

LEGISLATIVE APPROVAL OF EXECUTIVE APPOINTMENTS BY THE NATIONAL ASSEMBLY IN NIGERIA: A VINDICTIVE OR A CONSTITUTIONAL DUTY?*

Abstract

The power to approve presidential nominees for the office of ministers of the federation, ambassadors, and members of the Board of other executive bodies is vested in the Senate, while the power to approve governor's nominees for Commissioners and members of other State executive bodies vest in the House of Assembly of the State. The Chairmen and members of these bodies shall be removed for misconduct by the President on approval of the Senate, while the chairmen and members of the boards at the State level shall be removed by the Governor on approval of the House of Assembly of a State. The House of Representatives is deliberately excused from participating in the approval of Presidential appointment. This paper examines how this power is being exercised both at the Federal and State levels in Nigeria. Is the power exercised in a vindictive manner to deal with a political enemy or in a patriotic manner in order to engender good governance? The paper concludes that the power should be exercised in a way that peace, order and good governance shall be promoted both at the Federal and State levels.

Keywords: *Executive appointments, Legislative approval, National Assembly, Constitutional duty*

1. Introduction

The National Assembly is the highest law making and representative body in Nigeria. It is the Constitutional Institution invested with power to make law for peace, order and good government in Nigeria¹ including approval of Presidential appointments,² while the House of Assembly of a State is the law making body for the State.³ It also has the power to approve governor's nominees for any executive position as specified in the Constitution.⁴ The National Assembly consist of the Senate and the House of Representatives.⁵ The Senate is led by the Senate president, while the House of Representatives is led by a Speaker.⁶ The election of the leadership of the senate is entirely the affair of the Senate and the leadership can come from any party whether the party has the majority or minority of its membership,⁷ the same goes for the House of Representatives.⁸ The Constitution clearly states that there shall be a President and Deputy President of Senate, who shall be elected by the members of that House From among themselves⁹, and a Speaker and a Deputy Speaker of the House of Representatives, who shall be elected by the members of that House from among themselves¹⁰. The liberal and literal interpretation of this section of the Constitution is to the effect that the President of senate and Deputy president can come from any party whether the party wins majority seats in the Senate or not. But in practice, the party that has the highest number of members in the Senate normally gets elected to the office of the Senate President and Deputy Senate President, the same goes for the Speaker and Deputy Speaker of the House of Representatives. But in the Nigerian 8th Assembly, this convention was broken by the Senate when All Progressive Congress (APC) which has the highest

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¹ Section 4 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended

² Sections 147

³ Section 4(6)

⁴ Section 198

⁵ Section 47

⁶ Section 50 (1) (a)

⁷ Section 50 (1) (b)

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

number of Senators in the Senate produced the Senate president and the People Democratic Party (PDP) which has minority members of senators produced the Deputy Senate president.¹¹ This anomaly caused a lot of strange happenings in governance in Nigeria since June 2015 to date. It consequently led to the arraignment of the Senate President who arranged an alliance with PDP before the Code of Conduct Tribunal¹² and Federal High Court for forgery of the Senate Standing Rules 2015.¹³ It has also generated strain relationship between the executive and the National Assembly leading to many discordant tunes coming from the executive and the legislature, i.e. the National Assembly. Nigerian sees this government as a government in disarray, without focus and cohesion¹⁴. Contrary to the hope and expectation of Nigerians, the Senate president came out victorious from all his criminal charges both before the Code of Conduct Tribunal and the Federal High Court, Abuja. After the victory of the Senate president and his deputy, the Senate that has always been behind him now receive a new strength and courage to challenge the excesses of the Executive or to repay the executive and certain individuals who participated actively in the ordeal of the Senate president and his Deputy, and this made the Senate to exercise its power of approval of presidential nominees with eagle eye by approving or rejecting any one they do not like or they want to punish. Although Senate has the power to approve or reject any nominee of the president and once affirmed or approved it cannot be revoked.¹⁵

2. Power of Confirmation of Presidential Appointments

The Constitution of the Federal Republic of Nigeria 1999 as amended provides that there shall be such offices of ministers of the Government of the federation as may be established by the president¹⁶. Any appointment to the office of the minister of the Government of the federation shall, if the nomination of any person to such office is confirmed by the senate be made by the president.¹⁷ Any appointment under subsection (2) of this section by the President shall be in conformity with provisions of section 14(3) of this Constitution.¹⁸ Provided that in giving effect to the provisions of aforesaid, the president shall appoint at least one minister from each states who shall be an indigene of such state.¹⁹ The effect of the above provisions is that before any appointment of president, that the above section relates can be valid, the senate must approve after screening of that nominee. Nigerians have witnessed a lot of screening of ministerial and other executive nominees who were asked to recite the National Anthem, explain NEEDS, explain their master plan or agenda for their offices while some nominees were only asked to take a bow and leave especially if they were formerly members of the National Assembly.²⁰

The approval of the nomination of Ibrahim Magu as the Chairman of the Economic and Financial Crime Commission is the most controversial approval that any Senate in Nigeria have ever witnessed. The President presented Ibrahim Magu who had been acting chairman to the Senate for approval but the senate caused a security report to be prepared by the Directorate of Security Service (DSS) on him.

¹¹SGF opens up on Saraki, say APC's Inability to produce Deputy Senate President an aberration, *Nigeria Tribune*, 27 June 2016, p. 1

¹² *FRN v Saraki* 2016 1-2 SC (pt v) 59

¹³ *FRN v Saraki* 2016 1-2 sc (part v) 59

¹⁴ Jadesola Ajande Introduction to Nigeria Constitution 1999, Lagos 2000

¹⁵ Ibid

¹⁶ Section 147 (1) of the 1999 Constitution of FRN as amended

¹⁷ Section 147 (2)

¹⁸ Section 147 (3)

¹⁹ Section 147 (3)

²⁰Buhari writes Senate, names new ministerial nominees
<https://www.dailytrust.com.ng/news/...senate...ministerial-nominees/191206.html>

Based on this report that indicted Ibrahim Magu, he was rejected by the Senate.²¹ The rejection may be unconnected with DSS report but it may be connected with the role of Ibrahim Magu as acting Chairman of EFCC in the investigation of Senator Bukola Saraki and his wife Mrs Toyin Saraki on the case before the Code of Conduct Tribunal. The Senate saw the approval power as a pay-back time, thus Magu was rejected.²² The Secretary to the Government of the federation has also been paid back by Senate instigating his suspension.

The Senate refused to confirm Barrister Obono-Obla as a Commissioner in Nigeria Communication Commission because he is also involved in Anti-Corruption war. The Senate also refused to confirm Pastor Benjamin Ezekiel Yisa as a member of the commission on flimsy or meaningless excuses. (He is not a candidate of Bukola Saraki from Kwara.) One Mr Gbajabiamila who is a brother to Hon. Femi Gbajabiamila²³ was also not confirmed as chairman of Nigeria lottery commission because he is related to Femi Gbajabiamila (leader of House of Reps) who is not in Bukola Saraki camp in the National Assembly, some Ambassadorial nominees²⁴ were also not confirmed by Senate with no tangible reasons. The Senate should set up parameter or criteria for confirmation and rejection of presidential nominees so that Nigerians will see transparency and patriotism in their screening of presidential nominees instead of the present vindictive style being used by the senate. The senate should know that the institution is responsible to Nigerians. The Obono obla issue was the most funning. The senate voice vote confirmed him but the senate president ruled against him because of his personal animosity against him. The issue became controversial that Gbenga Aruleba on AIT programme 'Focus Nigeria' had a session in it.²⁵

The presidency, on the complaint of the Senate set up a Committee to investigate the matter but Magu was given a clean bill of health by the presidential committee.²⁶ Based on the report, the president represented Magu to the senate for confirmation. The senate received another report from the DSS indicting Magu again. The senate rejected Magu the second time but Magu continued to act as chairman of EFCC. The acting president and Mallam Nasir El Rufai, the Governor of Kaduna State had reiterated that Magu remains the chairman of EFCC whether or not he is confirmed by the Senate. To complicate the matter, the Acting President who is a professor of law and a Senior Advocate of Nigeria opined that Magu does not need Senate confirmation to be chairman of EFCC. He premised his argument on section 171 of the constitution.²⁷ The question the senate is asking now is why the president presented Magu to the senate for confirmation did when they know that his position as chairman of EFCC is not within the executive appointment to be approved by the senate.²⁸ This made the senate to decide not to approve any presidential appointment until Magu is dropped and another person appointed as chairman of

²¹ Can Magu continue as acting chairman of EFCC www.lawyard.ng/can-magu-continue-as-acting-chairman-of-EFCC/ accessed on 26 July 2017

²² Magu: The trial of EFCC Boss <http://www.dailytrust.com/ng/news/general/magu-the-trial-of-EFCC.../17-14-13/html> accessed on 26 July 2017

²³ Presidency apologises to Senate over Gbajabiamila ▸ NAIJ.COM <https://www.naij.com> ▸ Local news Stop Parading Yourself As DG Lottery Commission, Senate Tells ...

sundiatapost.com/.../stop-parading-yourself-as-dg-lottery-commission-senate-tells-gba.. accessed on 4/08/2017

²⁴ Senate rejects two ambassadorial nominees - Premium Times Nigeria

www.premiumtimesng.com/.../226958-breaking-senate-rejects-two-ambassadorial-no... Accessed on 4/08/2017

²⁵ Senate, Not Saraki, Rejected Obono-Obla's Confirmation For NCC ...

www.thebriefng.com/.../senate-not-saraki-rejected-obono-oblas-confirmation-ncc-boa. Accessed on 4/08/2017

²⁶ Examining the feud before the presidency and the senate <http://www.linkedin.com/.../examining-feud-between-nigerian-presidency-senate-fra...> Accessed on 26 July 2017

²⁷ Joseph Onyekwere, ;Is confirmation of Executive appointment by Senate inconsistent with section 171 of 1999 Constitution? *The Guardian* 25 July 2017 p 30

²⁸ Ibid

EFCC. But reason prevailed later and they continued their work including approval of appointment of Resident Electoral Commissioners.²⁹ The executive and legislature relationship at the federal has been frosty since the beginning of the 8th Assembly till date.³⁰ Although on this issue of presidential appointment confirmation by the senate, the executive had promised to take the matter to the Supreme Court for adjudication.³¹

3. The Legislature Power of Confirmation of Presidential Nominees: Matters Arising

Ordinarily, Section 147 relates to the appointment and confirmation of nominees for the office of ministers of government of the federation which requires the confirmation of the Senate³². The section also specifies that appointment of minister must reflect the federal character³³ and each state must have at least one minister.³⁴ However section 171 provides that power to appoint persons to hold or act in the offices to which this section applies and to remove persons so appointed from any such office shall vest in the president.³⁵ The offices were listed as follows: - Secretary to the Government of the federation, Head of Civil Service of the federation, Ambassador, High Commissioner or other principal representatives of Nigeria abroad, permanent secretary, secretary in any minister or Head of any extra-ministerial department of the Government of the federation how so ever designated and any office on the personal staff of the president.³⁶ Provided that any appointment to the office of Ambassador, High Commissioner or other principal representative of Nigeria abroad shall not have effect except the appointment is confirmed by the senate.³⁷

Flowing from the above sections of the Constitution, that is section 147 and 171, only ministerial and Ambassadorial, High Commissioners and diplomats nominees are subject to senate confirmation by the tenor of the constitution. Therefore the offices of the Government of the federation, Head of service of the federation, permanent secretary, Head of army, Extra-ministerial department of the federation and personal staffs of the president do not require senatorial confirmation before their appointment could be valid.³⁸ This is clear and unambiguous in the constitution. And once a nominee is confirmed, the confirmation cannot be revoked. Any nominees whose appointment is not confirmed cannot be sworn in.³⁹ The big question in the mouth of Nigerians is whether the position of the chairman of the EFCC can qualify as Head of Extra-ministerial department whose appointment is at the pleasure of the president in accordance with section 171(6). To answer this question the term extra-ministerial department must be defined. Wiki answers define parastatal as a statutory body of corporation that is wholly owned or control by national or municipal government which claim of command passes through a cabinet member of the Executive Council of that government like a minister, Commissioner or Councillor. Whereas an Extra-ministerial department is a unit of government which function is independent of any ministerial oversight.⁴⁰ In some cases, their function may relate directly to certain

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² Section 147 (1) of the Constitution of FRN 1999 amended

³³ Section 147 (2)

³⁴ Section 171 (2)

³⁵ Section 171 (1)

³⁶ Section 171

³⁷ Section 171

³⁸ Section 171

³⁹ J. O. Akande, *Introduction to the Constitution of Nigeria 1999*, Mil Professional publishers Ltd Lagos, 2000 p 279. *U.S. v. Smith* US 6 (1932). *Jideonwo v Governor of Bender State* (1921) 2 NCLR 745

⁴⁰ Wiki answers <https://en.wikipedia.org/wiki/WikiAnswers>

aspect of the function of the president that he/she want to delegate to an identifiable structure answerable to him directly without exposure to such checks and balances like congressional or parliamentary oversight. It went further to say, for instance in some countries, the office of the chief of staff to the president and the secretary to the Government of the federation are extra-ministerial bodies had taken part in cabinet meetings, manage budget but are only answerable to the president, not congress or parliament.⁴¹

From the above definition and illustrations, it is clear that EFCC is an Extra-ministerial department. This commission is an independent body directly under the supervision of the presidency and has its own budget and not subject to checks and balances from the National Assembly, although the National Assembly can invite the commission or its chairman to brief it on its activities. If this line of argument is correct, then the president can appoint the chairman of EFCC without recourse to the senate. This position is fortified by the Interpretation Act.⁴² Another important point worthy of note is the provision of the EFCC Act which subject the appointment of chairman of EFCC to senate approval or confirmation.⁴³ The EFCC Act is an Act of the National Assembly validly made pursuant to its power in section 4 of the constitution of the Federal Republic of Nigeria 1999 as Amended. The National assembly is of the opinion that since the Act is a valid law, the president is bound to obey it by presenting another candidate in place of Ibrahim Magu who has been rejected twice.

However, some legal scholars have argued that since Section 171 of the constitution provides that head of extra-ministerial department can be appointed at the pleasure of the president, that section 171 will override the EFCC Act in the sense that section 171 of the Constitution is a Superior law or the ground norm that overrides any other law that is in conflict with it, especially when section 1 (1) and (3) of the Constitution is invoked. There are decisions of the Supreme Court to this effect where in some sections of the Electoral Act were struck down on the ground that they are inconsistent with the provision of the constitution.⁴⁴

The Acting Chairman of EFCC even when not confirmed by the senate can continue to act and exercise the full powers of the chairman of EFCC in so far as he president wants him in that office, he could be removed, suspended and discipline in any other manner by the provision of the Interpretation Act⁴⁵. As pleasurable as this argument may appear, it has an inherent danger of nullifying any section of Act of the National Assembly that requires Senatorial confirmation of chairman or chief executives. Acts of parliament that set up ICPC, NACA etc. may be rendered void as far as senatorial approval or confirmation of Chief executive is concerned. Can this be the intendment of the law qua law makers? No. According to Joseph Onyekwere, the supremacy battle between the Executive and the National Assembly over the confirmation of certain executive appointments appears intractable. As it is, many are of the view that only judicial intervention would possibly resolve the logjam because both parties and their supporters refer to some sections of the constitution in their arguments. The mostly referred sections are 1(1) and (3) of the 1999 Constitution (as amended) and section 171 (1) (2) of the same constitution, in addition to section 2(3) of the Economic and Financial Crimes Commission (EFCC) established Act 2004. Section 1(1) (3) talks about the supremacy of the constitution, it says: 'if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall be extent of the inconsistency be void.' Section 171(1) (2) says the power to appoint

⁴¹ Ibid

⁴² Section 11 of the Interpretation Act cap

⁴³ Section 2 (3) of EFCC Act cap E1 Laws of the Federation 2004

⁴⁴ *INEC v. Musa*

⁴⁵ Section 11 of the Interpretation Act

persons to hold or act in the offices to which this section applies and to remove persons so appointed from any such office shall vest in the president. It went further to provide in subsection 2, the offices to which this applies. For purpose of clarity, the EFCC is not mentioned in subsection 2 referred above. Interestingly, section 2(3) of the EFCC Act provides that: ‘The chairman and members of the commission other than ex-officio members shall be appointed by the President and the appointment shall be subject to the confirmation of the Senate.’ Consequently, proponents of the non-confirmation theory are asking if it would be better for the executive to simply ask the Supreme Court to declare section 2(3) of the EFCC act as inconsistent with the constitution, therefore null, void and ultra vires.

Dissecting the arguments about the possibility of getting pronouncement on the issue,⁴⁶ former Director General of the Nigeria Institute of Advanced Legal Studies (NIALS), Prof. Epiphany Azinge (SAN) said the Supremacy of the constitution as enshrined in section 1 (1) of the constitution is not debatable: ‘What we must be careful not to misconstrue, is the provision of Section 1 (3) of the 1999 Constitution, which states that any law inconsistent with the provisions of the Constitution is null and void. Note that the emphasis is on the word ‘inconsistent’ and not ‘further elucidation on what is in existence.’ ‘Before addressing the import of section 171, with regards to section 2 (3) of the EFCC Act, permit me to highlight other Constitutional provisions on the need for confirmation by senate of appointment by the President.’ ‘Section 147 is clear on appointment of a Minister. So also is section 231 on appointment of Chief Justice of Nigeria and Justices of the Supreme Court, section 238 on appointment of Justices of the Court of Appeal.’ However, section 153 and 154 give a greater insight as regards appointments that required confirmation of the Senate before assumption in office. They include, Code of Conduct, Council of State, Federal Character Commission; Federal Civil Service Commission; Federal Judicial Service Commission; Independent National Electoral Commission; National Defence Council, National Economic Council, Police Service Commission; Revenue Mobilisation Allocation and Fiscal Commission,’ he stated.⁴⁷ Azinge explained that section 154 (2), specifically provides that in exercising his powers to appoint a person as Chairman or member of the Council of State, the National Defence Council, or the National Security Council, the president shall not be required to obtain the confirmation of the Senate. As regards Section 154 (3), he said the President can appoint a person as Chairman or member of the Independent National Electoral Commission; the National Judicial Service Council, the Federal Judicial Service Commission or the National Population Commission in consultation with the Council of State: ‘In relation to section 171 of the Constitution, it is instructive to note that the provision is specifically tied to the offices expressly mentioned and cannot by any stretch of imaginations be extended to offices not mentioned. The provision of section 171(1) (e) which states: ‘Any offices of the personal staff of the president’ is equally restrictive as personal staff in this aid refers to aides of the President (including domestic staff) e.g. Chief of Staff, Principal Secretary, Media Advisers etc. The legal maxim of express mention of one thing is to the exclusion of others must be evoked here. So offices not mentioned are therefore excluded in this context. ‘In addressing section 2(3) of the EFCC Act, a historical voyage of discovery is imperative. Firstly, is that the Constitution came into force in 1999, whilst the EFCC Act, was promulgated in 2004. Since the Constitution predates the Act, there is no way the Constitution would be amended to specifically accommodate the office of the chairman of the EFCC.’ He noted also that many other organizations that were not created or mentioned by the Constitution are caught up in that statutory elucidation, adding a good example is the NDDC Chairman and its board members. It is therefore, my considered position that the section 2 (3) of the EFCC Act, is not in any way inconsistent with section 1 (1) (3) of the Constitution. Its coming into force in 2004

⁴⁶ Joseph Onyekwere *op. cit*

⁴⁷ Ibid

cannot be seen as an antithetical to the constitution. It further reinforces the extent of the founders of the Constitution to allow the people have a say (through the Senate) in the appointment of members of strategic Federal Executive Agencies. ‘Lastly, section 171, is not an omnibus provision which can be extrapolated at convenience. It only refers to specific offices and to that extent, does not lie at the whims and caprices of the President to invoke for any other office not specifically mentioned in section 171,’ he declared.⁴⁸

Chief Ferdinand Orbih said all the relevant sections of the Constitution should not be read in isolation. ‘Constitution must be read together as a whole. There is no conflict at all between the EFCC act and the Constitution. If you hold the view that if an Act of the National Assembly provides for confirmation of appointment, then it is in conflict with the constitution, the question then is: which section of the Constitution is it in conflict with?’ The fact that a law provides for confirmation of the Senate for an officer’s appointment where there is no such provision doesn’t make such a law unconstitutional. That argument will certainly not fly. It will only be valid if every statutory provision that is not in the Constitution is automatically in conflict with it and therefore null and void,’ he insisted. Orbih argued that the line of reasoning will be untenable because the constitution, which is the *grundnorm* cannot provide for every type of situation. ‘If it were to do so, it would have been too voluminous and unwieldy. Therefore, I do not see Section 2 (3) of the EFCC Act as being in conflict with the constitution. I rather see the section and similar sections in other Acts of the National Assembly requiring confirmation of appointment where the constitution does not provide for it, as being in complete alignment or complementary to the provisions of the Constitution,’ he maintained⁴⁹ in his own intervention, a lawyer, Solomon Ukhuegbe pointed out that the suit, if filed would be within the original jurisdiction of the Supreme Court: ‘The suit will be within the original jurisdiction of the Supreme Court by virtue of section 232(2) of the Constitution and section 1 of the Supreme Court (Additional Original Jurisdiction) Act 2002. There is a live issue which (involves any question, whether of law or fact, on which the existence or extent of a legal right depends) to be decided by the Court since the Senate has exercised its purported statutory power to reject Mr. Ibrahim Magu, which power the president claims is contrary to section 171 and therefore void. According to him, the Supreme Court will have the opportunity to settle a constitutional matter of the highest significance- the Separation of Powers under our presidential constitution. He noted that this has become necessary because the National Assembly has clearly demonstrated the practice of including a requirement of confirmation of chief executive and board members of almost every statutory agency established by its Act and not only the EFCC Act.

Ukhuegbe however, said he would not like to speculate as to the correct interpretation of section 171 of the 1999 constitution.⁵⁰

However, Bankole Kayode said the provisions of section 1 (1) and (3) of the constitution is unambiguous because the constitution is the Supreme Law of the land. However, he stated that whether the provisions of section 2(3) of the EFCC Act is inconsistent with that of section 171(1)(2) will depend on the definition given by the court concerning the EFCC as an Extra-Ministerial body. ‘If the court defines it as an Extra-Ministerial body (as is my take) then, the appointment of any EFCC official does not require any input from the Senate,’ he pointed out, arguing that the Federal High Court and not the Supreme Court as is being widely believed.⁵¹

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

4. Confirming of Governor's Nominees by the House of Assembly

Nigeria being a federation has provision in her Constitution on appointment and confirmation of nominees for office of Commissioner of state. The Constitution contains similar provision on this when it provides that there shall be such offices of commissioner of the Government of a state as may be established by the Governor of the State⁵² and any appointment to the office of Commissioner of the Government of a state shall, if the nomination of any person to such office is confirmed by the House of Assembly of the state, be made by the Governor of that State and in making any such appointment the Governor shall conform with the provisions section 14 (4) of this Constitution⁵³ it is clear from the provision of the constitution appointment of Commissioners by the Governor of a state can only be valid after confirmation by the House of Assembly of a state. It has been stated that the court can examine whether the power conferred on the Governor to appoint Commissioners in accordance with section 173 (a) of the 1979 constitution has been properly used or not. In *Governor of Kaduna State v. House of Assembly of Kaduna State*⁵⁴, where the Governor of Kaduna State Alhaji Balarabe Musa sought an order of mandamus from the court to compel the members of the House of Assembly to approve his list of nominees for Commissioners of Kaduna State. The court declined to grant his application because the House of Assembly had power to approve or reject the list or any person on the list of the Governor. Therefore, nomination must be confirmed by the House of Assembly before the appointments are made. That being so, if a commissioner is sworn in without his appointment being confirmed his appointment is invalid. This same section 173 of the 1979 constitution has also been interpreted to mean that a Governor has a legal duty to appoint commissioners; he does not have a choice in the matter. In *Alhaji Lawal Kaigama v. Governor of Kaduna State*⁵⁵ - it was held that since the Governor is merely a Chief Executive and thereby implies that there are other executives. This same line of reasoning should be applicable to the president, that he has a legal duty to constitute his cabinet by appointing ministers as soon as he is inaugurated. A reasonable delay may be justifiable in order not to rush to select incompetent men and women as members of his cabinet and the power of senate to approve his nominees is also geared towards appointment of qualified men and women.

5. Legislative Approval of Appointments of Certain Executive Bodies at State Level

The Constitution went further to classify executive appointment at the State level into two. The first sets are the Chairman and members of State Civil Service Commission, State Independent Electoral Commission and State Judicial Service commission, the appointment of the set of executives are subject to the confirmation of the State House of Assembly before their appointment can be valid in law.⁵⁶ The Second set of executives who shall hold their offices at the pleasure of the Governor are secretary to the state Government, Head of the Civil Service of the State, Permanent Secretary or other Chief Executive in any ministry or a department of the Government of the state house ever designated and office on the personal staff of the Governor. It is clear from the wordings of the Constitution that appointment and removal of any of this category does not require approval or confirmation of the House of Assembly of the State. However, there are other executive bodies of the state level that are creation of validly enacted laws of the state by the state House of Assembly. The law may require that appointment of chairmen of such executive bodies must be approved by the House of Assembly of the state. Do we say that such laws are incompetent or do such laws conflict with the constitution? Otherwise appointment of chairmen of such boards such as State Environmental Protection Agency, State Action Committee against AIDS

⁵² Section 192 (1) of the 1999 Constitution of FRN

⁵³ Section 192 (2)

⁵⁴ 1981 2 NCLR 529

⁵⁵ Section 197 & 198

⁵⁶ Section 208

etc. may meet head approval of the House, even if the law say it should be approved by the House. To take that position may be dangerous as it amount to diminishing the powers of the legislature and infringing on the Separation of Power principles.

6. Concluding Remarks

It has been made clear from this paper that the National Assembly has the legislative power of approval or confirmation of presidential appointments while the States Houses of Assembly also have similar power to approve or confirm Governors' nominees for some executive positions. We have also shown that this legislative power to approve or confirm presidential or governor's nominees is not general or absolute in nature but circumscribed by the constitution itself. The legislative power to confirm executive nominees can be classified into three under the Nigerian Constitution. The first classification is the confirmation of the ministerial nominee under section 143 which cannot be dispensed with. The second is the chairman of statutory bodies like INEC, National Population Commission, and Federal Civil Service Commission etc. The third is the chairman of Federal Agencies created by an Act of the National Assembly such as EFCC, ICPC, NOSDRA, NESREA etc.

This same principle applies to State Governors in respect of confirmation of their nominees by the State House of Assembly. The situation in section 171 is clear; those affected by section 171 are also listed exhaustively. It is our view that section 171 is not at large; it is also circumscribed by the constitution. As much as we shall not discourage the Federal Government from going to court for proper interpretation of section 171 vis-à-vis section 2(3) of the EFCC Act, the National Assembly is advised to be patriotic in its legislative assignment and should not be vindictive so as to enjoy the support of Nigerians. The treatment given to Magu and SGF looked like pay-back or vindictive missions. Although, all Nigerians are expected to be above board at all times. The Senate is to ensure good governance and compliance with the federal character principles of the constitution in their approval or confirmation of executive appointments⁵⁷. Even if this matter is taken to the court for interpretation of section 171, how are we sure the judiciary will not do the bidding of the executive in view of the recent intimidation and harassment of the judiciary through the Department of State Security Service.⁵⁸

⁵⁷ Section 14 or the 1999 Constitution of FRN

⁵⁸ Olufemi Abifarin; 'Fighting the war Against Corruption with the Rule of Law: The DSS Raid on Judges in Perceptive', *EKSULJ*, special edition, 2017, p.252.