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An Examination of the Presidential Power to Veto or Assent to Bills in Nigeria

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ABSTRACT: *This paper examines the prerogative given the executive arm of the government to give assent to Bills passed by the legislature along with its corollary power to veto Bills passed by the legislature. This executive prerogative is expressly provided for in the Constitution of the Federal Republic of Nigeria 1999, as amended, which established the legislative, judicial, and executive branches of the government. This prerogative of assent or veto is exercisable by the President of the Federation in respect of Bills passed by the National Assembly or by the Governor of a State with respect to a Bill passed by the State House of Assembly or even by the Chairman of a Local Government Area involving a bill for a by-law passed by the Local Government Councilors. This paper examines various illustrations of the dynamic relationships and actions when Bills passed by the National Assembly have been presented for Presidential action. The above prerogative in the field of law-making, which field is constitutionally vested in the legislative arm of the government[1] is without prejudice to the hallowed principle of separation of powers. It only strengthens the desired checks and balances against abuses and arbitrariness by the legislative arm of the government. Thus, the Constitution requires that a bill duly passed by the National Assembly, that is to say, by both the Senate and the Federal House of Representatives, shall be presented to the President for his assent or as a corollary, for his veto. The President must either assent or withhold his assent within thirty days of the presentment of a Bill passed by the National Assembly.[2] There is no explicit third option of conditional assent or conditional veto. Notwithstanding the above, to demonstrate that the National Assembly retains the final discretion in the field of law-making, the Constitution vests in the legislature the power to override the veto of the President, or, when the President simply fails to act regarding a Bill within the thirty-day period.[3] The manner in which the above law-making powers have been exercised in Nigeria has created controversies especially with regard to which are the arguably correct procedures in three situations – (i) whether there is an agreed process and time for an override by the National Assembly of a Presidential veto, (ii) whether the President may give merely conditional or partial assent to a Bill, and (iii) whether it is necessary for a President to assent to a proposed*

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[1] S 4 of 1999 Constitution of the Federal Republic of Nigeria (as amended) (Henceforth, the Constitution)

[2] S 58(4) of the Constitution. S 100 of the Constitution provides for its equivalent in respect of the State.

[3] S 58(5) of the Constitution provides that "Where the President withholds his assent and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required."

Act intended to amend the Constitution. This paper examines these controversies along the following outline:

i. *The Constitutional Requirement for the Executive to Assent to Bills enacted by the National Assembly*
ii. *The Essence of an Assent or Veto by the President to Bills*
iii. *Whether the President is vested with the authority to Assent to a Bill Not Duly Passed by the National Assembly*
iv. *The Assent of the Executive to Bills for an Act for the Amendment of the Constitution*
v. *The Procedure for the Override of the Veto of the President*
vi. *The Interpretation of Section 58(5) of the 1999 Constitution*

This paper compares the way Nigeria practices its Constitutional system of government with the practices of similar federal tri-branch systems of government, especially the United States of America. This paper concludes that these controversies can only be resolved by the authoritative rulings of Nigeria's apex court, the Supreme Court of Nigeria, or when there exist express provisions of the Constitution of Nigeria relevant to a controversy, by strictly enforcing those provisions.

KEYWORDS: assent, veto, passing of a bill

INTRODUCTION

The Constitutional Requirement for the Assent of the Executive to Bills

The Constitution vests the legislative powers of the Federal Republic of Nigeria on the National Assembly for the federation[4] and in that of a State of the Federation on the House of Assembly of a State[5] and equally stipulates both the limits[6] and modes of the exercise of the legislative powers.[7]

On the modes of the exercise of the legislative powers the Constitution provides thus:

> The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President.[8]
>
> A bill may originate in either the Senate or the House of Representatives and shall not become law unless it has been passed and, except as otherwise provided by this section and

[4] S 4(1) of the Constitution
[5] S 4(6) of the Constitution
[6] As in ss 1(3); 4(2) (3) (4) (5) (7) (8) (9) of the Constitution
[7] Ss 58 and 59 of the Constitution in respect of the National Assembly and then s 100 in respect of a State House of Assembly.
[8] S 58 (1) of the Constitution

> section 59 of this Constitution, assented to in accordance with the provisions of this section.[9]
>
> The power of a state's House of Assembly to make laws shall be exercised by bills passed by the House of Assembly and, except as otherwise provided by this section, assented to by the Governor.[10]
>
> A bill shall not become Law unless it has been duly passed and, subject to subsection (1) of this section, assented to in accordance with the provisions of this section.[11]

The above provisions abundantly underscore the prescribed effect of executive actions upon the law-making function by the legislative branch in Nigeria. Thus, apart from the exceptions provided for in sections 58(5) and 59(4) of the Constitution,[12]a Bill passed by the legislature cannot become a law until the President gives his or her assent to it. These exceptions are those instances where the legislature overrides the veto of the President and the requirement for executive assent is thereby dispensed with.

This constitutional demand for the assent of the executive for a Bill to become a law is thus stressed by the Interpretation Act:

> An Act is passed when the President assents to the Bill for the Act whether or not the Act then comes into force.[13]

This requirement is so vital that an Act without the name of the president or governor that assented to it cannot take effect as a duly enacted law in Nigeria.[14] The exception to this is found in the cases where the executive vetoed the bill and the need for assent is dispensed with on account of the lawmakers overriding the veto of the relevant executive. Of course, "Assenting to a bill implies at least the possibility of refusing or withholding assent".[15] This is captured in the concept of veto power which the International Institute for Democracy and Electoral Assistance (International IDEA) defines veto power as follows:

> A presidential veto is a constitutional rule that enables a president (or elected head of state who might, in some cases, go by another title) to refuse assent to a bill that has been

[9] S 58 (2) of the Constitution
[10] S 100 (1) of the Constitution
[11] S 100 (2) of the Constitution
[12] The equivalent in respect of the State is s 100(5) of the Constitution
[13] S 2(1) of the Interpretation Act, Laws of the federation of Nigeria (LFN), Cap I23
[14] See *Ibrahim v Barde* <(1996) LPELR-1407(SC)> where the Supreme Court of Nigeria held that with regard to the absence of the name of Governor signifying his assent to the Bill to become law, among others, the said law in issue cannot be regarded as duly passed by the Nigerian State House of Assembly.
[15] Elliot Bulmer, "Presidential Veto Powers" in International IDEA Constitution-Building Primer 14, 2 <https://constitutionnet.org/sites/default/files/presidential_veto_powers.pdf> accessed on 29 August 2022

> passed by the legislature, and thereby to stop the bill from becoming law.[16]

It is however pertinent to observe that the Constitution did not envisage the President's conditional assent to Bill as exhibited recently by President Muhammadu Buhari while signing the Electoral Act Amendment Bill 2022 into law on 25th February 2022. The President signed the Bill into law, but on the condition that the lawmakers would expunge a certain offending provision of the Act. This conclusion is garnered from the following strong reservations the President expressed about section 84 (12)[17] of the proposed law:

> Section 84 (12) constitutes a disenfranchisement of serving political office holders from voting or being voted for at Conventions or Congresses of any political party, for the purpose of the nomination of candidates for any election in cases where it holds earlier than 30 days to the National Election.
>
> The practical application of section 84 (12) of the Electoral Bill, 2022 will, if assented to, by operation of law, subject serving political office holders to inhibitions and restrictions referred to under section 40 and 42 of the 1999 Constitution (as amended).
>
> Arising from the foregoing, with particular regards to the benefits of the Bill, industry, time, resources and energy committed in its passage, I hereby assent to the Bill and request the National Assembly to consider immediate amendments that will bring the Bill in tune with constitutionality by way of deleting section 84 (12) accordingly. [18]

In the face of the above-expressed reservations of the President, the President must withhold his assent until he is satisfied with the Bill in *toto*.[19] However, once he signed the Bill, it is the whole provisions of the Bill that he assented to. Having exercised his power of assent and becoming *functus officio* by signing of the Bill, the President is left with no other Constitutional authority, residual, implied, or otherwise, to "request the National Assembly to consider immediate amendments that will bring the Bill in tune with constitutionality by way of deleting section 84 (12) accordingly."

[16] Ibid 1

[17] It provides that "No political appointee at any level shall be a voting delegate or be voted for at the Convention or Congress of any political party for the purpose of the nomination of candidates for any election."

[18] Segun Adewole, 'Buhari signs Electoral Act Amendment Bill into law', The Punch (Lagos: 25th February 2022) < https://punchng.com/breaking-buhari-signs-electoral-act-amendment-bill-into-law/> accessed on 4th September 2022.

[19] He has earlier withheld his assent to the Bill.

What the Constitution expressly contemplates is either assent or veto. There is no conditional assent or veto. As the Constitution remains supreme with its provisions as the organic law of Nigeria, having binding effect on the authorities and persons throughout the Federal Republic of Nigeria,[20] the President (as well as the other relevant executives) must assent to a Bill presented to him by the legislature, or in the event he withholds this assent, a veto must, if such is the legislative will, be overridden in accordance with the procedures provided for by the Constitution before the Bill can become law without assent. The Nigerian Constitution is not alone in making this demand for the assent of the executive in law-making.[21] We shall briefly illustrate with the US as an example and then consider the essence of this cardinal requirement for the assent of the executive in law law-making in Nigeria.

The Constitution of the United States of America grants the President the authority to assent to or veto legislation passed by Congress. It provides thus:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. [22]

The above provision of the United States Constitution reveals that the president is allowed ten days during which he may approve or veto a bill. At the end of this ten-day period, the bill automatically becomes law 'in like manner as if the President had signed it'. There are two types of veto in circumstances where the President (in the United States) decides not to assent to a Bill presented to him. They are "regular veto" and "pocket veto". The former is when the President refuses to sign a bill and returns the bill complete with objections to Congress within ten days (excluding Sundays). In which case the Congress can override the veto [which

[20] S 1(1) of the Constitution
[21] The requirement is found in other jurisdictions practicing the Presidential system of government, including the United States of America as is evident in Art 1, s 7 of the Constitution and hosts of others jurisdictions.
[22] Art 1, s 7

requires] if the Congress musters [the necessary] two-thirds affirmative vote in both chambers in order for the bill to become law. If the president fails to act on legislation within ten days (excluding Sundays), the legislation automatically becomes law.[23] The latter is when the President receives a bill but is unable to reject and return the bill to an adjourned Congress within the ten-day period. In this case, the bill, though lacking signature and formal objections, does not become law.[24] In effect, the bill does not become law if Congress has adjourned within the ten-day period after the presentation of the bill to the President and thereby has prevented the president from returning the bill to congress. The implication is that if Congress wishes to insist on the bill, it must recommence the legislative process from the beginning of the next session. What then is the essence of this power of assent or veto granted to the executive in respect of Bills passed by the legislature?

The Essence of the Assent or Veto of the Executive to Bills

Flowing from the age-long principle of separation of powers among the three branches of government (the executive, the legislative and the judiciary) in a presidential system is the practice of checks and balances within the bounds of the law. Among the mechanisms of checks and balances is the requirement for the executive to assent to Bills passed by the legislative arm of the government or to veto the Bills by withholding his assent. While the Executive wields his authority by the act of either assent or veto, the Legislative branch has powers, among others, of legislative reviews and the Judicial branch has authority to review the exercise of powers of the executive.

Generally, therefore, a Bill passed by a Nigerian legislative branch is not a law until the President (or the Governor as the case may be) assents to it. That the president is vested with Constitutional power to give his assent to a Bill by signing the Bill, or on the other hand to refuse/withhold his assent, that is, to refuse to sign the Bill, does not nullify the sole responsibility of law-making by the legislative branch; rather it is part of the check and balance mechanism. It appears that the President may make consultations while exercising this prerogative as shown in this remark of President Muhammadu Buhari in his address at the signing of the Electoral Act Amendment Bill 2022 into law:

> in line with established tradition, he received inputs from relevant ministries, departments, and agencies of government after careful and thorough reviews of the Bill and its implications to democratic processes in Nigeria.[25]

The assent or veto is all about having a supervisory opinion on the Bill before it becomes law. Thus the president may veto a bill by not signing it into law and then return it to the lawmakers who may among other options make alterations and resend the corrected bill to the President. This veto power arrogated to the President in effect enables the President to protect the *status*

[23] Ibid
[24] Ibid
[25] Segun Adewole, 'Buhari signs Electoral Act Amendment Bill into law', The Punch (Lagos: 25th February 2022) < https://punchng.com/breaking-buhari-signs-electoral-act-amendment-bill-into-law/> accessed on 4th September 2022.

quo by preventing a change to it. It is thus, "by its nature an essentially reactive instrument".[26] While effective insofar as it goes, the power is not an almighty power that cannot be overturned or overridden by the legislature.

This power of the President to assent to or veto a Bill passed by the legislature enlarges the circle of cooperation between the executive and the legislature. It has thus been observed that

> Since the veto power increases a president's political bargaining power vis-à-vis the legislature, a skillful and popular president can also use the veto power in proactive ways, as a potentially potent tool for policy leadership and agenda-setting.[27]

The veto power has popularly been considered a veritable tool in the checking and balancing of the relationship among the three branches of government. Thus, James Madison rightly argued that the doctrine of veto power

> allows for each of the three branches of government to have some involvement in, or control over, the acts of the other two. This partial mixture of mutually controlling powers is known as a system of checks and balances. [28]

In any event, it has to be noted that law-making remains the sole responsibility of lawmakers, the legislature. The President for instance cannot give assent to a Bill purportedly passed by the National Assembly in contravention of the due procedure of lawmaking or in contravention of a subsisting order of a court as in *Hon Bala Kaoje & 5 others v the National Assembly of the Federation & 13 others.*[29] This case was discussed in *Nwakwoala v Federal Republic of Nigeria*.[30]

The date of the assent marks the date of commencement of the law in the absence of a specific commencement date stated in the law. The Interpretation Act lends credence to this point by providing as follows:

> Where no other provision is made as to the time when a particular enactment is to come into force, it shall, subject to the following subsection, come into force –
> (a) In the case of an act of the National Assembly, on the day when the Act is passed;

[26] (Footnote 15) 2
[27] Ibid
[28] Madison, James, 'The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts', The Federalist Papers, 47 (1788) <https://ballotpedia.org/Federalist_No._47_by_James_Madison_(1788)> accessed on 3rd September, 2022.
[29] FHC/ABJ/93/3003 (unreported)
[30] (2018) 11 NWLR (Pt 1631) SC

(b) In any other case, on the day the enactment is made.[31]

There are a plethora of cases supporting the position that the date of commencement of an Act is determined by the date of the assent. For instance, in *Amodu v FRN*[32] the "Terrorism Act (Prevention) Amendment Act 2013" which has no commencement date but had been assented to by the President on 21st February 2013, the date of assent was deemed to be the commencement date. This position is unlike what is obtainable in South Africa where an Act takes effect from the date it was published.[33]

The Invalidity of the Assent of the President (or Governor) to a Bill Not Duly Passed by the Legislature

The making of laws remains vested in the legislative arm of the government notwithstanding any other incidental roles assigned to any other arm in the course of law-making. The final discretion in law-making cannot, therefore, be usurped even in the name of checks and balances enshrined in the presidential system of government. Hence, the President can only give assent to a Bill duly passed by the National Assembly. The President cannot legitimately assent to a Bill not passed by both chambers of the Senate and House of Representatives. If it were otherwise, then hypothetically, the executive could draft a Bill and give assent *sua sponte* to the Bill he created without the Bill passing through the crucibles of the legislative processes as laid down by the Nigerian Constitution.

An instance of the President improperly assenting to a Bill not duly passed by the National Assembly comes to mind at this point. It is the celebrated case of the *Attorney-General of Bendel State v Attorney-General of the Federation and others.*[34] The facts of the case are that the President of the Federal Republic of Nigeria (Alhaji Shehu Shagari) drafted and initiated a Bill for revenue allocation titled "Allocation of Revenue (Federation Account etc.) Bill 1980" and forwarded it to the National Assembly setting out a new formula for the distribution of the amount standing to the credit of the federation account. The bill was passed with different sets of amendments by both houses. The President of the Senate pursuant to s 55 (2) of the 1979 Constitution convened a meeting of the joint Finance Committee to examine the Bill to resolve the differences. The Committee negotiated and adopted the Senate set of amendments and the Committee version of the bill was then presented by the Clerk of the National Assembly to the President for his assent. The President gave his assent to the Bill. The Bendel State Government being dissatisfied with the mode and manner by which the National Assembly had exercised its legislative power, challenged the constitutionality of the Act. Among other things, the Supreme Court held that since the Bill was not initiated within the General Assembly and debated and considered in accordance with the legislative process rules stipulated in the Constitution, the Act was not a valid law. The new versions of the Bill ought to have been sent back to each of the two Houses for adoption of the other house's amendments. It was, therefore,

[31] S 2(2). Note that an Act is passed when the President assents to the Bill for the Act as provided for in s 2(1) of the Interpretation Act
[32] (2016) LPELR-40471 (CA)
[33] S 81 of South African Constitution provides that: "a bill assented to and signed by the President becomes an Act of Parliament, must be published promptly, and takes effect when published or on a date determined in terms of the Act
[34] (1982) 2 NCLR 1

not a bill passed by the National Assembly by Constitutional process and could not have therefore been assented to by the President. Fatayi-Williams CJN (as he then was) observed as follows:

> a legislature which operates a federal written constitution in which the exercise of legislative power and its limits are clearly set out has no power to ignore the conditions of law-making that are imposed by that Constitution which itself regulates its power to make law.[35]

Another case that sheds light on this discussion is *Nwankwoala v Federal Republic of Nigeria*.[36] This case revolves around the purported *Corrupt Practices and other Related Offences Act, 2003*. The president (Olusegun Obasanjo) refused to assent to the Bill for the Act on the ground that the Bill was passed in violation of an existing court order restraining all parties from taking action on the subject matter, that is, a suit involving proposed amendment of the Corrupt Practices and other Related Offences Act, 2000. The National Assembly nevertheless again defied the said court order and proceeded to override the veto of the president and passed the bill into law. This warranted the federal high court in *Bala Kaoje & 5 others v the National Assembly of the FRN and 13 others*[37] to declare the said Corrupt Practices and other Related Offences Act, 2003 null and void and revalidated the Corrupt Practices and other Related Offences Act, 2000 which was purportedly repealed by the 2003 version. Further complicating the matter, the 2003 version of the Corrupt Practices and other Related Offences Act, which had not been assented to by the President and had been declared null and void by the Court, was - in error – compiled within the voluminous updated Revised Edition of Laws of the Federation of Nigeria Act, 2007 to which the President actually did give his assent. The Supreme Court of Nigeria held that simply by compilation a null and void Bill does not become law without first passing through all proper procedures. As a result, the Court refused to be moved by the Appellant's argument that by giving Presidential assent and with subsequent publication of the newly compiled Revised Laws in 2007, the subject law should be deemed to have been assented to. The Supreme Court firmly held that

> A law attains legitimacy and is valid only after it passes through the well laid down procedure. When a law is declared null and void by a Court of law, as is the case with the 2003 statute, it remains so, in the absence of a contrary declaration from the court. When legislation that should not be on the statute books finds its way there, it can only mean that those that did the compilation were not aware of the Court order.

We shall now turn to the case of an Act of the National Assembly for amendment of the Constitution which appears to be a different genus of legislation in its own class.

The Assent of the Executive in Bills for an Act for the Amendment of the Constitution

[35] (1982) 2 NCLR 40
[36] (2018) 11 NWLR (Pt 1631)
[37] FHC/ABJ/93/2003 (unreported)

From the foregoing discussions, it is not in doubt that the assent of the executive is required in the law-making process in Nigeria. In contrast, matters are not so clear with respect to Bills intended to amend the Constitution itself. Will the assent of the President still be required or be dispensed with? This question remains far from being definitely answered.

A manifestation of this controversy was the contention in the celebrated case of *Agbakoba VS National Assembly* [38] where Justice Okechukwu Okeke of the Federal High Court, sitting in Lagos, nullified an amendment of the 1999 Constitution by the National Assembly that failed to receive the assent of President Goodluck Jonathan. The central issue in the case was whether the National Assembly can amend the 1999 Constitution of the Federal Republic of Nigeria without the assent of the President. The Court decided that the assent of the President is a *conditio sine qua non* in the alteration or amendment of the Constitution. The rationale for the decision is that the amendment of the Constitution by an Act of the National Assembly must comply with the requirement of the assent of the President notwithstanding that the amendment of the Constitution is under s 9 of the Constitution.

The following relevant salient provisions of the Constitution are to be carefully noted. The alteration of the Constitution is by an Act.[39] An Act according to the Interpretation Act is "passed when the President assents to the Bill for that Act."[40] The Constitution expressly stipulates that the Interpretation Act is applicable in the interpretation of the Constitution.[41] The Constitution itself defines an "Act" or "Act of the National Assembly" to

> mean any law made by the National Assembly and includes any law which takes effect under the provisions of this constitution as an Act of the National Assembly;

If Presidential assent were not required in the amendment of the Constitution, then the Constitution would have explicitly stated, as was done when the requirement of Presidential assent was removed in s 12 (3) of the Constitution with respect to bills passed for to ratify of a Treaty agreement. The reason for this exception appears to be the fact that since the President is the person submitting an international treaty to the National Assembly for passage, the President must have impliedly assented to the bill that proposes amendment before so submitting the same.

The question of whether the assent of the President is required in the amendment of the Constitution is yet to be resolved. It is hoped that the Supreme Court will rest this controversy when presented with the opportunity. But now we shall turn our attention to another constitutional controversy, the proper procedure for overriding an executive veto of bills presented by the legislature.

[38] (Unreported) See The Punch Newspaper (10 November, 2010) 10
[39] 9(2) of the Constitution
[40] 2(1) of the Interpretation Act.
[41] S 318 (4) of the Constitution provides that "The Interpretation Act shall apply for the purpose of interpreting the provision of this Constitution."

The Exercise of the Faculty to The Override of the Veto of the President in Nigeria

The legislature is vested with authority to override a veto of the President. This empowerment is bolstered by the fact that the lawmakers retain final discretion in law-making notwithstanding the inputs allowed to the executive in policies and political positions that sometimes affect law-making. As to override of a Presidential veto, the Constitution states the following procedure for the exercise of this all-important faculty:

> Where the President withholds his assent and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required.[42]

This provision demonstrates the exulted position of the legislature in the field of law-making in Nigeria. Other jurisdictions that grant veto power to the executive also balance it with the concomitant power of the lawmakers to override the veto of the executive. Without such an equilibrium of power, the ministry of law-making would not be the sole responsibility of the Legislative Branch.

The instance of the enactment of the *Niger-Delta Development Commission (Establishment etc) Act*, 2000[43] clearly illustrates the exercise of this faculty granted the legislature to override the veto of the president. Then President Olusegun Obasanjo withheld his assent to the Bill for the Act. In response, the National Assembly had recourse to this all-important faculty enshrined in section 58 (5) of the Constitution. The Act was then duly (re)passed by the Senate on 6 June 2000 and by the House of Representatives on 1 June 2000 thus becoming an Act of the National Assembly in accordance with the provisions of Section 58 (5) of the 1999 Constitution of the Federal Republic of Nigeria. The Act was endorsed by the then Senate President [Senator Chuba Okadigbo] on 12 July 2000 as well as by the then Speaker of the House of Representatives [Ghali Umar Na'Abba] on 11 July 2000. Therefore, the Act thus became law without the assent of the President, Olusegun Obasanjo.

A similar event occurred at the state level when the aforesaid Constitutional faculty was exercised by the Delta State House of Assembly, with respect to the Delta State Anti-Kidnapping and Anti-Terrorism Law 2013. The Bill was passed into law by the Delta State House of Assembly without the assent of the Governor who had withheld his assent to the bill. The law was discussed in the case of *Ogheneovo & Anor V Governor Of Delta State & Anor* at the Court of Appeal.[44]

[42] S 58(5) of the Constitution.

[43] An Act to provide for the repeal of the Oil, Mineral Producing Areas Commission Decree 1998, and among other things, establish a new Commission with a re-organised management and administrative structure for more effectiveness; and for the use of the sums received from the allocation of the Federation Account for tackling ecological problems which arise from the exploration of oil minerals in the Niger-Delta area and for connected purposes. It has its commencement date as 12th day of July 2000.

[44] (2022) LPELR-58062(SC)

The Interpretation of Section 58 (5) Of The 1999 Constitution

The following is the key provision of the Constitution which grants the National Assembly the authority to override a Presidential veto:

> Where the President withholds his assent and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required.[45]

We shall anchor the exegesis of the above provision of the Constitution by examining the import of the two phrases contained within the expression, "the bill is again passed by each House by two-thirds majority". The first phrase raises the question, what does it mean to "again pass" a vetoed bill? And, the following phrase raises one direct and one implied question, in order for the above legislative action to be effective. Is it two-thirds of the members present and voting? Or is it two-thirds of all the members of each of the House?

The phrase **"the bill shall be passed again"** may imply that a legislature wishing to pass again a bill following a Presidential veto must begin again the arguing, discussing, amending and passing every section of a bill in order to fully comply with the legislative process. It has been judicially noticed that the legislative process commences when a bill is introduced and first read in any of the two Houses of the National Assembly.[46]

The phrase **"the bill shall be passed again"** cannot, therefore, be merely taking the bill back to each of the two houses for merely a "yea and nay" vote on the Bill exactly as it was originally sent to the Executive, without more. If it were so, the Constitution would have so stated. And that would surely minimize the whole essence of checks and balances on the exercise of the legislative powers because the lawmakers would be deprived of the opportunity of taking a robust critical second look at the bill in face of whatever objections the president must have raised that warranted the president's decision to withhold his assent to the bill. Going through the whole process of passing a bill must also involve the public once again. Not to do so would also imply that the public would not be carried along.

Again, there is ambiguity in the prepositional phrase **"by two-thirds majority."** For section 58 (5) of the Constitution to be fully applied to override the veto, a supermajority (of two-thirds) votes in each house are required. Logically, the ability to muster the required supermajority vote relies upon the existence of a broad consensus of support in the legislature.

Therefore the two questions posed above must be examined:

> Is it two-thirds of the members present and voting? Or is it two-thirds of all the members of each House?

As a starting point we look to Section 54 (1) of the Constitution. For normal business of the Senate or the House, the quorum expressly stated by s 54(1) is **"one-third of all the members**

[45] S 58(5) of the Constitution
[46] AG Bendel v AG Federation and others (1981) LPELR-605 (SC)

of the legislative house concerned."[47] Being that the Senate should consist of 109 members[48] and the House of Representatives consist of 360 members[49] the view of this paper is that if for purposes of s 54(1) of the Constitution the Senate or the House while forming their respective quorum must muster up to a two-thirds majority **of the members sitting and voting**, then the two-thirds majority vote required in s 58(5) for the override of a Presidential veto is satisfied. It is the view of this paper that if the Constitution intended a two-thirds majority of **all** the members of each house, the Constitution would have so indicated by inserting "all" in s 58(5) as it did in 9(2),(3)[50]; 143(4)(9)[51]; 305(6)(b)[52]. Apart from these special circumstances, the normal is that any question proposed for decision in the Senate or the House of Representatives shall be determined by the required majority **of the members present and voting**.[53]

It is however curious that the Supreme Court in *the National Assembly v President of the Federal Republic of Nigeria*[54] took a different position on the issue of how to determine the presence of a required quorum to override the veto of the president. A discussion of this case which centred on the Electoral Act 2002 vis-à-vis non-compliance with s 58 (5) of the Constitution will on the whole throw more light on this ongoing analysis of section 58 (5) of the Constitution.

The facts of the case are that the National Assembly passed a bill for the Electoral Act, 2002 which the President refused to assent to and returned same to the National Assembly. Each of the Houses passed a motion for override of the veto of the President and thereby passed the Bill into law without the assent of the President. In the suit filed by President and the Attorney General against the National Assembly at the Federal High Court, one of the issues raised for determination in the said case at the Court of Appeal was:

> Whether the Electoral Act, 2002 was validly passed by the National Assembly by two-thirds majority of the members of the two chambers who were present as against two-thirds of all the members.

The Court of Appeal reviewed both phrases that this paper has just discussed. Examining the first phrase, the Court held that both houses of the national assembly cannot override the President's veto by merely passing a "motion for veto override". The court held that the appropriate interpretation of the phrase "**and the bill is again passed by each House**" in s 58 (5) is that the Bill should go through the eight stages of the legislative process it had previously gone through when it was first passed. This paper agrees with this interpretation.

[47] S 54(1)
[48] S 48 provides that "The Senate shall consist of three Senators from each State and one from the Federal Capital Territory, Abuja."
[49] S 49 of the Constitution
[50] On alteration of the Constitution
[51] On investigation of allegation against the President or the Vice President
[52] On proclamation of state of emergency
[53] S 56(1) of the Constitution
[54](2003) 9 NWLR (Pt 824)104

Then, with respect to the question of quorum, the Court of Appeal held that the National Assembly was not properly constituted[55] by defining "two-thirds" as two-thirds of the membership of the whole of the House of Representatives and of the Senate. This implies, as held by the Court, that in order to override the President's veto there must be present at least: 73 members in the Senate and 240 members House of Representatives.

In the end, the Supreme Court upheld the Court of Appeal decision that there was an insufficient number of members in order to cast a valid vote, but still did not strike down the whole law for this reasoning:

> The Court noted the law was being relied upon for the 2003 National Elections. To declare it unconstitutional and strike it down at this stage may lead to a widespread disruption of national life … it is not in my view necessary to strike down the law.[56]

G.O.C. Amadi is of the view that the judgement (of the Court of Appeal) would have stated categorically that the refusal to annul a clearly unconstitutional statute was based on necessity as the pronouncement of the learned jurist implicitly affirmed so. For Amadi,

> The case evidently shows an ironic but regrettable situation where a law-making body acts outside the law, which resultant effect can be anarchic, but for the sagacity of the court's implied invocation of the doctrine of necessity to avoid "a widespread disruption of national life".[57]

Another additional legal element must be fulfilled if the National Assembly wishes to override the veto of the President. That element is the timeline within which to grant assent or exercise veto. Logically, a requirement for the assent of a president for a bill to become law without a prescription of the time limit within which the said assent would be given would imply that the President's approval is absolute as no bill can become law without it.[58]

Being that the Nigerian Constitution specifies a time period of thirty days during which the presidential veto may be exercised,[59] a bill is deemed to have been vetoed if the 30 days elapsed without the President assenting to it or returning to the lawmakers unsigned. In this case, the lawmakers may then proceed to override the veto through the laid down procedure. In some other jurisdictions like Argentina, a bill that has not been signed or vetoed by the president

[55] There were only 55 senators and 204 members of the House of Representatives at the time the 2 houses made the motion of veto override.
[56] (Footnote 54) 134
[57] *GOS Amadi, "Political Jaywalking and Legal Jiggery-Pokery in the Governance of Nigeria: Wherein Lies the Rule of Law", the 57th Inaugural Lecture of University of Nigeria Nsukka (2011)* 63
[58] (Footnote 14) 11
[59] S 58(5) of the Constitution.

within the prescribed period automatically becomes law at the end of that period regardless of Presidential inaction.[60]

It is clearly established that the legislature must follow the procedures laid down in the constitution for law-making including how to override the veto of the executive. The legislature has no power to ignore those mandated procedures. As the Supreme Court observed in *AG Bendel v AG Federation and others*[61]

> If the Constitution makes provisions as to how the legislature should conduct its internal affairs or as to the mode of exercising its legislative powers, then the court is duty bound to exercise its jurisdiction to ensure that the legislature comply with the constitutional requirements.

CONCLUSION

This paper concludes that it is a salutary idea to separate executive, legislative and judicial powers and still allow cooperation in the exercise of these powers in such a way that there is mutual control to avoid abuses and arbitrariness.

To achieve a healthy practice of the veto power by the executive and the power to override the veto by the legislature, a veritable tool of the desired mutual control, this paper proposes more specifically defined boundaries and rules of the game.

The Constitution presently does not require the President to give reasons or grounds for refusing or withholding his assent. The relevant provision only states:

> Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assent.[62]

If the constitution were to prescribe that the President cannot just simply say "no" but that the President must also give reasons for the "no", there might be a less capricious or arbitrary use of the veto power with the added benefit to the legislature in fully considering the contributions and insights from the President. This is the practice in the United States and some other jurisdictions that also arrogate the veto powers to the executive.[63] In Ghana for instance, if the President refuses to assent to the bill, he must

> within fourteen days after the refusal, state in a memorandum to the Speaker any specific provisions of the

[60] The Constitution of Argentina (art. 80) which states that 'Any bill not returned within ten working days is to be considered approved by the Executive Power'.
[61] (1981) LPELR-605 (SC)
[62] S 58(4) of the Constitution
[63] In the US, as provided for in Art 1, s 7 of the US Constitution, President usually sends the bill back to Congress with a message explaining his objections.

> bill which in his opinion should be reconsidered by parliament, including his recommendations for amendments if any.[64]

Malawi has a similar demand for reasons for withholding assent. The Malawian Constitution provides as follows:

> Where the President withholds assent to a Bill, the Bill shall be returned to the Speaker of the National Assembly by the President with a notification that the President's assent has been withheld, including reasons therefor, …

In the event that the reasons given by the President border on the constitutionality of the Bill, this paper recommends borrowing from the practice in South Africa where the president upon being presented with a Bill can assent to and sign the Bill or refer it to the Constitutional Court for a decision on its Constitutionality; if the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it.[65] We, therefore, recommend that the President might consider referring to the Supreme Court his concerns regarding the constitutionality or otherwise of a Bill – or sections of a Bill - that is presented for his assent of veto.

It is also recommended that the Constitution be explicit on the procedures for the override of the veto of the President including a clearer definition of what constitutes a quorum and also the requirement of assent in respect of amendment of the Constitution.

Considering the pivotal roles of the lawmakers which by no means are not limited to lawmaking, we subscribe to the following recommendation that lawmakers comply with the provisions of the law:

> it is not enough to enjoy this enormous power without the corresponding responsibility of ensuring that the law-making process in the legislature is a reflection of a credible procedure addressing the needs of society.[66]

[64] Article 106 (8) of the Constitution of Ghana
[65] S 79(4) & (5) of the Constitution of South Africa.
[66] "Guide to Lawmaking in The National Assembly" (2017, Abuja: Policy and Legal Advocacy Centre (PLAC)) 2