

RELEGATION OF THE LEGISLATURE BY PRESIDENTIAL EXECUTIVE ORDERS IN NIGERIA: A  
CRITICAL REVIEW\*

**Abstract**

*The primary intendment of executive orders is to direct or instruct the actions of the executive agencies or government officials. However, some presidential executive orders issued in Nigeria tend to go beyond this scope by becoming laws unto themselves thus encroaching on the constitutional role of the National Assembly. The objective of this study is to find ways to curtail the excesses of the usage of executive orders in Nigeria. The paper employed doctrinal methodology and in doing so, used both primary and secondary sources of materials. The paper found out that Nigerian president with so much unchecked powers in issuing executive orders is prone to abuse and arbitrariness. Consequently, the paper recommended strengthening legislative independence to ensure checks and balances by subjecting executive orders to legislative scrutiny by laying them before the National Assembly prior to judicial review, without departing from the core intendment of executive orders, which is to fact-track policy directives.*

**Keywords:** Executive Orders, Legislature, Presidential Powers, Nigeria, Constitutional Law, Separation of Powers.

**1. Introduction**

Executive Orders are issued by or on behalf of the President, usually intended to direct or instruct the actions of executive agencies or government officials or to set policies for the Executive branch to follow.<sup>1</sup> It is a way for the executive branch to implement policies, rules, or actions without requiring legislative approval. Executive orders typically have the force of law, but they must still be in line with the Constitution and existing laws. They are often used to implement policy initiatives, regulate government agencies, manage national emergencies, conduct foreign policy, establish task forces or committees, etc. Executive orders are one of the written presidential directives with its origin in the United States of America.<sup>2</sup> Section 5(1) of the Constitution<sup>3</sup> provides the legal framework and approval for issuance of executive orders by an Executive President in Nigeria. At the same time, the Constitution<sup>4</sup> established the National Assembly made up of the Senate (Red Chamber) and the House of Representatives (Green Chamber) with their respective core mandate of making law for the Federation.

**2. The Legislature**

The legislature is one of the key institutions in the democratic process. This is premised on the fact that it symbolizes democracy and avails the people the opportunity to participate in governance. Section 4 of the Constitution<sup>5</sup> gives the legislature, both the National Assembly and the State Houses of Assembly the primary responsibility of law-making. There are basically two types of legislature: unicameral and bicameral. The unicameral legislature is the legislature that has only one legislative house. In Nigeria for instance, all the State Houses of Assembly have a unicameral legislature. Thus, section 4(6) of the Constitution provides: "The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State". The above-quoted provision clearly shows that the law-making body in the state level is only consisted of a unicameral legislature. On the other hand, at the federal level, the National Assembly is a bicameral legislature. This is consistent with section 4(1) of the Constitution, which stipulates that "the legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of a Senate and a House of Representatives". In this paper, our major focus is on the National Assembly, which operates a bicameral legislature.

**3. Basis for the National Assembly**

It is to be noted that all democratic institutions and features exist in other forms of undemocratic regimes, except the legislature. The legislature is central and is at the heart of democracy to the extent that it is the only institution of government that symbolizes democracy. This is why the legislature is often said to epitomize the existence of democracy in a polity.<sup>6</sup> Perhaps this is why Sha<sup>7</sup> has posited that the legislature is an indispensable institution that all democratic countries must build and maintain. One cannot agree less with this assertion on the ground that it is inconceivable to have democracy without the legislature. This is premised on the fact that the legislature epitomizes the existence of democracy. The National Assembly exercises legislative power in matters falling under exclusive and concurrent legislative list of the 1999 Constitution, in addition to performing a range of other essential public functions, including the following: providing representation for Nigerians from all parts of the country, performing oversight functions on the executive to prevent

---

\*By Carol ARINZE-UMOBI, PhD, Professor of Law, Faculty of Law; Acting Vice-Chancellor, Nnamdi Azikiwe University, Awka, Nigeria, Tel: +2348037424211, and

\*Anthony Okwudili ANAZOR, LL.M, LL.B, BL, PhD Candidate, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria; Notary Public, IUC Global Chambers, Awka, Anambra State – Nigeria, Email: nazokng@yahoo.com, TEL: +2348035419657

<sup>1</sup> BA Garner (ed), *Black's Law Dictionary* (10<sup>th</sup> edn, USA: West Publishing Co, 2014) p. 690.

<sup>2</sup> TF Gaziano, *The Use and Abuse of Executive Orders and other Presidential Directives* (Washington, D.C.: The Heritage Foundation, 2001) p 2.

<sup>3</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>4</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 47.

<sup>5</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>6</sup> SM Fish, 'Stronger Legislatures, Stronger Democracies,' (2006) 17(1) *Journal of Democracy*, 5.

<sup>7</sup> PD Sha, 'Duties and Responsibilities of Principal Functionaries of the Legislature,' in *Legislators and the Legislature: A Guide for Legislators in Nigeria*, ed. S. G. Tyoden (Kuru: National Institute for Policy and Strategic Studies, 2014).

democratic tyrannical tendencies, and also guards the guardians of the treasury by appropriating money for the running of government businesses.<sup>8</sup> Thus, the legislative role in Nigeria is multifaceted and indispensable for the country's governance. While facing several challenges, the National Assembly has the potential to drive meaningful change and development through effective law-making, representation, and oversight.<sup>9</sup> Hence, the legislature performs four cardinal functions: law-making, representation, oversight, and budgeting. The legislature makes laws for the good governance of the polity, represents the people's interest in the government, performs oversight functions on the executive to prevent democratic tyrannical tendencies, and also guards the guardians of the treasury by appropriating money for the running of government businesses.<sup>10</sup> In a democratic set up, law-making is an act of the legislative arm of government. They are usually products of the will and desire of people in the society. In Nigeria, the legislative powers of the Federal Republic of Nigeria have been vested in the National Assembly consisting of the Senate and the House of Representatives, while the legislative power of each state is vested in the House of Assembly of that state.<sup>11</sup> Consequently, the National Assembly has the power to make law for the peace, order and good government of the federation or of the state as the case may be in relation to matters contained in various legislative list.<sup>12</sup> Law-making (legislation) commences where a bill is presented to the lawmakers. The essence of all the process of law-making in a democratic setup in Nigeria is to show the thoroughness involved in 'normal law-making' as opposed to 'law-making through the instrumentality of executive orders'. While the former is an element of representative democracy through the national assembly, the latter is prone to arbitrariness with its attendant consequences in a democratic setup. On the other hand, however, the cumbersome procedure for law-making makes it expedient for executive order, which is less cumbersome, for good governance. It is the national assembly of government in Nigeria that bears the negative impact of presidential executive orders. The relegation is the taking away the core mandate of the national assembly by the executive president through the instrumentality of executive orders.

#### 4. Basis for Executive Order

The basis for executive orders could easily be ascertained from some of its usefulness. One of the hallmarks of a vibrant administration is the increase in the regulatory activities of the federal government. As the challenges of managing the national economy increases, the government resorts more frequently to the use of regulatory agencies that exercise wide-ranging powers over domestic affairs, which impact on private economic interests.<sup>13</sup> The US Supreme Court in *FTC v Ruberiod*<sup>14</sup> described this phenomenon as "the emergence of a 5th branch of government that has deranged our conventional three branches of government". The president can intervene on these regulatory activities through executive orders because they help to align broad agency mandates with presidential priority.

#### 5. A Critique of Executive Orders in Nigeria

Executive orders are a fruitful demonstration of unilateral governance and provide great insight into how presidents act within their political environment to achieve policy change. In that regard, executive orders can expand the executive branch's power, potentially encroaching on the legislative branch's authority.<sup>15</sup> It can bypass the legislative process, allowing the executive to unilaterally implement policies without legislative input or approval.<sup>16</sup> It can also alter the balance of power between the executive and legislative branches, potentially undermining the legislative branch's ability to check the executive.<sup>17</sup> More so, executive orders can limit the legislative branch's authority to make laws, potentially infringing on their constitutional powers. Some executive orders appear *ultra vires* the provisions of the Constitution.<sup>18</sup> For instance, Executive Order 6 of 2018<sup>19</sup> including Executive Order 10 of 2020<sup>20</sup> fall into this category. Some of the provisions appear like usurpation of the National Assembly's legislative mandate. In Executive Order No 6 for instance, it inserts the executive into a terrain that belongs to the judiciary and the legislature. In these circumstances, the court may nullify these orders because they are capable of disrupting the vital equilibrium of constitutional power-sharing that undergirds liberty and freedom in constitutional democracies as was done in *A.-G., Abia State v A.-G., Federation*.<sup>21</sup> At the same time, many executive orders, either have no direct effect or have a trivial effect on the rights exercised by the general public. Some executive orders may affect the general public but may be difficult or impossible to challenge, depending on a variety of factors. Some executive orders may not be subject to judicial review if the effect on private citizens is indirect or if the executive order is implemented through agency regulations or other agency action. For instance, Executive Orders 001,<sup>22</sup>

<sup>8</sup> BO Nwabueze, *The Presidential Constitution of Nigeria* (London: C. Hurst & Company, 1982) p.232.

<sup>9</sup> 'Defining the Legislative Functions and Responsibilities in Nigeria' <<https://www.assendelft.co.za/posts/define-what-the-legislative-role-in-nigeria-is/>>. Accessed on 5th September, 2025

<sup>10</sup> BO Nwabueze, *The Presidential Constitution of Nigeria* (London: C. Hurst & Company, 1982) p.232.

<sup>11</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 4(1) and (6).

<sup>12</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 4(2).

<sup>13</sup> S Amadi, 'Executive Order and Presidential Power in Nigerian Constitutional Democracy', <<https://www.abujaschool.org.ng/executive-order-and-presidential-power-in-nigerian-constitutional-democracy/>>. Accessed on 17th August, 2025.

<sup>14</sup> 343 U.S. 470 (US Supre, C) (1952).

<sup>15</sup> A Adebajo, 'Executive Orders and the Separation of Powers in Nigeria' (2018) 62(1) *Journal of African Law*, p. 3.

<sup>16</sup> O Ojo, 'Executive Orders and Legislative Oversight in Nigeria' (2019) 10(1) *Nigerian Journal of Administrative Law*, p. 2.

<sup>17</sup> EA Esu, 'Examination of the Lawmaking Power of the Executive Arm of Government, Separation of Powers, Checks and Balances under the Nigerian Constitutional Democracy' (2020) 8(1) *ALJ*, p. 165.

<sup>18</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 5(1).

<sup>19</sup> Preservation of Suspicious Assets Connected with Corruption and Other Relevant Offences Order, 2018

<sup>20</sup> Implementation of Financial Autonomy of State Legislature and State Judiciary Order, 2020.

<sup>21</sup> [2022] 16 NWLR (pt. 1856) 205 SC.

<sup>22</sup> The Executive Order was signed by Acting President Yemi Osinbajo on May 18, 2017 and aims to promote transparency and efficiency in Nigeria's business environment.

002,<sup>23</sup> 003,<sup>24</sup> 004,<sup>25</sup> 005,<sup>26</sup> 007,<sup>27</sup> 008<sup>28</sup> and 009<sup>29</sup> in Nigeria are examples of executive orders with indirect effects on private citizens.

## **6. Conclusion**

It was the finding of this work that leaving a Nigerian president with so much unchecked powers in issuing executive orders is prone to abuse. The use of executive orders can undermine democratic governance and the rule of law, as the President can assume powers that are typically reserved for the National Assembly. This can contribute to concerns about authoritarianism and the erosion of citizens' rights, highlighting the need for greater accountability and oversight. In this regard, subjecting executive orders to legislative scrutiny by laying them before the National Assembly for either affirmation or rejection of same prior to judicial review, if any, without departing from the core intentment of executive orders, which is to fact-track policy directives is recommended. This will go a long way in checking executive excesses in Nigeria and help preserve the core mandate of the National Assembly.

---

<sup>23</sup> This executive order focuses on the submission of annual budgetary estimates by all statutory and non-statutory agencies, including incorporated companies wholly owned by the Federal Government.

<sup>24</sup> This executive order focuses on supporting local content in public procurement by the Federal Government.

<sup>25</sup> This Executive Order was also signed by Yemi Osinbajo on June 29, 2017. It focusses on tax matters, specifically introducing the Voluntary Asset and Income Declaration Scheme (VAIDS).

<sup>26</sup> The first executive order signed by President Muhammadu Buhari on February 5, 2018, which focuses on promoting Nigerian content in public procurement with science, engineering, and technology components.

<sup>27</sup> Signed on January 25, 2019, which focuses on Road Infrastructure Development and Refurbishing Investment Tax Credit Scheme. This order allows private companies to fund road construction and refurbishment projects, recovering their investments through tax credits.

<sup>28</sup> Signed by President Muhammadu Buhari on October 8, 2018, introduces the Voluntary Offshore Assets Regularization Scheme (VOARS). This scheme allows Nigerian taxpayers with undisclosed offshore assets and income to declare and pay applicable taxes over a 12-month period.

<sup>29</sup> President Muhammadu Buhari signed the Order titled 'The Open Defecation-Free Nigeria by 2025 and Other Related Matters Order', on November 20, 2019. This order aims to end open defecation in Nigeria in 2025, aligning with the United Nations Sustainable Development Goals.