turkey, the presidents of both countries have resorted to the issuance of instruments which possess the force of law. Nigerian presidents have been issuing executive orders since its first use by Vice President Osinbajo in 2017, with over 20 executive orders which have so far been issued. The president of Turkey has since 2017 also been rolling out presidential decrees and by-laws that operate as primary legislation.

Do the presidents of Nigeria and Turkey possess the authority under the constitutions of both countries to issue such instruments? If yes, in what ways are such powers controlled in order to prevent these presidents from turning into supermen? Are there lessons Nigeria can learn from the Turkish model? It is the desire to proffer answers to these posers that prompted the present research. Accordingly, this paper will undertake a comparative analysis of the presidential executive order and decree issuing authority under the CFRN and the CRT and draw out lessons, if any, which Nigeria can learn from the Turkish experience.

## **2. Conceptual Clarification**

This section will briefly examine the concepts of executive orders and presidential decrees as they apply to the discussion in this paper.

### **Executive Orders**

There have been debates among scholars and commentators about the actual nature of executive orders. This is further exacerbated by fact that the definition of executive order is not offered in the CFRN or in any other statute in Nigeria.<sup>17</sup> It has also been contended that even in the United States from where executive order originates, neither the Constitution or any congressional statute has offered any guidance as to what the concept entails.<sup>18</sup> However, the Black's Law Dictionary defines executive order as, '[A]n order issued by or on behalf of the President ... intended to direct or instruct the actions of executive agencies or government officials, or to set policies for the executive branch to follow'.<sup>19</sup> For the purpose of this paper, 'executive order' will be used to denote a written directive issued by a head of the executive branch of government at any level of governance intended to guide or instruct persons or bodies within the relevant executive branch on the modalities and measures to be adopted in the implementation of government policies.

### **Presidential Decrees**

The Collins English Dictionary defines presidential decree as an official order or decision, especially one made by the ruler of a country.<sup>20</sup> Presidential decrees have also been viewed as regulations issued by a president on matters within his constitutionally assigned executive power. it is not in conflict with the provisions of the law.<sup>21</sup> From the foregoing, it can be deduced that a presidential decree is a regulation, order or proclamation in writing issued by a president to implement government policies under a direct authority vested in the present to do so by the constitution. The decree constitutes primary legislation at par with laws enacted by the legislature but will be void where it conflicts with a statute. Usually, the constitution specifies the subject-matters on which the president can issue decrees as well as areas of governance prohibited to decrees.

## **3. Executive Order Issuing Power under the Constitution of the Federal Republic of Nigeria 1999 (As Amended)**

Section 5 of the CFRN establishes the federal executive branch of government and its structure and establishes a sole executive personalised in the President. The structure of the federal executive branch is composed of a President, a Vice-President, Ministers of the Government of the Federation, and officers of the public service of the Federation. The CFRN stipulates that the executive powers of the Federation are vested in the President.<sup>22</sup> The CFRN defines the scope of the federal executive power vested in the President. The federal executive power extends to the execution and maintenance of the CFRN,<sup>23</sup> all laws enacted by the NASS,<sup>24</sup> and to all matters with respect to which the NASS has power to make laws for the time being.<sup>25</sup> So

<sup>14</sup>CRT, arts 75 and 87

<sup>15</sup>CRT, art 104

<sup>16</sup>*Ibid*, art 138

<sup>17</sup>E O Okebukola and A A Kana, 'Executive Orders in Nigeria as Valid Legislative Instruments and Administrative Tools' (2012) *NAUJILJ*, 59-68; C V Odoeme, 'Executive Orders in Constitutional Democracies: A Critique', 2 <[https://www.researchgate.net/publication/356789114\\_EXECUTIVE\\_ORDERS\\_IN\\_CONSTITUTIONAL\\_DEMOCRACIES\\_A\\_CRITIQUE/link/61ad3b3eca2d401f27cafb46/download?\\_tp=eyJjY250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19](https://www.researchgate.net/publication/356789114_EXECUTIVE_ORDERS_IN_CONSTITUTIONAL_DEMOCRACIES_A_CRITIQUE/link/61ad3b3eca2d401f27cafb46/download?_tp=eyJjY250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19)> accessed 23 September 2025; J A Adeyeye, 'Executive Orders in Nigeria and United States of America: Constitutionality and Comparative Analysis' (2023) (3) *Cavendish University Law Journal*, 1-27, 5

<sup>18</sup>AA Graber, 'Executive Orders: An Introduction' (2021) *Congressional Research Service*, 1-21, 1 <<https://crsreports.congress.gov/product/pdf/R/R46738>> accessed 21 September 2025

<sup>19</sup>B A Garner (ed), *Black's Law Dictionary* (11<sup>th</sup> edn, St. Paul, The USA: Thomson Reuters 2019) 715

<sup>20</sup>Collins English Dictionary (Online), 'Presidential Decree' <<https://www.collinsdictionary.com/dictionary/english/presidential-decree>> accessed 22 August 2025

<sup>21</sup>K Cantekin, 'Turkey: Presidential Decrees' 1-19, 1 <<https://tile.loc.gov/storage-services/service/ll/llgldr/2022666100/2022666100.pdf>> accessed 22 August 2025

<sup>22</sup>CFRN, s 5(1)(a)

<sup>23</sup>*Ibid*, s 5(1)(b)

<sup>24</sup>*Ibid*

<sup>25</sup>*Ibid*

manifold and profound are the extent and ramifications of the federal executive powers vested in a president by the CFRN. First, the president is to execute and maintain the CFRN. Second, the president is to see to it that he faithfully executes and maintains all laws that have been enacted by the NASS. There are hundreds of laws that have been enacted by the NASS. It is the duty of the president to execute all these laws to attain the government policies embodied in them. Third, the expression, 'all matters with respect to which the National Assembly has power to make laws for the time being', used in Section 5(1)(b) of the CFRN seems to suggest that the president needs not wait until the NASS discharges its legislative duties in relation to any of the subject-matters with respect to which the NASS has power to enact laws. The president is vested with the constitutional power to execute and maintain any matter which is within the legislative competence of the NASS, even in the absence of any specific laws enacted by the NASS in that regard. As long as the matter is one in respect of which the CFRN has conferred legislative powers on the NASS, the president would be well within his constitutional remit to execute and maintain such matter. While the president cannot make law on such matter, he can carry out his executive powers and functions in relation to such matter, such as issuing policy guideline to officers and agencies of the federal executive branch to take certain actions towards the execution of the matter.

#### **4. Presidential Decree Issuing Authority under the Constitution of the Republic of Turkey 2017**

The Republic of Turkey is a trans-continental country located at the cross-roads of South-Eastern Europe and Western Asia. The Republic of Turkey is governed by the Constitution of the Republic of Turkey<sup>26</sup> which has been amended 21 times, with the latest amendment in 2017. It should be noted that prior to the 2017 constitutional amendment, Turkey operated a parliamentary system of government. The constitutional amendment of 16 April 2017 ushered in the presidential system in Turkey. The major highlight of the 2017 constitutional amendment is the extensive powers granted to the president to make laws, issue presidential decrees and orders possessing the force of law, with far-reaching consequences on the power equilibrium required for the sustenance of a constitutional democracy.

In tandem with the principles of presidentialism, the Constitution of the Republic of Turkey (CRT) creates three distinct powers of government – the legislative, executive and judicial. The CRT vests the legislative powers of the Republic of Turkey in the Grand National Assembly of Turkey (GNAT);<sup>27</sup> while the executive powers of the Republic are vested in the president.<sup>28</sup> The judicial powers of the Republic are vested in the courts.<sup>29</sup> A key feature of the CRT is that it confers express legislative powers on the president of the Republic of Turkey. These law-making powers are in three categories. The first category of presidential law-making power in the Republic of Turkey is the promulgation and ratification power. Essentially, this is the authority to promulgate laws (or what is generally referred to as the power of presidential assent) and publication of the laws in the official gazette of the State, and also the power to ratify and promulgate international treaties. The second category of presidential law-making power is the decree-issuing authority; while the third category is the by-laws-issuing authority. In relation to the first category, the CRT provides that the president shall promulgate laws.<sup>30</sup> As noted earlier, the power to promulgate laws is the equivalent of the power to assent to bills (as is the case of the president of Nigeria) and should not be taken as an act of creating or making laws. It may also include the power to publish the law passed by the GNAT and assented to by the president in the Official Gazette of the Republic. Apart from promulgating laws, the president is granted an express power to ratify and promulgate international treaties.<sup>31</sup> However, no treaty ratified by the president in pursuance of Article 104 of the CRT shall acquire the force of law until such treaty is enacted into law by the GNAT.<sup>32</sup> In relation to the second category, CRT confers on the president of the Republic the power to issue presidential decrees in respect of matters within the ambit of the president's executive power.<sup>33</sup>

However, the CRT imposes restrictions on the presidential decree-issuing power by prohibiting the issuing of decrees in respect of wide-ranging subject-matters. For instance, presidential decrees are prohibited in relation to the fundamental rights, individual rights and duties included in the first and second chapters and the political rights and duties listed in the fourth chapter of the second part of the CRT.<sup>34</sup> Similarly, no presidential decree shall be issued in relation to the matters which are stipulated in the CRT to be regulated exclusively by law.<sup>35</sup> In addition, no presidential decree shall be issued on the matters explicitly regulated by law.<sup>36</sup> To ensure that the presidential decree-issuing authority is firmly circumscribed and to emphasise the pre-eminent authority of the legislature in matters of law-making, the CRT provides that in the case of a conflict between provisions of the presidential decrees and the laws, the provisions of the laws shall prevail.<sup>37</sup> Thus, a presidential decree shall become null and void once the GNAT enacts a law on the subject-matter.<sup>38</sup> Similarly, the CRT grants to the president of the Republic the power to issue by-laws in order to ensure the implementation of laws, provided that the by-laws so issued are not contrary to

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<sup>26</sup>1982 (as Severally Amended up to 2017) [CRT]

<sup>27</sup>CRT, arts 75 and 87

<sup>28</sup>*Ibid*, art 104

<sup>29</sup>*Ibid*, art 138

<sup>30</sup>*Ibid*, art 104/5

<sup>31</sup>CRT, art 104/11

<sup>32</sup>*Ibid*, art 90/1

<sup>33</sup>*Ibid*, art 104/17

<sup>34</sup>*Ibid*

<sup>35</sup>*Ibid*, art 104/17

<sup>36</sup>*Ibid*

<sup>37</sup>*Ibid*

<sup>38</sup>*Ibid*

the parent law.<sup>39</sup> It should be noted that this power to issue by-laws roughly corresponds to the power of the Nigerian president or executive branch agencies and officers to issue regulations or other forms of subsidiary legislation. Presidential decrees and by-laws take effect on the date of their publication in the Official Gazette, unless a later effective date is expressed.<sup>40</sup> Furthermore, the CRT vests in the president of the Republic, the ministries, and public corporate bodies the power to issue by-laws in order to ensure the implementation of laws and presidential decrees relating to their jurisdiction, as long as they are not contrary to those laws and decrees.<sup>41</sup>

The President of Turkey started exercising his decree-issuing power from 2017 when the current amended constitution took effect. Interestingly, only one president has been in power since 2017 until date. Since the introduction of the decree-issuing power into the CRT, it has been claimed that 89 presidential decrees have so far been issued, mostly regulating the organisation of the central administration, but also touching on other subject-matters.<sup>42</sup> Perhaps, what appears to be the most controversial presidential decree issued by the Turkish president was the presidential decree<sup>43</sup> withdrawing the Republic of Turkey from the Istanbul Convention,<sup>44</sup> which decision was taken without the approval of the GNAT. The president's action was based on the claim that the Istanbul Convention was being used to normalise homosexuality. The president's power to issue a decree terminating Turkey's international agreement has been hotly contested. The main point of contention is whether the president has the right to issue a presidential decree on the termination of international agreements.

Critics of the presidential exercise of power contend that the CRT stipulates that international agreements are subject to adoption by the GNAT with a statutory law approving the ratification.<sup>45</sup> Consequently, it is contended that Article 90/1 of the CRT does not contemplate any procedure for withdrawal or termination from an international agreement. Therefore, in line with the principle of parallelism of competence and procedure, the GNAT should have the authority to withdraw from international agreements by enacting a statutory law, in the absence of any other constitutional provision regulating the termination of a treaty.<sup>46</sup> This argument is reinforced by the fact that it is a constitutional stipulation that international agreements that are duly put into effect have the force of statutory law.<sup>47</sup> Furthermore, the CRT provides that provisions of international agreements related to fundamental rights and freedoms duly put into effect – such as the Istanbul Convention – prevail in the event of a conflict with statutory law.<sup>48</sup> The constitutionality of this controversial presidential decree was challenged before the Turkish Council of State – the highest administrative court in Turkey, which in a split decision of 3:2 delivered on 19 July 2022, upheld the constitutional validity of President Erdogan's presidential decree unilaterally withdrawing Turkey from the Istanbul Convention.<sup>49</sup> The Council of State seems to have predicated its conclusion on Article 104 which grants the president the power to ratify treaties.<sup>50</sup> This decision has been criticised for failing to uphold the constitutional provisions which limit the scope of the president's executive power.<sup>51</sup>

## **5. Comparative Analysis of Executive Order and Decree Issuing Power under the Nigerian and Turkish Constitutions**

A discussion of the modes of exercising executive power in the implementation of government policies in Nigeria, the US, Brazil, Turkey and Seychelles has revealed some notable similarities as well as differences in the existence, scope and applicability of the power in the jurisdictions studied. This section distills and discusses some of the key similarities and dissimilarities observed in the comparative analysis of the legal regime and practice of government policy implementation in the affected jurisdictions.

### **Rampant Issuance and Use of Presidential Instruments**

Increasing involvement of the executive in the legislative process seems to be a feature of most presidential systems and is observed in Nigeria and Turkey. In Nigeria, the major instrument of political power used by the presidents is executive order. Executive order usage in Nigeria is relatively new. It took until 2017 before the first presidential instrument styled 'executive order' was issued in Nigeria, although gubernatorial executive order, especially in Lagos State of Nigeria has been in use since 2012. Only two Presidents in Nigeria's history – Muhammadu Buhari and Bola Ahmed Tinubu, have issued executive orders.

<sup>39</sup>*Ibid*, art 104/18

<sup>40</sup>CRT, art 104/19

<sup>41</sup>*Ibid*, art 124

<sup>42</sup>Goles, 'Introducing the Report on Turkish Presidential Decrees' (10 January 2022) <<https://blogs.loc.gov/law/2022/01/introducing-the-report-on-turkish-presidential-decrees/#:~:text=The%20report%20provides%20an%20overview,or%20delegation%20from%20the%20legislature.>> accessed 20 September 2025

<sup>43</sup>Presidential Decision No. 3718 Published in the Official Gazette on 20 March 2021 <<https://www.resmigazete.gov.tr/eskiler/2021/03/20210320-49.pdf>> accessed 20 September 2025

<sup>44</sup>The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence adopted on 11 May 2011 in Istanbul, Turkey

<sup>45</sup>CRT, art 90/1

<sup>46</sup>A Kula, 'An Unconstitutional Setback: Turkey's Withdrawal from the Istanbul Convention' (22 March 2021) <<https://verfassungsblog.de/erdogan-istanbul-convention/>> accessed 20 September 2025

<sup>47</sup>CRT, art 90/5

<sup>48</sup>*Ibid*, art 90/5

<sup>49</sup>Peoples Dispatch, 'Top Court Upholds Erdogan's Decision to Withdraw Turkey from Istanbul Convention' (21 July 2022) <<https://peoplesdispatch.org/2022/07/21/top-court-upholds-erdogans-decision-to-withdraw-turkey-from-istanbul-convention/>> accessed 21 September 2025

<sup>50</sup>*Ibid*

<sup>51</sup>*Ibid*

Even if Nigeria transitioned from the parliamentary system inherited at independence, to the presidential system modeled closely on the US system in 1979, the only President under the 1979 presidential constitution – Alhaji Shehu Shagari, did not issue a single instrument which bears the appellation ‘executive order’, until he was out of office through a military coup on 31 December 1983. Nigeria slipped into another round of military dictatorship characterised by the complete fusion of the legislative and executive powers in the military head of State/military ruling council, and even the judicial powers, to a lesser degree. The return to civil rule in 1999 ushered in the CFRN modeled on the US presidential system. The first president under the CFRN 1999 – Chief Olusegun Obasanjo, the second President – Alhaji Musa Yar’ Adua and the third President – Dr Goodluck Ebele Jonathan, did not issue any instrument christened ‘executive order’. It was even the Vice-President to the fourth republican President, Prof. Yemi Osinbajo, who issued presidential executive orders in Nigeria for the first time. In Turkey, the predominant instrument used by presidents in executing laws and managing executive branch administration is decrees, although the Turkish president is constitutionally empowered to additionally issue by-laws. Thus, Turkish presidents routinely issue presidential decrees and by-laws. It should be noted that prior to the adoption of the 2017 constitutional amendment which transmuted the Republic of Turkey from a parliamentary into a presidential system, the presidential power of decree-making was not recognised by the constitution. The president of Turkey started exercising his decree-issuing power from 2017 when the current amended constitution took effect. Interestingly, only one president has been in power since 2017 until date. Since the introduction of the decree-issuing power into the CRT, it has been claimed that 89 presidential decrees have so far been issued, mostly regulating the organisation of the central administration, but also touching on other subject-matters.<sup>52</sup>

### **Constitutional Authorisation for Issuance of Presidential Instruments**

In Nigeria, there is no direct textual reference to executive orders in the CFRN,<sup>53</sup> although the CFRN specifically empowers the Nigerian president to issue regulations on citizenship,<sup>54</sup> proclamations for dissolution of legislative houses<sup>55</sup> and proclamation declaring a state of emergency,<sup>56</sup> and also empowers the president or governor to make an order modifying the test of any existing law.<sup>57</sup> However, the CFRN mandates the president to execute the constitution and the laws enacted by the relevant federal legislatures. There is also no direct textual reference to executive order in the CFRN.<sup>58</sup> What the CFRN provides is that the executive powers of the Federation is vested in the president and that this power extends to the ‘execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the times being, power to make laws.’<sup>59</sup> This is followed by the Commander-in-Chief Clause<sup>60</sup> and the Oath Clause<sup>61</sup> of the CFRN which did not mention that the president could issue executive order or any instrument, except for the few instances of express constitutional grant of executive instrument making power alluded to earlier. It would seem, however, that Nigerian presidents derive the implied power to issue executive orders and other instruments from the word ‘execute’ used in the CFRN in relation to presidential powers. Scholarly support for presidential and gubernatorial executive order issuing authority in Nigeria are many.<sup>62</sup> However, this acceptance of presidential and gubernatorial executive order issuing authority is predicated on the caveat that such instrument will not conflict with express or implied constitutional or statutory provisions.<sup>63</sup> Nigerian courts have also endorsed the presidential executive order issuing authority.<sup>64</sup> However, this judicial endorsement has been confined within certain legal boundaries: an executive order or other instrument of executive branch administration must not contravene express constitutional or statutory provisions;<sup>65</sup> and it must be confined to purely matters of internal regulation and ordering of the activities of the executive branch.<sup>66</sup> However, on the contrary, the constitution of Turkey contains express authorisation for the president to issue specific executive branch instruments that possess the force of law. The presidential instrument-issuing power in Turkey is a direct or express constitutional grant of power and not an indirect or implied one as it

<sup>52</sup> Goles, ‘Introducing the Report on Turkish Presidential Decrees’ (10 January 2022) <<https://blogs.loc.gov/law/2022/01/introducing-the-report-on-turkish-presidential-decrees/#:~:text=The%20report%20provides%20an%20overview,or%20delegation%20from%20the%20legislature.>> accessed 20 September 2025

<sup>53</sup> C V Odoeme (n 17) 7-8; J A Adeyeye (n 17) 8

<sup>54</sup> CFRN, s 32(1)

<sup>55</sup> *Ibid*, ss 64(3) and 105(3)

<sup>56</sup> *Ibid*, s 305(1)

<sup>57</sup> *Ibid*, s 315(2)

<sup>58</sup> S Amadi, ‘Executive Orders and Presidential Power in Nigeria: Comparative Lessons from the United States of America’ (2019) <<https://ir.nilds.gov.ng/bitstream/handle/123456789/407/EXECUTIVE%20ORDERS%20AND%20PRESIDENTIAL%20POWER%20IN.pd?sequence=1&isAllowed=y>> accessed 25 September 2025; M T Ladan, ‘The Effect and Legal Limit of Presidential Executive Orders in Nigeria and the USA: A Review of Executive Orders 1-6 of 2017-2018 in Nigeria’ (2018) 3 <<https://ir.nilds.gov.ng/bitstream/handle/123456789/71/THE%20LEGAL%20EFFECT%20AND%20LIMIT%20OF%20PRESIDENTIAL%20EXECUTIVE%20ORDERS%20IN%20NIGERIA%20AND%20THE%20USA%20A%20REVIEW%20OF%20EXECUTIVE%20ORDERS%201-6%20OF%202017%20-%202018%20IN%20NIGERIA.pdf?sequence=1&isAllowed=y>> accessed 25 August 2025

<sup>59</sup> CFRN, s 5(1)(a) and (b)

<sup>60</sup> *Ibid*, s 130(2)

<sup>61</sup> *Ibid*, 7<sup>th</sup> Schedule to the CFRN

<sup>62</sup> S Amadi (n 58); C V Odoeme (n 17); M T Ladan (n 58); E O Okebukola and A A Kana (n 17); J A Adeyeye (n 17)

<sup>63</sup> S Amadi (n 58); C V Odoeme (n 17); M T Ladan (n 58); E O Okebukola and A A Kana (n 17); J A Adeyeye (n 17)

<sup>64</sup> *Ugochinyere v President of the Federal Republic of Nigeria* [Unreported] Suit No.: FHC/ABJ/CS/740/2018 (Judgment of the Federal High Court of Nigeria, Abuja Judicial Division, delivered on Thursday, 11 October 2018 by Honourable Justice Ijeoma L. Ojukwu; *Attorney-General of Abia State v Attorney-General of the Federation* (2022) 16 NWLR (Pt 1856) 205, 433-434

<sup>65</sup> *Attorney-General of Abia State v Attorney-General of the Federation* (n 64) 493

<sup>66</sup> *Ugochinyere v President of the Federal Republic of Nigeria* (n 64) 28; *Attorney-General of Abia State v Attorney-General of the Federation* (n 64) 493

is the case in Nigeria. With respect to the Republic of Turkey, the Turkish president is constitutionally empowered to issue decrees and by-laws.<sup>67</sup>

### **Scope of Presidential or Gubernatorial Executive Powers**

In Nigeria, the situations in which a president may exercise his executive power and by extension, issue instruments of executive branch administration appear to be more expanded than it is the case in the Turkey. In Nigeria, the president is given the power to execute and maintain not only the CFRN and laws actually enacted by the NASS. The President's executive power expressly extends to the execution and maintenance of all matters within the legislative competence of the NASS. What this implies is that on any matter which the NASS is constitutionally empowered to make laws, the president need not wait until a law is actually enacted before he will exercise his executive power. The president can validly act in the absence of a NASS legislation. The only caveat is that the instrument issued must not purport to make a law. It must remain within the realm of an administrative directive for streamlining the priorities of government or to guide the officers and agencies of the federal executive branch as to the way and means of implementing government policies. On the other hand, the scope of the instrument-issuing authority of the president of Turkey is restricted. The presidential decree-issuing power is expressly delineated and devoid of the nebulousness that characterises the Nigerian model. The president's authority to issue executive instruments, such as decrees and by-laws is more restrictive than the case of the president of Nigeria. In the case of Turkey, presidential decrees are prohibited in relation to the fundamental rights, individual rights and duties included in the first and second chapters of the CRT as well as the political rights and duties listed in the fourth chapter of the second part of the CRT.<sup>68</sup> Similarly, no presidential decree is permitted in relation to the matters which are stipulated in the CRT to be regulated exclusively by law.<sup>69</sup> In addition, no presidential decree shall be issued on the matters explicitly regulated by law.<sup>70</sup> To ensure that the presidential decree-issuing authority is firmly circumscribed and to emphasise the pre-eminent authority of the legislature in matters of law-making, the CRT provides that in the case of a conflict between provisions of the presidential decrees and the laws, the provisions of the laws shall prevail.<sup>71</sup> Thus, a presidential decree shall become null and void once the GNAT enacts a law on the subject-matter.<sup>72</sup>

### **Legal Force of Executive Instruments**

In Nigeria, instruments of executive branch administration are not laws as only the relevant legislative bodies can make laws. However, instruments of executive branch administration when properly issued have the force of law and operate as subsidiary legislation. In *Access Bank Plc v Ogboja*,<sup>73</sup> the Supreme Court held that regulations issued by the Governor of Central Bank of Nigeria pursuant to express statutory delegation of rule-making power is a subsidiary legislation and therefore binding on every person in Nigeria.<sup>74</sup> Instruments of executive branch administration are binding and enforceable in Nigeria. Nigerian courts have played and still continue to play vital roles in ensuring that presidential exercise of executive powers does not breach the constitutional stipulations of separation of powers. There have at least two cases of judicial reviews of executive orders in Nigeria; and in both cases, the courts while accepting the presidential power to issue executive orders as instruments of managing executive branch operations, upheld the validity of the presidential executive order issuing authority in one case;<sup>75</sup> while the Supreme Court invalidated presidential executive order issuing power in the second case.<sup>76</sup> In Nigeria, there have been tussles for supremacy between the president and the federal legislature; as well as between the federal government and the States. For instance, Executive Order issued by President Buhari was converted into an Act of the NASS<sup>77</sup> through constitutional amendment by excising the offending provisions. Presidential decrees and by-laws in Turkey have the force of law. They are laws on equal status with legislation passed by the legislature, and not subsidiary in status. This contrasts with the position in Nigeria where presidential and gubernatorial instruments, although possessing the force of law, operate merely as subsidiary legislation; therefore, such instruments are subordinate to and derive their existence and validity from legislation. However, it should be noted that the CRT provides that in the case of a conflict between provisions of the presidential decrees and the laws, the provisions of the laws shall prevail.<sup>78</sup> Thus, a presidential decree shall become null and void once the GNAT enacts a law on the subject-matter.<sup>79</sup>

### **Legislative Approval of Instruments of Executive Branch Administration**

In Nigeria and Turkey, an executive instrument once issued by a president or governor becomes operative and does not require the approval of the legislature for its validity. An instrument of executive branch administration issued by a Nigerian president or a state governor is not required to be submitted for the approval of the NASS or a HoA, as the case may be. The same situation applies to an executive instrument issued by the Turkish president which is also not subject to congressional deliberation or approval. However, the legislature in Nigeria and Turkey may revoke or modify an executive instrument by passing appropriate legislation.

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<sup>67</sup>CRT, art 104/17 and (19)

<sup>68</sup>CRT, art 104/17

<sup>69</sup>CRT, art 104/17

<sup>70</sup>*Ibid*

<sup>71</sup>*Ibid*

<sup>72</sup>*Ibid*

<sup>73</sup>(2022) 1 NWLR (Pt. 1812) 547

<sup>74</sup>*Ibid*, 581, paras B-C and 590

<sup>75</sup>*Ugochinyere v President of the Federal Republic of Nigeria* (n 64)

<sup>76</sup>*Attorney-General of Abia State v Attorney-General of the Federation* (n 64)

<sup>77</sup>Constitution of the Federal Republic of Nigeria 1999 (Fifth Alteration) (No.6) Act 2023

<sup>78</sup>CRT, art 104/17

<sup>79</sup>*Ibid*

## **6. Conclusion and Recommendations**

Instruments of executive power are inevitable, especially in a presidential system which Nigeria operates. The only means by which the executive branch – the president and the governors, can communicate to the agencies and officers under them the policies and programmes that the government intends to implement and the method and parameters to be adopted in their implementation, is through a written communication or instrument. Written communications are of enduring nature and provide clarity and specificity to the directives of government official. In Nigeria, there are varieties of tools or instruments that are regularly called in aid by a president or governor when seeking to communicate the priorities of government in a top-bottom approach. The most common ones that have been in regular use before the advent of executive orders in Nigeria are orders, notices, regulations, proclamations, rules, administrative circulars and memoranda. However, since 2017, presidential executive orders have tended to dominate the instruments directly issued by presidents and governors in Nigeria towards the implementation of government policies.

Since the first use of presidential executive orders in 2017, the courts have given judicial imprimatur to the power of a president, and by extension a governor, to issue executive orders in Nigeria. Even in the absence of a direct definition of an executive order and express textual recognition of its issuance and scope in the CFRN, the courts, in order to maintain the delicate balance of power encapsulated in the CFRN, have made attempts to streamline the scope of executive orders. Despite these laudable efforts by Nigerian courts, it does not yet appear that some executive orders issued in Nigeria have stayed within the limits imposed by the courts. It also seems that executive orders will continue to be the predominant instrument of executive power and government policy implementation in the foreseeable future in Nigeria. Nigerians have demonstrated their uneasiness at the idea of a president or governor (heads of the executive branch of government), engaging in the issuance of instruments that have the force of law.

Since it is not realistic to expect the president or governor and indeed the executive branch to implement the policies of government without issuing instruments, Nigeria can learn from the Turkish model by expressly stipulating the power to issue executive order and other instruments of executive branch administration in the CFRN. In order to preclude the abuse of executive instruments issuing authority by the Nigerian executive branch, it is therefore important that Nigeria emulates the Turkish example by expressly stipulating in the CFRN not only the subject-matters upon which the president or governor can issue executive instruments but also clearly spell out the subject-matters that are forbidden to, or outside the reach of an executive instrument. To this end, it should be expressly stipulated in the CFRN that a presidential or gubernatorial executive instrument, especially executive order, shall not under any circumstance be issued in relation to the following: to create a law binding on persons outside the executive branch and which have direct impact on citizens in terms of regulating their lives, relationships and transactions; creating criminal offences, law relating to evidence or criminal or civil procedure; exceeding the penalties or creating a penalty of a different dimension from the ones stipulated in the legislation being implemented; and stipulating that an executive instrument must remain a directive issued to members of the executive branch and must be confined to the internal workings and policies of the executive branch.