

CHALLENGES TO THE DOCTRINE OF SEPARATION OF POWERS UNDER THE CURRENT POLITICAL LANDSCAPE IN NIGERIA

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Abstract:

This paper analysed the critical challenges confronting the doctrine of separation of powers within Nigeria's contemporary political landscape. The doctrine of separation of powers in Nigeria has faced significant challenges, including executive overreach, corruption, and inadequate checks and balances. This paper examined the nature and extent of these challenges, their causes, and consequences, and proposed solutions to strengthen the doctrine of separation of powers in Nigeria. Employing the doctrinal research method, the paper exposed the weaknesses in Nigeria's current system of separation of powers, thereby highlighting their need for change. The paper recommended constitutional reforms, institutional strengthening, and capacity building to enhance the effectiveness of the separation of powers in Nigeria.

Keywords: Challenges, Separation of Powers, Executive Overreach, Corruption and Constitutional Reforms

1.0 INTRODUCTION

It is clear that there is no perfect system of governance however this is more obvious in some countries than others. Democracy appears to be

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the most popular and widely supported system of governance. The political and national development of any democratic country depends on the genuine and friendly relationship between all organs of government. When such a relationship is not friendly, it causes the state's systems to malfunction.

The principle of separation of powers is essential to constitutional governance. Its origins lie in the writings of John Locke and Montesquieu. This principle states that government power should be divided among three organs: Legislative, Executive, and Judiciary. Each organ operates in its own area, with defined powers and checks on each other. This arrangement aims to prevent power from becoming concentrated, protect liberty, and increase accountability.

In Nigeria, the 1999 Constitution¹ clearly supports this principle by specifying the powers of the National Assembly, the President, and the Judiciary. Applying this doctrine, however, in Nigeria's current political environment exposes a complex mix of constitutional structure, institutional weaknesses, political culture, and socioeconomic factors. The ongoing issues such as executive dominance, legislative subservience, judicial corruption, and tensions among governments undermine the goal of a balanced tripartite system.

The development of Nigeria's constitutional framework shows a consistent struggle between centralizing and decentralizing power. From the Lyons-Cameron Constitution (1914) to the Independence Constitution (1960) and the Republican Constitution (1963), each version aimed to address ethnic diversity while ensuring effective governance. The 1979 Constitution established a presidential system,

¹ Constitution of The Federal Republic of Nigeria 1999, ss. 4 - 6.

which the 1999 Constitution later adopted, emphasizing separation of powers as a guard against autocracy. Despite this, years of military rule have created a legacy of executive dominance, patronage politics, and weak institutions that continue to distort the application of this doctrine.

The World Bank's Worldwide Governance Indicators (WBWGI)² places Nigeria in the 31st percentile for Political Stability and the 24th percentile for Rule of Law. Similarly, the Corruption Perception Index by Transparency International³ ranks Nigeria 145th out of 180 countries. These figures highlight systemic problems that weaken checks and balances.

Scholars like Nwabueze said: "*Concentration of powers in the hands of one individual is the very definition of dictatorship and absolute power is by nature arbitrary, capricious and despotic*"⁴ he argues that Nigeria's separation of powers is "nominal rather than real," citing the President's significant control over appointments, budgeting, and legislative processes. On the other hand, Okeke believes there is institutional resilience⁵, noting important judicial decisions. like *AG Lagos State v. AG Federation*⁶ that strengthened federalism and the independence of government branches

The Nigerian Judiciary has faced criticism for inconsistent judgments, long legal processes, and perceived political bias. Cases such as *INEC*

²WBWGI 2023, available at <https://www.worldbank.org/en/pulication/worldwide-governance-indicators> >accessed 13 June 2026.

³Corruption Perception Index 2023, Available at <https://www.transparency.org/en/cpi/2023> >accessed 13 June 2026.

⁴ Ben Nwabueze, *Presidentialism in Nigeria* (Ibadan, Spectrum law publishing, 1982) 45.

⁵ F C Okeke, "Institutional Resilience and Separation of Powers in Nigeria" (2016) *Nigerian Journal of Political Science*, 78.

⁶ (2003) LPELR-SC.353/2001 (SC)

*v Musa*⁷ highlight tensions between the judiciary and elected officials, raising concerns about judicial independence.

In Nigeria, legal pluralism the mix of customary, Islamic, and statutory laws complicates matters. Muhammed argues that Nigeria's separation of powers is a hybrid model, blending elements of Westminster parliamentary practices with U.S. presidentialism, which results in structural pressures.⁸

The paper aims to analyse these discrepancies, explore their origins, and suggest specific reforms to restore balance. Given Nigeria's democratic progress since 1999, it is vital to understand how the doctrine operates. This paper argues that separation of powers in Nigeria is more theoretical than practical, worsened by corruption, weak institutions, and existing political culture. The research aims to explore these issues, identify root causes, and suggest reforms suited to Nigeria's political context.

2.0. DEFINITION AND EVOLUTION OF SEPARATION OF POWERS

Separation of powers can be defined as the division of legislative, executive, and Judicial powers, each to be exercised by a separate and independent arm of government as a preventive measure against abuse of power, which will occur if the three powers are exercised by the same person or group of people.

Black's Law Dictionary defined separation of powers as "The division of governmental authority into three branches of government,

⁷ (2003) 3 NWLR (Pt 806), 72.

⁸ A A Muhammed, "Federalism and Political Stability in Nigeria: Current Peril and Future Hopes" *Journal of Sustainable Development in Africa* (2007) Vol. 9, No. 4, 187 - 210

legislative, executive and judicial, each with separate and independent powers and responsibilities, so that no single branch exercises the functions of another.”⁹

The Legislature handles law-making and represents the people. Executive manages administration, carries out policies, and enforces laws. The Judiciary interprets laws and resolves disputes. This principle aims to promote good governance, accountability, and efficiency while protecting individual freedom. It prevents tyranny and arbitrary rule. The idea is that no part of the government should have unchecked power, and each branch should work within limits defined by the Constitution.

3.0. EXECUTIVE OVERREACH: PATTERNS, CAUSES, AND CONSEQUENCES

3.1 What's Executive Overreach?

Executive overreach is when the government's executive branch goes beyond what the constitution or law allows, encroaching on the functions of the legislature or judiciary, or violating fundamental rights. People often say it's needed for things to run smoothly, to keep people safe, or because of an emergency.

3.2 Patterns of Executive Overreach

Rule by executive Orders: Executive Orders are enshrined in the Constitution of the Federal Republic of Nigeria¹⁰ and must be exercised within the limits of the same document. It's like making laws through instructions instead of parliamentary or legislative debate. *A.G. Abia State & 35 Ors v. A.G. Federation*,¹¹ the Federal Government, via Executive Order No. 10 of 2020, sought to compel

⁹ Bryan A Garner, *Black's law dictionary*, (11th edn, 2019) .388

¹⁰ Section 5 (n 1)

¹¹ SC/CV/655/2020 (Unreported).

the states' judiciary and legislature to receive financial autonomy and directed deductions from the Federation Account to enforce compliance. The Supreme Court held the Executive Order ultra vires (beyond executive power) and unconstitutional, as the President cannot use executive orders to legislate or override constitutional fiscal arrangements. The order was declared null and void.

Such orders usually weaken Legislative Authority and ignore the legislature's ability to keep things in check. In *Rivers State House of Assembly & Anor. v. The Government of Rivers State & 9 Ors*,¹² a political conflict occurred in Rivers State between the Governor of Rivers State and the State House of Assembly (the legislative arm of government in Rivers State). Actions taken by the executive branch of government interfered with how the House of Assembly was allowed to operate, including actions regarding the leadership, meetings, and legislative processes of the House of Assembly. The House of Assembly sought relief in the Supreme Court, claiming that the Governor and his executive agents had exceeded the powers granted to them by the Constitution and violated the independence of a legislative body, which is protected by the Constitution. The Supreme Court held that the Governor and the executive arm's actions were ultra vires (acted beyond their constitutional powers) by interfering with the independence and operation of the legislature. The court declared such action unconstitutional and ruled in favour of the House of Assembly.

The Order also violated the legislature's duty by refusing to carry out laws that the legislature has already passed. In *Attorney-General of Osun State v. Attorney-General of the Federation*¹³ The federal government of Nigeria, through its agencies, has withheld or exercised control over the disbursement of funds that had been allocated to the

¹² (2025) LPER-80539(SC), 38-42

¹³ SC/CV/773/2025 (Unreported).

local government councils of Osun State from the Federation Account. The Osun State government filed a lawsuit with the Supreme Court, asserting that the action of withholding funds from the local government councils was unconstitutional and infringed upon the independence of local government councils as one of three levels of government recognized by the constitution. The Supreme Court held that the withholding of funds allocated to the local government council was unconstitutional.

This also involves getting rid of parliament or pushing it aside using questionable reasons and interference with Judicial Independence. In *Nnamdi Kanu v. Federal Republic of Nigeria*,¹⁴ The leader of the Indigenous People of Biafra (IPOB), Mazi Nnamdi Kanu, was prosecuted by the federal Government of Nigeria for offences relating to terrorism and treasonable felony. After His arrest and extraordinary rendition from Kenya to Nigeria in 2021, the Court of Appeal in 2022 held that:

“Kanu’s arrest in Kenya and forcible return to Nigeria violated international law, Nigerian constitutional provisions, and due process”. *He was granted bail but the Nigerian Government disobeyed the court orders and continued his detention.*

In *The State v. Sheikh Ibraheem El-Zakzaky & Anor*,¹⁵ El-Zakzaky (Shia Muslim Leader), and his wife, Zeenat Malama, were arrested in December 2015 over allegations of plotting to assassinate the then Army Chief Tukur Buratai. He was charged over allegations of disruption of the public peace, culpable homicide and unlawful assembly, among other charges. Justice Gabriel Kolawole of the Federal High Court of Abuja ordered his release and that of his Wife

¹⁴ CA/ABJ/CR/625/2022 (Unreported).

¹⁵ KDH/KAD/60C/2018, 28 July 2021 (Unreported)

from DSS custody in December 2016. The judge also ordered the DSS to compensate the couple with the sum of N50 million. The ICIR reported that El-Zakzaky and his wife were released for the first time on medical grounds to India in August 2019. They were rearrested after arrival in Nigeria. They were, however, later freed of all charges by the Kaduna State High Court on July 28, 2021.

In *Col. Mohammed Sambo Dasuki (Rtd) v. Federal Republic of Nigeria*,¹⁶ The former National Security Adviser of Nigeria, Sambo Dasuki, was detained for more than two years in spite of a bail request granted by the court on several occasions. His detention was declared illegal by the ECOWAS Court, yet nobody in the Nigerian government bothered to act on it.

In *Federal Republic of Nigeria v. Omoyele Sowore*,¹⁷ the case of human rights activist Omoyele Sowore, who was arrested, detained, and charged with various crimes such as treason, but his lawyers claimed that such an arrest was illegal.

Naira Redesign Policy also buttresses the excessive and arbitrary Executive orders. In *Attorney-General of Kaduna State & Ors v. Attorney-General of Federation & Ors*,¹⁸ President Muhammadu Buhari defied the decision of the Supreme Court of Nigeria, allowing old versions of the naira to continue being circulated due to security reasons provided by him.

Osun CJ got the Boot:¹⁹ in November 2023, Osun State Gov gave

¹⁶ (2018) LPELR 43969 (CA).

¹⁷ FHC/ABJ/CR/484/2025 (Unreported)

¹⁸ SC/CN/162/2023 (Unreported)

¹⁹ Amp hails NCJ for clearing Osun CJ Ojo, available at <https://www.vanguardngr.com/2026/01/apm-hails-ncj-for-clearing-osun-cj-justice-ojo/> accessed 15 June 2026.

Chief Judge Justice Oyebola Ojo the boot because of misconduct claims. The NJC and NBA condemned the move; they said it was against the rules (unconstitutional) and a hit on the courts' independence.

Benue CJ Removal Attempt:²⁰ In June 2025, the NJC reported the Attorney-General of Benue State to the Legal Practitioners Disciplinary Committee for supposedly plotting to remove Chief Judge Maurice Ikpambese. The NJC didn't find any good reason to come after Ikpambese and accused the state government was dodging the constitutional procedure.

Judicial Appointment Controversy:²¹ In January '26, folks slammed the NJC for violating its own rules when it picked 14 Federal High Court Judges. The appointments didn't even have security reports, which made people, worry if the whole exercise was on the up and up. A major scandal emerged in early January 2026 when it was alleged that a member of the NJC judicial interview panel had a daughter among the candidates, raising direct nepotism concerns.

Abuse of Emergency Powers: In *AG Adamawa & 10 Ors v. AG Federation & Ors*²² the Government of Nigeria (President) declared a state of emergency under Section 305 of the Constitution of Nigeria 1999 due to a high level of violence, crime and terrorism in parts of Nigeria, (River's state). The government subsequently suspended the functions of many state governments and attempted to dissolve the

²⁰Court voids removal of CJ Ikambese, available at <https://leadership.ng/court-voids-removal-of-chief-judge-ikambese/> >accessed 15 July 2026.

²¹Alleged Corruption Rocks Nigerians Federal High Court judge Appointments of candidates <https://saharareporters.com/2025/12/22/alleged-corruption-rocks-nigerias-federal-high-court-judge-appointments-candidate> >accessed 12 July 2026.

²² [2025] SC/CV/329/2025 (Unreported)

institutions of state governments, including their legislative and executive branches. The Attorneys-General of some states in Nigeria challenged the actions of the President of Nigeria in the Supreme Court, arguing that while the Constitution gave the President the authority to declare a state of emergency, it did not give him the power to dissolve the duly elected governments of states in Nigeria. “The Supreme Court held that although the President has the constitutional power to declare a state of emergency under section 305 of the Constitution, he has no power to dissolve or suspend elected state executive or legislative institutions”.

Suspension of people's rights using national security as an excuse: The executive usually uses law enforcement, military, or anti-corruption agencies against political opponents. Opposition leaders, such as Peter Obi and former vice president Atiku Abubakar, alleged that the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and Economic and Financial Crimes Commission (EFCC) were being used to silence dissent and weaken opposition parties.²³

Selective prosecution and enforcement of laws: In *Nnamdi Kanu v. Federal Republic of Nigeria*,²⁴ the federal Government continued the detention pending an appeal after the Court of Appeal ordered the release of Nnamdi Kanu in October 2022. While filing an appeal is lawful, continued detention without a valid stay of execution *raises constitutional concerns*.

3.3 Causes of Executive Overreach

²³Presidency and Opposition Clash over EFCC and ICPC conducts, available at <https://thenationonline.net/presidency-opposition-clash-over-efcc-icpc/> accessed 14 July 2026.

²⁴ [2022] CA/ABJ/CR/625/2022 (Unreported)

Weak institutional Checks: In Nigeria, the president has too much power because the government's checks and balances aren't strong enough. This hurts democracy and the law.

A weak legislature can't keep the president in check, so the president makes decisions alone. The courts are also not great. They're influenced by outside forces and slow, as a result, they do not hold the president accountable, which just makes the problem worse.

Agencies that are supposed to fight corruption, like the EFCC and ICPC, are often used to scare people instead. They go after the opposition but protect people in the ruling party. Since there is not enough transparency, the president can get away with a lot, and they use vague parts of the constitution to justify their actions.

Constitutional Ambiguities: Constitutional vagueness can really let the Nigerian executives (President) grab too much power in the following ways;

- i. **Vague Provisions:** If the constitution is unclear, the president can twist it to justify doing things that were not really intended.
- ii. **Loose language:** If the constitution's words are open to different meanings, the President can abuse it to get more power.
- iii. **Gaps in the constitution:** If the constitution does not cover something, the President might just step in and do whatever, since it is not technically against the rules.
- iv. **Conflicting provisions:** If the constitution has rules that clash, the President might use one to justify something that's not exactly legal. Basically, all this confusion gives the President room to push the limits.
- v. **Political Culture:** In Nigeria, politics kind of encourages

Presidents to grab too much power. It's because people see leaders as untouchable, loyalty matters more than doing what is right, and things are not always open and transparent. This means nobody's really keeping an eye on power. Traditions of having strong-man leaders, when people start to think that being in charge means being effective.

- vi. National Crises and Security Threats: Things like terrorism, war, pandemics, or a financial crisis are often used to approve expanding executive branch powers. When Nigeria faces serious problems and threats to its safety, leaders might grab too much power. They might say they need to act fast and use emergency powers to do things that normally wouldn't be allowed, skipping usual rules. People might put up with this because they are scared
- vii. Public Apathy or Support: People might put up with overreach to get stability or see development. When Nigerians do not care or actually support it, Presidents can get away with doing too much. This happens when people just want things to be calm, do not pay attention, or are okay with leaders who are really strong. Then, it just keeps happening over and over because nobody stops them. Weak civic education and low political participation.

3.4 Consequences of Executive Overreach

- i. Rule of Law Fades: The law depends on what the executive branch decides instead of the constitution.
- ii. Democracy Goes Backward: Slowly turning into a government where one person has all the power (totalitarianism). Messing up free and fair elections.
- iii. Human Rights Violations: People get arrested for no reason, locked up illegally, and people are not allowed to disagree.
- iv. Restrictions on freedom of expression and association.

- v. Institutions Fall Apart: The legislature and courts are not useful, and people stop trusting them. Civil servants start playing politics.
- vi. Political Problems: Public protests, riots, or even a coup. The government loses its legitimacy.

Executive overreach usually happens bit by bit through small violations of the constitution. Even if it seems okay during emergencies, too much power for the executive branch can mess with democracy, the rule of law, and people's rights.

3.4 Legislative Weakness: Structural and Institutional Challenges

Basically, legislatures can be weak when they are unable to effectively perform their law-making, keeping an eye on things, and representing people. This usually happens because of problems with how they are set up. Sometimes, the way things are organized gives the executive branch too much control, especially over money, who gets appointed, and when to use emergency powers. So sometimes it seems like the separation of powers is not so separated; strong parties and messed-up elections make the legislature less independent and responsible too.

Legislatures also struggle because they do not have enough expert staff or good research, their committees are not great, they rely on the executive branch for money, there is corruption, and they do not have much freedom. All this makes it tough to keep the executive branch in check and leads to not-so-great laws.

3.5 Judicial Inefficiency: Backlogs, Corruption, and Interference

A clear sign of judicial inefficiency in Nigeria is the large number of pending cases. Courts are struggling with too many cases for the number of judges and staff available. Things like complicated procedures, frequent postponements, poor handling of cases, and old

record-keeping practices slow things down even more. As a result of this, cases can drag on for years, which goes against the constitutional right to a fair hearing within a reasonable time. These delays make lawsuits more expensive, prevent people from getting the justice they deserve, and can cause unfair results, especially when witnesses pass away, evidence disappears, or defendants are held in jail for too long.

Corruption in Nigeria's legal system shows up as bribery, using influence unfairly, and some judges, lawyers, and court workers compromising their honesty. Bribes or political pressure can sway how cases turn out, leading to wrong rulings. The issue gets worse because of weak ways to keep people accountable and the difficulty of finding and proving corrupt acts. Corruption in the judicial system ruins the public's belief in the courts, creates inequality under the law, and weakens the rule of law, as people start to think that justice can be bought.

Judicial independence in Nigeria faces threats from executive and political meddling. The executive branch has much to do in judicial appointments, promotions, and budgets, possibly pressuring judges, especially in politically charged cases. The judiciary's power decreases when government bodies ignore court orders. This meddling goes against the idea of separation of powers and keeps the courts from being neutral and balancing executive overreach.

3.6 Corruption and Institutional Decay: Impact on Separation of Powers

In Nigeria, corruption and the deterioration of institutions are major problems that weaken the separation of powers. The 1999 Constitution aims to divide authority among the legislature, executive, and

judiciary²⁵, corruption and poor institutions have upset this balance, giving the executive branch too much power.

Corruption increases executive power by letting the government misuse resources to control other branches. The executive can use favours, bribes, and control of money to influence lawmakers and judges, which hurts the legislature's ability to oversee and the judiciary's independence. This changes these branches, meant to be equal, into dependent bodies.

Corruption in the legislature causes members to trade votes, accept bribes, and put their own or their party's interests ahead of public duty. Actions meant to provide oversight, like investigations and budget reviews, are often weakened or stopped for political or money gains. This institutional decline keeps the legislature from properly controlling the executive, damaging how separation of powers works. If the judiciary is corrupt, it cannot judge fairly and cannot protect the Constitution properly. When bribes or political pressure affect court decisions, the courts fail to stop the executive or legislature from acting against the Constitution. This hurts public trust and stops the judiciary from doing its job of checks under the separation of powers.

Institutional decline, shown by weak enforcement, poor rules for responsibility, and disregard for constitutional rules, reduces checks and balances. If institutions do not have freedom and honesty, constitutional limits on power do not work, letting power be misused and authoritarian behavior grow.

3.7 Effects on How Democracy Works

The combined effect of corruption and institutional decline leads to the

²⁵ Ss 4, 5 and 6 (n 1)

executive taking over, weaker rule of law, less public trust, and democratic decline. The separation of powers becomes just a formality, existing only in writing but not in reality.

Corruption and institutional decline have greatly damaged the separation of powers in Nigeria by weakening the legislature's oversight, the judiciary's independence, and institutional responsibility.

4.0 CONSTITUTIONAL REFORMS FOR ENHANCING CHECKS AND BALANCES

Checks and Balances are an essential part of constitutional democracy. Its purpose is to make sure that no single branch of government can have all the power and also to hold those branches accountable to one another (Executive, Legislature, and Judiciary). The constitution provides the framework for separation of powers to keep the three branches separate. In practice, however, weaknesses in the institutions that make up the three branches necessitate constitutional reform to strengthen checks and balances.

The Nigerian system has been frequently criticized for being dominated by the executive branch, having institutions that lack independence from each other, and having inadequate means of holding the executive branch accountable.

As the political landscape continues to change in Nigeria, constitutional reform is an ongoing process to improve democratic governance and provide for proper oversight of the executive branch through effective checks and balances.

4.1 Enhancing the Independence of the Judiciary

Judicial independence is a key element of checks and balances. Section 81(3) of the Constitution allows for funding for the judiciary

from the Consolidated Revenue,²⁶ while Section 153 creates the National Judicial Council, which oversees the appointment and discipline of judges.²⁷

There have been significant challenges, however, in achieving effective judicial independence in Nigeria. Issues of reliance upon the executive for funding, interference from the executive branch in judicial functions, excessive delays in reaching finality in judicial proceedings, and the application of political pressure on judges have led to a diluted state of judicial independence. Therefore, constitutional reforms designed to enhance judicial independence are paramount. These include the following;

a. Financial Independence of the Judiciary

A key element of reform is Section 81(3) of the Constitution to provide the judiciary with complete financial independence from the executive branch of government. Providing for judicial funding to be paid directly to the judiciary will eliminate executive influence and enhance institutional independence.

b. Reforming the Judicial Appointment Process

Another area that must be examined is how judges are appointed. Specifically, there must be a re-examination of how the National Judicial Council (NJC) recommends appointments of judicial officers to ensure that the recommendations are made with greater transparency, based on merit, and with less political influence than has been the norm historically. Therefore, Section 153 of the Constitution needs reform.

c. Tenure Security and Political Pressure Protection

²⁶ (n 1).

²⁷ *Ibid*, section 153

Judges need safeguards, such as immunity from being improperly dismissed from their jobs or receiving threats that they cannot withstand when performing their judicial duties. Strengthening the constitutional provisions that govern a judge's ability to take action against another party (discipline) would allow judges to carry out their judicial functions without fear of being retaliated against politically.

d. Promptly Resolving Constitutional Issues

One of the reforms necessary will be the setting of time limits for resolutions of constitutionally disputed matters, especially those relating to elections or to issues revolving around governance.

These changes will help to bolster the judiciary's role as an effective check upon the legislature and the executive.

4.2 Strengthening the Oversight Authority of the Legislature

The legislature has the primary responsibility for representing the interests of the citizenry and for holding the executive branch accountable for its actions. Sections 88 and 89 of the Constitution²⁸ give the National Assembly of Nigeria the power to investigate the activities of Government institutions to determine whether or not they are corrupt and/or not operating efficiently or wasting taxpayer resources.²⁹ However, these sections give the National Assembly the ability to perform sufficient oversight over the Government institutions; they are often hindered from performing their oversight duties due to political influence and the lack of enforcement mechanisms. If Sections 88 and 89 of the Constitution are amended to expand the investigative powers of the National Assembly and provide enforcement mechanisms for Legislative Summons, the accountability of the branches of Government would be enhanced.

²⁸ *Ibid*

²⁹ *Ibid*

In addition, the Constitution provides for impeachment procedures in sections 143 and 188 to ensure that there is accountability by enabling the legislature to remove any of the following for gross misconduct: the President and the Vice President; the Governors; and the Deputy Governors.³⁰ Even though these procedures represent a significant check on the power of the executive branch, the political nature of the impeachment process often diminishes their overall effectiveness. Therefore, it is imperative to reform the terms used in the Constitution that define "gross misconduct", to establish an objective standard of misconduct. It is also imperative to avoid or discourage the use of the impeachment process for political purposes.

4.3 Limit Excessive Executive Appointment Powers

Section 147 of the Constitution gives the President authority to appoint ministers with Senate approval;³¹ the President's appointment power, however, under Sections 171 and 154, gives the President considerable control over important government positions, as well as federal commissions.³² Therefore, the call for constitutional reform to limit excessive executive control and to provide for greater transparency and merit-based appointments continues.

4.4 Reforming Elections and Political Processes

Electoral integrity is also an important factor in constitutional governance. In addition to Section 153 creating the Independent National Electoral Commission,³³ Section 158 attempts to guarantee its independence.³⁴ However, the appointment of electoral commissioners by the executive has raised doubts about their

³⁰ *Ibid*, sections 143 and 188.

³¹ *Ibid*, section 147.

³² *Ibid*, sections 171 and 154.

³³ *Ibid*, section 153.

³⁴ *Ibid*, section 158.

neutrality. Therefore, reforming the constitution is essential to protect both the independence and credibility of the electoral process. Reform should also focus on;

a. Independent Candidates

A proposed reform allowing individuals to run for office (within the election process independent of a political party affiliation) will reduce the excessive control and influence of political parties, while increasing the opportunity for more people to participate in the political process.

b. Electoral Offences Commission

Establishing a new body that will be responsible for investigating and prosecuting electoral offences will deter (police) election-related crimes, and help to ensure that those in power remain accountable to the electorate.

c. The Creation of State Police with Institutional Safeguards

Nigeria currently has only one (1) police force (the Nigerian Police Force, NPF) as embodied within Section 214 of the Constitution responsible for policing the entire country,³⁵ and the NPF has been widely criticized for being ineffective in providing citizen protection against crime and for failing to provide adequate service delivery to citizens.

A common recommendation for reform involves the establishment of state police forces (in addition to the existing federal police force) to assist with addressing local security concerns in Nigeria. State Governments have concerns about how to provide oversight to state police forces and thus create an institutional mechanism that will

³⁵ *Ibid*, section 214.

provide for accountability and not lead to a misuse of state police forces.

Some institutional safeguards that could minimize the risk of state police forces' political misuse include creating independent state police service commissions and legislative oversight by the state houses of assembly. There must also be judicial review procedures in place to protect the rights of citizens. Coordination mechanisms must also exist between federal and state police authorities to help ensure national security through the implementation of consistent policing standards across both levels.

There must also be defined constitutional provisions that define the jurisdictions, functions, and limits on the powers of the state police as established by the Constitution of Nigeria in order to prevent conflicts between the state's police and federal law enforcement authorities. Establishing adequate institutional safeguards in the establishment of state police forces will represent significant constitutional reforms in the area of federalism, security administration, and checks and balances while providing for accountability and the protection of fundamental rights.

4.5 Devolving Authority and Establishing Genuine Federalism

The Nigerian system of government is federal;³⁶ however, the Nigerian federal government has much more authority than it should. The concentration of power with the federal government is contrary to the very nature of federalism as it is defined by the Constitution of Nigeria and has been characterized by the government's exercise of extraordinary measures to ensure that the majority of power remains within the purview of the federal government through laws that

³⁶ *Ibid*, section 2(1).

establish obligations and rights.

The rationale for this issue can be found in the Exclusive Legislative List of the Constitution of Nigeria,³⁷ which is filled with items that the federal government is responsible for, leaving the states very little power. It is therefore necessary to transfer some powers from the exclusive list to the concurrent list. Section 4 of the Constitution separates powers between the federal and state governments via the Exclusive and Concurrent Legislative Lists found in the Constitution's Second Schedule.³⁸ Constitutional reforms could transfer some functions, such as policing, transportation, and electricity regulation, from the Federal government to the States.

4.6 Fiscal Federalism

According to Section 162 of the Constitution, the Federation Account was created and prescribes how revenue is shared between the Federal, State, and Local Governments.³⁹ A constitutional reform proposal is to revise how State and Local Governments receive funding from the Federal Government in order to allow greater jurisdiction over natural resources located in their territories.

4.7 Regional Economic Autonomy

Empowering States and Regions to implement economic development policies will increase competition, foster innovation in governance, and enhance regional economic development. A decentralized system will create stronger checks and balances, as each level of government will have authority and subsequently have the ability to hold the others accountable.

³⁷ *Ibid*, Part 1, second schedule

³⁸ *Ibid*, section 4.

³⁹ *Ibid*, section 162.

4.8 Local Government Autonomy

The Local Government autonomy issue is still a significant constitutional issue under the 1999 Constitution of the Federal Republic of Nigeria. While Section 7 of the Constitution provides that Local Governments are a tier of government,⁴⁰ their independence is heavily diluted by State Governments exercising a very significant amount of control over Local Governments' administration, financial matters, and elections.

One key reform proposal involves providing clear constitutional recognition of Local Governments as an independent tier of government free from excessive interference by State Governments. This would require an amendment to section 7 of the Constitution that guarantees the continued existence of democratically elected Local Government Councils and protects those councils from arbitrary dissolution by state governors and replacement with caretaker committees.

Another key reform proposal involves abolishing the State-Local Government Joint Account System provided for by Section 162(6) of the Constitution. Under the current approach, federal funds allocated to local governments are deposited into a joint account that is administered by the states.⁴¹ Therefore, it is common for State Governments to incorrectly divert funds or mismanage state funds that have been allocated to Local Governments. As part of the proposed amendments, federal funds would be paid directly to the Local Councils rather than being deposited into a joint account with the states.

Reforms are also recommended to enhance the voting procedure used

⁴⁰ *Ibid*, section 7.

⁴¹ *Ibid*, section 162(6).

by local authorities. Local authority elections are administered by the Independent Electoral Commission of the respective State, which is routinely influenced by the State Governments. As suggested, authority for managing local authority elections should be assigned to an independent electoral body pursuant to the Constitution or any other constitutionally independent electoral body, so that free and fair elections may be held.

Furthermore, there is a need to establish clarity and strength to the constitutional roles of Local Governments (as articulated in the 4th Schedule) to reduce inappropriate involvement of State Governments in Local Government matters and enable Local Authorities to fulfill their mandates regarding, inter alia, rural development, primary healthcare, drainage and local infrastructure.

The overall goal of implementing the proposed constitutional reforms to strengthen Local Government independence is to:

1. Promote Administrative Independence.
2. Promote Financial Independence.
3. Establish Democratic Electoral Systems;
4. Clarify the Constitutionally Conferred Powers of Local Governments.

The implementation of these constitutional reforms will contribute to the effective delivery of Local Government Goods and Services, promote democracy at the local level, and enhance Local Government service delivery in Nigeria.

4.9 Institutional Strengthening of the Legislature and Judiciary

The legislative branch is vital to the effective operation of democratic governance. The legislature has four primary functions, which are:

Law-making; representing the electorate; overseeing the executive; and appropriating money.⁴² Ultimately, the Nigerian legislature is constitutionally mandated to carry out its responsibilities as outlined in the Constitution of Nigeria. Many institutions, however, have failed to fulfill their constitutionally defined responsibility because of various institutional factors. One will look at these factors as they impact the functionality of the legislature through institutional strengthening. In order to function effectively, the institutions of the legislature must also have administrative independence in order to manage internal operations of the institution. These factors include;

a. Strengthening the Capacity of Oversight

Legislative oversight is a critical tool for holding the executive accountable for its actions. The responsibilities of legislative committees include conducting investigations, holding public hearings, examining government policies, and scrutinizing expenditures.

Legislative committees need to be staffed by individuals with sufficient technical skills and have adequate research resources to utilize during their work. Legislative committees must have the power to compel compliance by government agencies in response to legislative summonses and provide legislative committees with any requested data or documents. The existence of discrepancies in an oversight report must result in appropriate consequences and/or policy changes.

b. Building Capacity and Professional Support

To effectively make laws, legislators must possess sufficient expertise in such subject matter as economics, public policy, international

⁴² *Ibid*, section 4.

relations, and constitutional law. If the legislature wants to build its capacity, it needs to:

1. Create properly funded legislative research units;
2. Provide ongoing training opportunities for legislators and legislative staff; and
3. Promote cooperative partnerships with institutions of higher learning and public policy think tanks.

c. Committees are an Important Part of the Legislative Process

Committees play an essential role in considering bills, performing investigations into government programs, and overseeing the operations of executive agencies. A strong committee system will facilitate in-depth examination of legislation and executive agency operations. To achieve this, there are needs for;

1. Providing committees with additional investigative authority;
2. Ensuring transparency of committee proceedings; and
3. Providing committee staff with adequate staffing and technical support.

d. Increased Legislative Independence from Political Party Control

Legislators' independence is often compromised by a political party's control over the legislative process and an influence from party leaders over how legislators vote on matters under consideration. To enhance legislative independence requires providing methods for legislators to exercise their independent judgment in representing their constituents. The reforms will also increase the level of representation provided by democracy and reduce the amount of influence the executive branch has over the legislative process.

4.10 Strengthening the Institutional Framework of the Judiciary

As the protector and guardian of the Constitution, the Judiciary has a dual role of protecting individuals' rights and freedoms and ensuring that every piece of legislation and every action taken by an Executive branch of Government meets the requirements of our Constitution through its powers of judicial review.⁴³

Judicial authority is distributed across multiple distinct Courts throughout Nigeria as established by Section 6 of Nigeria's Constitution (1999, as amended). Courts include among others, the Supreme Court, Court of Appeal, Federal High Court and various State Courts.⁴⁴

Currently, there are many institutional impediments to an effective Judicial system in Nigeria such as; delays in the disposition of cases (quality / quantity of judicial resources), insufficient funds, allegations of corruption and excessive Executive Branch interference.

a. Financial Independence of the Judiciary

Judicial independence depends on financial autonomy. In a situation therefore when the Executive control funding, there is potential for political pressure to be exerted on the judiciary.

Reform of our constitutions and accompanying policy measures should ensure that funds allocated to the judiciary do not require executive branch involvement prior to their release. This would allow the judiciary to have proper control over its operations and maintain its independence as an institution.

b. Open Process for Appointing Judges

⁴³ *Ibid*, section 6(6).

⁴⁴ *Ibid*, section 6.

When appointing judges, the focus should be on their professional qualifications, their knowledge of the law and their trustworthiness and honesty. The National Judicial Council will advise on appointments; it will also consider disciplinary action against judges. To improve the appointment of judges, proposals include:

1. Openly identifying the judges who will be appointed.
2. Using rigorous selection criteria to evaluate potential judicial appointees.
3. Reducing outside influence, including political, on the judicial appointee selection process.

c. Judicial Accountability/Discipline

Judge independence is fundamental; however, judges must also be held accountable for their actions to prevent abuse of position. Enhancing judicial accountability will require improvements in current judicial accountability mechanisms that address judicial misconduct, dishonesty and abuse. The National Judicial Council will also assist in maintaining a high level of ethics and conduct within the judiciary.

d. Reforming the Justice System

Delays continue to hamper Nigeria from building a fair and sustainable legal system, improved administration of justice can help to strengthen the Nigerian judicial system. Some ways to reform the judicial system through administration of justice include:

1. Adoption of a case management software
 2. Use of electronic filing and technology in court administration
 3. Establishment of specialized courts to hear specific types of cases.
- By implementing any of these options, delays in the administration of justice can be reduced and individuals gain greater access to the justice system than they currently do.

e. Judicial Protection

Judges must be protected from any form of intimidation, threats and/or political pressures. In order to provide this protection, judges need reasonable security, reasonable working conditions and guaranteed employment security in order for them to be able to fulfill their duties with independence.

4.11 The Significance of Strengthening both Institutions

The legislature and judiciary are two integral elements of constitutional democracy; each performs a complementary function to preserve the constitution. Strengthening these institutions can provide: Accountability in governance, Control over the exercise of executive authority, improved realisation of constitutional supremacy and the rule of law, Increased public trust in democratic institutions. When both of these institutions operate effectively, together they establish a strong system of checks and balances, providing security for democratic governance.

4.12 Enhancing Accountability Mechanisms and Anti-Corruption Efforts

Public officials are accountable to society and their accountable to controlling authorities for their conduct and choices on behalf of society. There are systems and policies designed to prevent, identify and penalize corrupt behavior in public service ("anti-corruption").

The absence of an accountable mechanisms leads to an increase of corruption and imbalance between all three branches of government. Some examples of this include:

The executive branch manipulates resources of the state as leverage to influence decision-making within the legislative or judicial branch.

Legislators compromise on their responsibility for oversight in return for political or financial gain. Judicial officers may succumb to the pressure of corruption impacting their impartial ability to administer justice.

To ensure that government branches fulfill their constitutional function autonomously, therefore, it is critical to strengthen accountability and combat corruption through anti-corruption institutions

Nigeria has established several anti-corruption institutions/organizations to combat corruption and promote transparency and good governance. Two of these organizations are: The Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and Other Related Offences Commission (ICPC).

Even with their statutory responsibilities, the EFCC and ICPC have experienced challenges including political interference, insufficient financial resources, and limited ability to prosecute corruption. Anti-corruption institutions should have autonomy and independence from any influence from politics on them, through reforms that will put in place processes that allow for open and transparent selection of leadership and tenure for its members.

For an anti-corruption institution to effectively investigate and prosecute offenders of corrupt acts, the institution must receive adequate funding and resources (both technical and money) to support its operational capacity. The judiciary must prioritize the prosecution of individuals who commit corrupt acts and not delay the adjudication of those cases longer than necessary. Specialized anti-corruption courts could enhance the prosecution of individuals who commit corrupt acts. The strengthening of these institutions will enable them to enforce

accountability of all government officials and curtail the potential for government officials to abuse their authority. The legislature has a critical role in ensuring transparency and accountability, through its oversight powers as granted by the Constitution. In Nigeria, the National Assembly is the only governing body empowered to investigate any and all activities conducted by government agencies and therefore all expenditures made on behalf of the citizenry (i.e., tax revenues).

Legislative committees should have sufficient resources and support to properly investigate the dealings of ministries, departments and agencies. Providing opportunities for citizens and civil society organisations to be involved and monitor government activity through open legislative hearings. Increasing Parliament's accountability of government funding and spending will decrease corruption in the management of public finances. Legislative committee investigations that uncover wrongdoing must lead to actual policy changes or sanctions against those responsible. When the legislature is exercising these powers effectually, it is keeping executive branch authority in check.

a. Judicial Accountability and Anti-Corruption Reforms

The judiciary must uphold the rule of law and implement anti-corruption laws to support democratic governance. Unfortunately, some recent allegations of corruption in the judicial branch have decreased people's faith in how justice is administered. The National Judicial Council has substantial authority to implement judicial accountability systems, including overseeing the disciplinary process for judicial officers who violate ethical standards.

Reforming the National Judicial Council will improve the judiciary with a more disciplined approach to corruption and misconduct. The

use of transparent case assignment and court procedures in court administration will decrease opportunities for manipulation and unwanted influence in judicial proceedings. Using electronic filing systems and digital case management tools will greatly reduce the potential for corruption with manual administrative processes.

The existence of a transparent and credible judiciary is vitally important in enforcing anti-corruption legislation effectively. Civil society organizations, the media, and the public can strengthen accountability mechanisms by monitoring the actions of governments at all levels of operation. Through investigative journalism, public support, and whistleblower efforts, civil society can expose corrupt practices and help to promote transparency.

For reforms aimed at accountability to succeed, they must contain:

1. Legal protection for whistleblowers
2. Freedom of information or access to public records
3. Protections for journalists and civil society advocates

These basic reforms empower individuals to have a voice in the governance of their governments and to have accountability against those who are in public service.

4.13 Political Integrity and Electoral Accountability

Corruption is a significant problem in Nigeria and is often due to electoral processes that are flawed and characterized by political leaders who gain positions through manipulation instead of having a legitimate electoral process. Therefore, to enhance the systems that separate the branches of government, it is important that systems of accountability are strengthened.

The Independent National Electoral Commission is charged with conducting elections and ensuring that elections are conducted with integrity.

The reform of electoral accountability systems may include:

1. Strict enforcement of campaign-finance laws and rules.
2. Use of technology to provide for transparent elections
3. Successful prosecution of violations of election laws

When elections are fair and transparent; political leaders are accountable and therefore, less likely to abuse their public positions.

4.14 Accountability and Anti-Corruption Reform Challenges

Although many reforms have been made, many challenges still remain; these challenges include the following:

1. Political pressure on anti-corruption agencies
2. Poor enforcement of anti-corruption laws
3. Long judicial processes.
4. Lack of transparency in government
5. Social and political acceptance of corruption

To address these issues, there needs to be both legal reforms and institutional and cultural changes.

4.15 Impact of Reforms on Democratic Stability and Governance

Reforming the distribution of power between branches of government creates a positive effect on democracy and good governance throughout Nigeria. Reform efforts affect democracy and good governance in many ways, including:

a. Promotion of Checks and Balances

The recording of checks and balances between the different branches of government (executive, legislative, and judicial) once the reforms are enacted creates greater security that power does not become concentrated in any one of the three branches. Increased separation will create more political stability in Nigeria through better-defined roles for the three branches of government which will create a more robust democracy.

b. Strengthening the Rule of Law

Changes to the judicial system through reform will create an independent judiciary and promote the rule of law. This is a system where judicial opinions can be independent from the executive and legislative branches. An independent judiciary creates greater public confidence in the judicial system and ensures the constitutional limits of executive and legislative branches are enforced.

c. Improvement of Government Accountability

The establishment of greater checks and balances within each branch of government generates improved accountability for actions taken by the executive branch through the power of the legislative branch to oversee the expenditures of the executive branch, the implementation of government policies, and the appointment process for executive branch officials. Improved accountability reduces corruption and abuse of power and generates a more transparent and responsible government.

d. Enhancement of Institutional Efficiency

Reforms to institutions build up their capacity to operate democratically. Thus, improving the legislative process or the judicial administration through institutional reforms will make it possible for the Government's institutions to operate efficiently and effectively.

Efficient and effective institutions lead to efficient and effective implementation of policy and stable governance.

e. Increased Public Confidence in Democratic Institution

When reforms are focused on promoting transparency, accountability, and fairness for citizens, the result will be a greater level of confidence in democratic processes. If citizens have confidence in the system of governance, they are more likely to actively participate in governing, electoral processes, and civic engagement, which are all necessary for maintaining democratic stability.

f. Prevent Political Conflicts

Through the clear definition of the separation of powers and through institutional reforms, the institutions now have formal channels for settlement of disputes between the various branches of government. This means that, rather than having political crises or unconstitutional behaviour, conflicts can be resolved through constitutional and legal means resulting in continued stability of the Democratic order.

Overall, the impact of reforms on the stability of democracy and the governance of Nigeria is largely seen as positive due to the way in which they have strengthened the separation of powers; promoting the rule of law, improving accountability, helping improve efficiency of institutions, and increasing the public's confidence in the government. As a result, these effects will all contribute to the consolidation of democracy and stability of the Nigeria's governance system.

5.0 CONCLUSION

The doctrine of separation of powers is an indispensable element for any democracy. For Nigeria's democracy, it is essential for the protection of fundamental rights and the maintenance of good governance. While Nigeria's 1999 Constitution (as amended) may

provide for this doctrine, the practical implementation remains seriously defective.

The predominance of the Executive arm over the other two, the impotence of the legislature and the judiciary are factors that have culminated in the incapacitation of the doctrine in Nigeria. Political manipulation, corruption and decay in institutions of government are also contributing factors. For Nigeria's democracy to grow effectively, Nigeria must implement all institutional and constitutional reforms recommended, in order to reinforce the principle of checks and balances.

In conclusion, therefore, the implementation of the doctrine of separation of powers in Nigeria lies not only in the Constitution alone but also hinges on the resolve and determination of government officials at all levels to respect and obey the Constitution as well as uphold the principle of rule of law. Without this, it will remain theoretical rather than actual.