

Issues in the Nigerian Senate's Confirmation of Presidential Appointments: the Case of the EFCC Chairman

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Abstracts

Under the Nigerian constitutional democracy, the Constitution and certain legislations require that some appointments made by the President at the Federal level be confirmed by the Senate while some made by the Governors at the state level be confirmed by the respective Houses of Assembly. Confirmation by the Senate of appointments made by the President with regards to the EFCC chairmen appointments since its inception in 2003 till 2015 has been adhered to until when this became an issue between the President and the Senate. The issue in question is as to whether this is a mandatory constitutional requirement or a mere convention. This work discusses this issue by reviewing relevant laws and literatures. Upon providing the rationale for legislative confirmation of Presidential appointments, examining the possible sanctions for want of confirmation where constitutionally required and considering the option of litigation in the circumstance of the present stalemate being experienced over the EFCC chairmanship non-confirmation by the Senate, the work draws its conclusion and offers some recommendations.

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1. Introduction

The Constitution vests the executive powers of the Federation in the President. The President Exercises these powers either directly or through the Vice President, Ministers of the federal Government or officers in the public service of the Federation¹. The exercise of the constitutional powers vested in the President is for the maintenance of the Constitution and all laws made by the National Assembly as well as all matters with respect to which the National Assembly has power to make laws. The laws made by the National Assembly are for the peace, order and good government of the Federation or any part thereof with regards to matters in the Executive Legislative list².

In discharging his Constitutional mandate, the President needs to make appointment of persons into several offices. Some of these appointments by the President are constitutionally required to be confirmed by the Senate of the Federal Republic of Nigeria. Such appointments requiring the Senate's confirmation include; those of his cabinet Ministers,³ Chairmen and members of some Federal Executive Bodies,⁴ appointment into membership of some public services of the Federation such as Ambassadors, High Commissioners or other Principal Representatives of Nigeria abroad⁵, Bodies established by statutes as Extra-Ministerial

¹See section 5(1) (a) & (b) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) hereinafter referred to as ("The 1999 Constitution").

²See *Ibid* at section 4(2) and matters set out in part 1 of second schedule to the said Constitution.

³See *Ibid* at section 147(2) for appointment of Ministers by the President and section 192(2) *Ibid* for appointment of Commissioners by state Governors subject to confirmation by the respective state Houses of Assembly.

⁴Such Federal Executive Bodies established in section 153 of the 1999 Constitution includes the National Judicial Council (NJC), The National Population Commission (NPC), The Revenue Mobilization Allocation and Fiscal Commission (RMAFC) etc

⁵See *Ibid* at section 171 (2) (c)&(4).

Departments of Government of the Federation of Nigeria etc⁶. Inherent in most of these statutes, for example, the EFCC Act is the requirement for Senate confirmation of persons appointed as either members or chairman of such a body or Commission.

The issue of confirmation of appointments has happened in particular with the appointment of EFCC chairman since its inception from 2003 till 2015 by the Senate confirming Mallam Nuhu Ribadu (2003-2008), Mrs. Farida Waziri (2008-2011) and Mr. Ibrahim Lamorde (2012-2015).T

his position was not challenged until 2015 when the President presented the name of Mr. Ibrahim Magu as his nominee for the EFCC chairmanship position to the Senate and the Senate twice rejected the name as a result of a purportedly damning report of Department of State Services (DSS) which is the Nigerian integrity watchdog. Mr. Magu was first denied confirmation on 15th December, 2016 and secondly on 15th March, 2017.

Some issues to be dealt with in this work therefore includes: Whether the Senate's confirmation of President's nominee to the office of EFCC chairmanship position is a mandatory requirement of the Constitution or not? In other words, is the position of the EFCC Act on Senate confirmation of appointment made by the President as the EFCC chairman at variance or inconsistent with that of the provisions of the Constitution? Again, what would be the consequences of unconfirmed appointments assuming that the Constitution requires this? Furthermore, is the issue as to what options are opened to both parties to the stalemate, i.e, whether

⁶Such Bodies established by statutes of the National Assembly as Extra-Ministerial Departments of Government of the Federation of Nigeria includes; Economic and Financial Crimes Commission (EFCC), established by the EFCC (Establishment Act), Cap E1 LFN, 2004; Independent Corrupt Practices and Other Related Offences Commission (ICPC), established by ICPC (Establishment Act), Cap C31 LFN, 2004; National Drug Law Enforcement Agency (NDLEA) established by the NDLEA (Establishment Act), Cap N30 LFN, 2004; etc.

litigation would be the end result as well as the court with jurisdiction to entertain such matter. These are the germane issues in focus in this work. This work therefore makes its contribution to existing literatures surrounding the topic. Being mindful of some pending law suits in this regard, it makes only fair academic comments but the rule of *subjudice* is guided against.

2. The Rationale for legislative confirmation of Presidential Appointments

Nigeria practices constitutional democracy; and “the Nigerian Constitution is founded on the rule of Law, the primary meaning of which is that everything must be done according to law.”⁷ Democracy is a form of government which has stood the test of time in societal administration. It is a type of government formed in accordance with the rule of law i.e a government founded on equality of persons and authorities before the law; supremacy of the Constitution and separation of powers amongst its legitimate functionaries.⁸ Albert Venn Dicey,⁹ the great exponent of rule of law, said rule of law means:

... the absolute supremacy or predominance of regular as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative or even of wide discretionary authority on the part of government...

⁷Per Obaseki JSC in *Governor of Lagos State & ors v Ojukwu* (1986) 1 NWLR (Pt.18) 621 at 638.

⁸Dicey A.V; *Law of the Constitution*. (10th Ed. London:1885) P.202. See generally, Omosehin Kayode, *Impeachment & Removal in Nigerian Democracy* (Book in honour of: Hon. Justice (Prof.) Niki Tobi)(CON) (Ibadan: Life Gate Pub. Co. Ltd, 2009), pp.1-3.

⁹*Ibid.*

On the other hand, the doctrine of separation of powers, as was founded by John Locke in the 17th Century and later developed by the French Jurist and political philosopher, Baron de Montesquieu, states that for the rule of law to fully operate in any society practicing a constitutional democracy, there must be a separation of powers among the three arms of Government, namely, the Legislature, the Executive and the Judiciary for the purposes of law-making; execution of policies made; and interpretation of law-cum-adjudication of causes between private individuals or between citizen(s) and the Government. Hence he¹⁰ said:

There would be an end of everything if the same person or body, whether of the nobles or of the people, were to exercise all the three powers i.e that of enacting laws, that of executing public resolutions and trying causes of the individuals.

The Nigerian Constitution, upon which its constitutional democracy is grounded, with the benefit of hindsight, is mindful that the history of mankind is replete with situations of abuse of powers and authority such as official corruption, embezzlement, nepotism etc. especially where powers is centrally concentrated in a single person or body without checks and balances . The Nigerian 1999 Constitution in guiding against these and other abuse of powers provides for the following safeguards: first is supremacy of the constitution.¹¹

The effect of this is that the Constitution has a binding force on all authorities and persons throughout Nigeria. Also, any other law inconsistent with the provisions of the Constitution shall be

¹⁰Baron de Montesquieu: *The spirit of the law* (vol. XI. 1949) P.1761. See also Omoshin Kayode, *loc. Cit.*

¹¹See section 1(1) of the 1999 Constitution.

null and void to the extent of its inconsistency.¹² Second is that the Constitution provides for separation of powers as checks and balances among the three arms of Government created by the Constitution?¹³

Thirdly is by virtue of the fact that Government depends on human beings to actualize its programs but human beings are fallible and prone to mistakes. In order for the Government to however attain its laudable programs of accelerating economic growth and good governance, the tide of corruption, nepotism and abuse of powers to which human beings are prone need be checked. In checking these and other vices, the Government need therefore continuously rely on and explore the avenues provided by the Nigerian 1999 Constitution¹⁴, some statutory provisions¹⁵ the court¹⁶ and the legislature to pursue good government.¹⁷

Thus one vital role assigned to the Legislature in this regard is to among other things, confirm most of the appointment of public officers made into governmental positions by the President

¹²See *Ibid* at 1(3).

¹³See *ibid* at sections 4, 5 & 6 which provides for the Legislature, Executive and Judicial arms of Government respectively.

¹⁴For instance while section 15(5) *Ibid* provides that the state shall abolish all corrupt practices and abuse of powers, sections 154(1) and 171(4) *Ibid* respectively made some appointments made by the President subject to Senate's confirmation.

¹⁵For instance section 2(3) of the EFCC Act Provides for Senate's confirmation of the President's nominee as chairman and members of the commission.

¹⁶For instance the court in *Geroge v FRN* (2014) 17 NWLR (pt.1063) 274 etc has decisively condemned corruption in all its ramifications in Nigeria through its judgments.

¹⁷For instance by section 4 (2) (7) (8) of the 1999 Constitution, the Legislature, both at the Federal and state levels are enjoined to make laws for the peace, order and good government; also that their law-making powers should be subject to the jurisdiction of court. The result of the Legislative law making powers is the outcome of Laws such as the EFCC Act, ICPC Act, NDLEA Act etc.

as otherwise, such appointments will be disallowed. This, no doubt is laudable to guarantee rule of law, guide against official corruption, nepotism, to ensure good governance, equality of representation of the citizens in the composition of Government and its agencies at whatever level to foster sense of belonging and as well guarantee equality of rights, obligation and opportunity before the Law.¹⁸

Thus among the several appointees of the President made subject to Senate's confirmation are his cabinet ministers,¹⁹ chairmen and members of some Federal Executive Bodies,²⁰ appointment into membership of some public services of the Federation such as Ambassadors, High Commissioner or other Principal Representatives of Nigeria abroad,²¹ Bodies established as Extra-Ministerial Departments by statutes or Legislations made by the National Assembly of Nigeria.²² The rationale behind the Senate's confirmation of the President's appointment as examined above is no doubt good for the rule of law being an offshoot of the doctrine of separation of powers.

3. The legal Basis for Legislative confirmation of Presidential Appointments

From 15th December, 2016 till date, there has been a controversy between the President and the Senate. The controversy arose because of the refusal of the Senate to confirm the name of Mr. Ibrahim Magu as the EFCC chairman as presented by the President. The denial of confirmation has happened twice by the Senate on 15th December, 2016 and 15th March, 2017 because on both occasion, Mr. Magu was reported to have failed the integrity

¹⁸See generally chapter II *Ibid* especially sections 13, 14 (3), 15 (4) (5) thereof.

¹⁹See footnote 3 (*supra*).

²⁰See footnote 4 (*supra*).

²¹See footnote 5 (*supra*).

²²See footnote 6 (*supra*).

report of the DSS on him. As at writing this work, the commission has an acting chairman in the person of the same Mr. Magu, since his appointment got entangled in a web of controversy.

The above controversy centres on what seems to be an apparent conflict between the provisions of section 2(3) of the EFCC, Act on the one hand and section 171 (2) (d) of the 1999 Constitution on the other hand. These two provisions of the law will now be examined in order to determine the legal basis of the Senate's power of confirmation or not of the EFCC chairman. The EFCC Act provides:

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 confirmation of the Senate.²³

On the other hand, the constitutional provisions dealing with appointment and removal of the EFCC chairman and its members is found in section 171(2)(d) of the 1999 Constitution. Though mention or definition of EFCC is not made in the Constitution, sufficient allusions are made to it as an Extra-Ministerial Department of Government in the said section of the constitutional provision: Section 171 of the 1999 Constitution Provides:

- (1) 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.
- (2) The offices to which this section applies are namely-
- (d) Permanent Secretary in any Ministry or Head of any Extra-Ministerial Department of the Government of the Federation however designated; and

...

²³ See section 2(3) of the EFCC Act

(4) An appointment to the office of Ambassador, High Commissioner or other Principal Representative of Nigeria abroad shall not have effect unless the appointment is confirmed by the Senate.²⁴

Of the appointments by the President mentioned in section 171 (1)-(6), only those stated in subsection (4) above are specifically mentioned as those requiring Senate's confirmation.

By virtue of section 171(2) (d) of the said Constitution, Mr. President does not require the Senate's confirmation in order to appoint Head of an Extra-Ministerial Department. How best can the words "Extra-Ministerial Department of Government" be described? In other words, the words Extra-Ministerial Department of the Government of the Federation howsoever as captured in the section under reference in the Constitution can best be described as follows:²⁵

Government Department's which function without ministerial oversight/control. They are also Government Departments, whose activities /functions overlap more than one ministry. Such Department for instance, is not placed directly under the control of a particular ministry. Also, such a commission or Department coordinates various laws and relevant agencies with respect for instance to corruption, financial and economic crimes –related issues. It has liaison offices in various agencies and supervisory institutions including for instance the eradication of

²⁴ See generally section 171(1)-(6) of the 1999 Constitution. (Underlining supplied for emphasis) to show that the appointments requiring Senate confirmation are the only ones mentioned therein.

²⁵See the commentaries of Professor Taiwo Osipitan, SAN, in *This Day Lawyer Weekly Pull Out* of Tuesday 8th August, 2017 Edition Titled: NASS Should Focus on Law Making and Oversight Functions at PP.8-10 Particularly at P.9.

Economic and Financial Crimes like the case of EFCC or Enforcement of Drug and related Drug Laws like the case of NDLEA. Also like the case of National Agency for the Prohibition of Trafficking in Persons (NAPTIP).

It is clear beyond doubt therefore that the EFCC for instance as in the case of other examples given, very much meet all the attributes of an Extra-Ministerial Department of a Government vividly given above. To this extent therefore, our conclusion here on this issue is that the EFCC is an Extra-Ministerial Department of the Government of the Federation as stated in section 171(2)(d) of the 1999 Constitution.

It is clear therefore that the EFCC, being an Extra-Ministerial Department of Government, its enabling Act prescribes that appointment of chairman of the Commission shall be made by the President subject to Senate's confirmation.²⁶ On the other hand however, the 1999 Constitution dispenses with the Senate's confirmation of appointments of Head of Extra-ministerial Departments of Government.²⁷ This leads us to the next issue of discourse in this work.

4. Does EFCC Chairman's Appointment Require Senate Confirmation?

Evidently from the survey carried out in the above analysis, there is a conflict between the provisions of the EFCC Act and those of the Constitution on the issue of Senate confirmation of appointment of the chairman of EFCC. In the face of this conflict, will the EFCC chairman's appointment be required to be confirmed by the Senate as provided in the EFCC Act or will the requirement for confirmation by the Senate be dispensed with as the Constitution demands no confirmation of appointments made

²⁶ See section 2(3) of the EFCC Act.

²⁷ See section 171 (2)(d) & (4) of the 1999 Constitution.

by the President of Heads of Extra-Ministerial Department of Government? Our response to this question will be as follows:

In the first place, since the Constitution is the grundnorm to which all existing laws must be in harmony with, the EFCC Act as an existing law of the National Assembly by virtue of sections 315 and 318 of the 1999 Constitution, must in order to be valid, be consistent with the provisions of the Constitution.²⁸ Therefore since the provisions of the EFCC Act on the issue of Senate confirmation of the Commission's chairman appointment is in conflict/inconsistent with the provisions of the Constitution on the matter, the provisions of the Constitution will prevail while the provisions of the existing inconsistent law shall be null and void to the extent of its inconsistency with the provisions of the Constitution.²⁹ This in effect translates to the fact that the President does not require that his appointment of EFCC chairman be confirmed by the Senate.

The argument of non-requirement of Senate confirmation of the EFCC chairman can also be pursued from another angle. This is because the Constitution has specifically mentioned the President's appointments that are made subject to Senate confirmation among the list of such several appointments that the President is to make in section 171(1)-(6) of the 1999 Constitution.³⁰ The position of the law is that, to the extent that the Constitution has specifically listed those appointments of the President requiring Senate confirmation as those of Ambassador, High Commissioner or other Principal Representatives of Nigeria abroad,³¹ no any other appointment made by the President in that series or section of the Constitution will be included again. The law is *expressio unius est exclusio alterius*- the express mention of

²⁸ See section 1(1) (3) of the 1999 Constitution.

²⁹ *Ibid.*

³⁰ See section 171(4) of the 1999 Constitution.

³¹ *Ibid.*

one thing in a statute implies the exclusion of others which otherwise might be included.³² The Supreme Court has held consistently that under a constitution conferring specific powers, a particular power must be conferred, as otherwise, it cannot be exercised.³³

From the above analysis, it is correct to say that section 2(3) of the EFCC Act which prescribes Senate's confirmation of the appointment of EFCC chairman, must on the strength of supremacy of the Constitution, give way to the constitutional provision on non-confirmation by the Senate. The appointment of EFCC chairman consequently therefore, does not require Senate confirmation.

5. Sanction(s) for want of Required Legislative Confirmation of EFCC Chairman's appointment

The President of the Federal Republic of Nigeria is expected to perform all his constitutional duties, most especially the defense of the Constitution in accordance with his Oaths of allegiance and Oaths of office.³⁴ The same applies to both the state Governors³⁵ and members of the Legislative Houses at both the Federal and State levels.³⁶ The implication of a grave constitutional violation or breach, for instance on the part of the President, is termed a

³²See *A.G (Bendel State) v Aideyan* (1989)4 NWLR (Pt. 118) 664 (Emphasis supplied).

³³See *A.G (Bendel State) v A.G (Fed)* (1981) 12NSCC 314, *Ishola v Ajiboye* (1994) 6NWLR (Pt. 352) 506 at 573 D.

³⁴See the Oaths of Allegiance and oaths of office of President in the 7th schedule to the 1999 Constitution.

³⁵See *Ibid* for the Oaths of Governor of a state.

³⁶See *Ibid* for the Oaths of a member of the National Assembly or of a member of a House of Assembly.

gross misconduct. The term gross misconduct is defined in the Constitution³⁷ as:

Gross misconduct means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amount in the opinion of the National Assembly to gross misconduct.

According to the Constitution, the President could be impeached if he is guilty of gross misconduct in the performance of the functions of his office.³⁸ Though no President of the Federal Republic of Nigeria has ever been impeached, several state Governors have been impeached and removed while in office.³⁹ Allegations of gross misconducts have been levelled by state legislature against many state Governors. In these allegation of gross misconducts, grave violation or breach of provisions of the Constitution were known to have been alleged against most impeached Governors as constituting allegation of gross misconduct.⁴⁰

³⁷See *Ibid* at section 143 (II) and section 188 (II) as defined for the President and the Governor respectively.

³⁸See *Ibid* at section 143 (2) (II) for the President and section 188(2)(II) for the Governor.

³⁹Such impeached former Governors include: Senator Rasheed Ladoja of Oyo State; DSP Alameyeigha of Bayelsa State; Mr. Peter Obi Anambra's state; Mr. Ayo Fayose of Ekiti State; Murtala Nyako of Adamawa State etc. Most of these impeachments though were nullified by the Supreme Court. See: *Inakoju v Adeleke* (2007) 4 NWLR (Pt.1025) 421 SC; *Dapialong v Dariye* (2006) 8 NWLR (Pt.1036) 332 SC; *Nyako v Adamawa state House of Assembly & ors* (2017) 6NWLR (Pt.1562) 347.

⁴⁰ See *Balarabe Musa v Hamza* (1982), 2NCLR 229, the former Governor Balarabe Musa of Kaduna State was alleged to have failed to present fresh list/names of his advisers even when his earlier lists were rejected by the same House and he was impeached for this, among other grounds under the Nigerian 1979 Constitution. (Underline supplied for emphasis only).

If the Constitution thus define gross misconduct as meaning grave violation or breach of provisions of the Constitution, hardly will anyone doubt that; wilful refusal and/or neglect by the President to present a name constitutionally required to be Presented by him for Senate's confirmation into an exalted office of EFCC chairman will amount to a grave violation or breach of the provisions of the Constitution assuming such confirmation is a demand of the Constitution.

In this respect, we are of the opinion that the President is not guilty because no such demand is made of him by the Constitution to seek the Senate confirmation of his EFCC chairmanship nominee. Assuming the Constitution makes this demand on him however, he will be committing a grave constitutional violation or breach amounting to an impeachable offence. Similar incident accounted for the impeachment in the case of *Balarabe Musa v Hamza*.⁴¹ Thus, where there is wilful refusal, failure and/or neglect by a President or a Governor, to present his nominee for confirmation by the Senate as alleged in *Balarabe Musa's case*⁴², the Nigerian Senate may take this as an impeachable offence assuming the Constitution does not negate a Senate confirmation of EFCC chairman.

Be that as it may, could the Senate be left with an option to compel the President to perform his public duty by an order of *Mandamus*? This is another assumption that the obligation is there on the part of the President to appoint the EFCC chairman subject to Senate confirmation. In other words, can the Senate or any member of the public at large with the necessary *locus standi* ask a court of law for an order of *mandamus* to compel the President to present his EFCC chairmanship nominee for Senate confirmation assuming the President is unwilling? We should on

⁴¹(*supra*).

⁴²(*supra*).

the Supreme Court authority of *Gani Fawehinmi v Akilu*⁴³ believe that an order of *Mandamus* can lie to compel the President to perform his public duty.

To conclude however on this segment, a note of warning must be sounded that neither of the above stated options or steps portend well for Nigerian emerging democracy as they have telling consequences on rule of law for Nigeria. If public officers have to be coerced by sanctions of impeachment or *mandamus* order of court before performing the lawful duty of their office, this will harbour grave consequences for rule of law for Nigeria.

6. Option of Litigation to the Parties in the event of Unresolved Dispute

Either the Senate or Mr. President may take or continue (already commenced) law suits against the other in the event of the present stalemate. Certainly, the parties and the cause of action will determine the court with jurisdiction in such case.

In the first place, the parties in this dispute are Mr. President and the Senate of the Federal Republic of Nigeria. The National Assembly is certainly not a party since the 1999 Constitution defines the National Assembly as the Senate and the House of Representatives established by this Constitution.⁴⁴ A dispute therefore between the Senate and Mr. President is obviously not a dispute within The Supreme Court (Additional Original

⁴³(1987) 11-22 SCNJ 151. See also *A.G (Anambra State) v Nwobodo* (1992) 7NWLR (Pt. 256) 711 at 724 (CA).

⁴⁴See section 318 of the 1999 Constitution.

Jurisdiction) Act.⁴⁵ For Clarity sake, the original Jurisdiction of the Supreme Court are as follows:⁴⁶

- i. Dispute between Federation and a state;
- ii. Dispute between states;
- iii. Disputes between National Assembly and the President;
- iv. Disputes between National Assembly and any state House of Assembly
- v. Disputes between National Assembly and any state of the Federation.

The expanded original jurisdiction of the Supreme Court, as stated above, is limited to disputes between Mr. President and the National Assembly, in so far as the disputes relate to the rights of the aggrieved parties; the aggrieved parties here being Mr. President and the Senate of the Federal Republic of Nigeria.

In the second place, the cause of action in this dispute will deal with the confirmatory powers of the Senate with respect to the appointment of EFCC chairman, and the right of Mr. President to appoint EFCC chairman who will function in office without the Senate's confirmation. This dispute deals with control and management of EFCC, an agency of the Federal Government. In other words, this is a dispute involving interpretation of the running of the Constitution as it affects an agency of the Federal Government of Nigeria. These causes of action are within the exclusive original jurisdiction of the Federal High Court.⁴⁷

As a nation and people operating under supremacy of the Constitution, doctrines of rule of law and separation of powers

⁴⁵The supreme Court (Additional Original Jurisdiction) Act, 2002 gave the Supreme Court additional Jurisdiction in 2002.

⁴⁶NOTE: While 1-2 disputes are provided for in section 232(1)(2) of the 1999 Constitution, the remaining 3-5 disputes are provided for in The Supreme Court (Additional Original Jurisdiction) Act, 2002.

⁴⁷ See section 251(1)(p)(q) & (r) of the 1999 Constitution.

therefore, the controversy between Mr. President and the Senate may best be resolved in a competent court of law for the good of Nigerian nascent democracy. This competent court of law in our own humble mind where the dispute between the parties should be impleaded, and as some have already commenced, should be and we agree, is the Federal High Court.⁴⁸ Good enough, several law suits challenging the appointment of Mr. Ibrahim Magu as the EFCC Chairman are already filed and pending before the Federal High Court.⁴⁹

7. Conclusion and Recommendations

By section 2(3) of the EFCC Act, 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 confirmation of the Senate. This provision has been applauded as commendable in view of the good intentions the confirmation is designed to achieve ultimately guaranteeing rule of law through the mechanism of checks and balances anchored on separation of powers. By virtue of section 171(2)(d) of the 1999 Constitution however, the requirement for Senate's confirmation of Head of some Extra-Ministerial Departments of Government of the Federation, into which EFCC falls, is dispensed with. Successive Presidents since 1999 have however religiously observed the requirement for appointing EFCC chairman subject to Senate confirmation. The confirmatory powers of the Senate had never been called to question until recently when the Senate twice refused to confirm Mr. Ibrahim Magu as Mr. President's nominee for EFCC chairman. The rejection by the Senate of Mr. Magu's

⁴⁸ See *Ibori v FRN* (2009) ALL FWLR (pt. 487) 159.

⁴⁹ Some of such suits pending before the FHC include: *Bello v AGF*, suit No. FHC/ YL/CS/2017; *Abubakar Sani v The Senate of the FRN*. Suit No. FHC/ABJ/ CS278/2017; *Jibrin Samuel Okutepa (SAN) v The President*, FHC/ABJ/CS/318/ 2017, etc.

name was anchored on a damning DSS integrity report on him. The battle line has since been drawn between Mr. President and the Senate hence the resulting several court cases either for and/or against the Federal Government, the President or the Senate.⁵⁰

This work affirms the position that EFCC chairman's appointment as may be made by the President does not require to be confirmed by the Senate, the Constitution having dispensed with same. The work considered the sanction of impeachment as an option against Mr. President by the National Assembly assuming the obligation of Senate's confirmation is constitutionally imposed on Mr. President and His duty is derogated. The option of members of the public or the Senate compelling Mr. President by means of an order of *Mandamus* to perform his public duty to appoint a substantive EFCC chairman subjected to Senate confirmation has been considered. Finally however, the issue of litigation has been thrown open as well as the court with appropriate jurisdiction with the necessary parties examined. This, in essence is what the rule of law entails.⁵¹ The following recommendations are offered for improvement in the art of Executive and Legislative relationship and in governance generally:

1. While the Senate should not gang-stand and insist on confirming the appointment made by Mr. President into the position of EFCC chairman, Mr. President should at the same time be magnanimous in carrying the Senate as well as other relevant security agencies along in fielding credible candidate into the position of EFCC chairman. Certainly, a candidate allegedly embroiled in moral issues as Mr. Magu, except further enquires fail to establish such moral

⁵⁰ See footnote 49, *Ibid.*

⁵¹ The law suits referred to in footnote 49 as well as most other pending suits before the various Federal High Court are now being sought to be consolidated before an Abuja FCT Federal High Court.

allegations, such a candidate must as a compromise be dispensed with in the interest of the nation.

2. If Mr. Magu is truly of a moral burden to the anti-corruption war as alleged by the DSS, Mr. President should summon the courage to dispense with him and source for a better candidate. Certainly, it cannot be Mr. Magu or nobody else in a country where several interested and competent hands can complement the efforts of the government of the day in the fight against corruption, economic and financial crimes etc.
3. The National Assembly, especially through the Senate, should focus more on its law making and legitimate oversight functions rather than trying to expand its authority beyond its constitutional limit. The issue of confirmation of EFCC chairman's appointment should not be a burden on the Senate, having been relieved of the obligation by the Constitution.
4. One simple way out of the present controversy surrounding the appointment of EFCC chairman is an amendment to the appropriate provisions of the Constitution. Therefore, it is suggested that if Nigerians so desire, they should through appropriate media, ensure that section 171 and related provisions of the 1999 Constitution are amended to reflect that the EFCC chairman is appointed subject to Senate confirmation. Until this is done the *dire is cast*.
5. All other agencies or departments of Government whose heads and members are appointed subject to legislative confirmation should take hints and be guided by the appropriate suggestions made above as they apply to them.