

Executive -Legislative Conflicts in Nigeria: An Examination of Politics of Efcc Chairman's Confirmation under President Mohamadu Buhari's Administration

Asadu Ikechukwu, Ph.D

University of Nigeria, Nsukka, Department of Public Administration

E-mail: ikejustin2@gmail.com

Abstract

The 1999 Constitution of Federal Republic of Nigeria provided for a presidential system of government with instituted separation of power, checks and balances. Section 171(1) empowers the president 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 while section 171 (4) states that principal representatives of Nigeria abroad shall not have effect unless the appointment is confirmed by the Senate. Notwithstanding constitutional provisions, conflict arose between the Federal Executive organ and the Senate over the appointment and confirmation of Ibrahim Magu as the substantive chairman of Economic and Financial Crime Commission. The paper examined the politics and disharmonious relationship between the executive and Legislature over the confirmation of Ibrahim Magu as the substantive EFCC chairman. The methodology of the paper is qualitative and descriptive. Relevant data were generated through secondary source and subjected to contextual-analysis. The findings reveal that the conflict relationship between the two organs stemmed from struggle for dominance, lack of synergy, constitutional misinterpretation and interest protection. Thus, the paper, among other things, suggests the strengthening of the democratic institutions, regular education of public officers on their constitutional roles; approaching the judiciary for constitutional interpretation of disputing sections.

Keywords: *Executive, legislature, conflicts, separation of powers, checks and balances.*

INTRODUCTION

Conflict is a phenomenon that is an integral part of human settings. Wherever two or more people, groups and institutions interrelate, conflict is bound to arise at different time and circumstances. Most often, conflict is perceived as being utterly negative; nevertheless, this has not always been so. Depending on how conflict is resolved by the parties involved, it can be positive (constructive) or negative (destructive). When conflicts between individuals or institutions is destructive, it hinders progress in the social setting; compels individuals to resort to antagonistic attitude; lead to disintegration of organization as well as scuttling of development projects (Bakut, 2006).

Nigeria, after prolong military rule 1983-1999 returned to civilian government on May 29th, 1999. The democratic institutions and structure instituted prior to the military rule had been dismantled and the political space got



shrunk. The military, before hand over of political power to civilian government on May 29th, 1999, promulgated into law the 1999 Constitution of the Federal Republic of Nigeria. The constitution upholds a presidential system of government which promotes separation of power, checks and balances among the three arms of government. These organs, particularly the executive and legislature have experienced conflict relationship over some issues bothering on shared responsibilities. During the tenure of President Olusegun Obasanjo, 1999-2007, there were several attempts to muzzle the Legislature by the Executive in the course of their interactions (Eme and Ogbochie, 2014).

However, the attempts by the legislature to assert its sovereignty in the exercise of its constitutional roles brought the National Assembly on collision with the Executive. The alleged attempt by President Olusegun Obasanjo to have dominance over the leadership of the National Assembly resulted in frequent changes in the leadership of the National Assembly. Within the period, Senate presidents who were perceived not to be loyal to the president were removal by the President loyalists in the legislative house. The victims of such a circumstance include Senator Evans Enwerem, Senator Chuba Okadigbo and Senator Adolphus Wabara who were removed as Senate presidents.

There were also conflicts over budgetary matter, legislative allowances, share responsibilities and tenure elongation (Olufemi and David, 2016).

Although there was substantial improvement in Executive-Legislative relations during the tenure of President Umaru Yar'Adua who assumed office on May 29th, 2007, conflicts still manifested over the constitutional roles of the Legislature on budgetary matter, the appointment of Farida Waziri as EFCC chairman without Senate confirmation, Yar'Adua's medical trip to Sandi Arabia for more than three months without transmitting letter to the National Assembly as required by section 145 of the constitution. The death of Yar'Adua in May 2010 caused his deputy, Jonathan Ebere Goodluck to become the President. His tenure which lasted from May 2010-May 2015 was not rancor free in terms of Executive-Legislative relations (Eme and Asadu, 2017). Following the defeat of People Democratic Party by All Progressive Congress in 2015 presidential election, Mohamadu Buhari became the president. The emergence of President Mohamadu Buhari gave hope to some Nigerians who believed in his integrity and capacity to combat corrupt practices in the country. The president during his campaign gave prominence to fight against corruption. Unfortunately, the appointment of Ibrahim Magu as the chairman of Economic and Financial

Crime Commission by President Mohamadu Buhari has generated controversy and disagreement between the Executive and Legislature over their constitutional roles. The two organs have resorted to different tactics and politicking to outwit each other in the supremacy struggle. The paper, therefore, examined the politics and disharmonious relationship between Executive and Legislature over the confirmation of Ibrahim Magu as the substantive EFCC chairman.

CONCEPTUAL CLARIFICATION

Conflicts reflect clashes of interests or goals between parties which may be individual, groups, institutions and states. According to Oxford Advanced Learner's Dictionary, International Students' Edition, conflict is a situation in which people, groups or countries are involved in a serious disagreement or argument, a violent situation or period of fighting between two countries. Conflicts entail two or more parties in opposition to strategies, practices, principles or interest. Burton (1993), conceives conflict as a concept that is employed usually for the range of argument, tensions and violent conflict that occur both within and between states. It is defined as the pursuit of incompatible goals or interest by different groups or individuals. Although conflict is often perceived as threat to peace and progress, it is the negative or destructive action taken to

resolve the conflict that constitutes threats. When there is direct violence (physical and psychological violence), structural violence (deliberate policies and structures that cause human suffering, death and harm) or cultural violence (practicing of cultural norms that create discrimination, injustice and human suffering) there is a threat to peace and security. Quincy (1971), described conflict as a condition in which identifiable group of human beings whether tribal, socio-economic, political or otherwise is in conscious opposition to one or more other identifiable human institution because these institutions are pursuing incompatible goals. Nwagwu (2010), defined conflict as an attitude, behaviour or action or process that introduce strains and stress in relationship between two or more parties on the attainment of a set of interest or goal. In conflict, parties see or treat each other as a stumbling to one's interest. Executive-Legislature conflicts therefore entail a disharmony, strain and stress that arise between the two organs in the course of discharging their constitutional and shared responsibilities in a given political system. It is a manifestation of non cordial or strain relationship between the executive and legislature in the process of performing the roles assigned to them by the constitution.



METHODOLOGY

The research methodology for this work is qualitative and descriptive in approach. Through secondary sources, relevant data on executive-legislative conflicts were generated and subjected to contextual-descriptive analysis. To ensure the validity and reliability of the data employed, the researchers relied on documentary data generated from the Executive and Legislative organs, conference papers, periodicals, internet material, journals and books written by renowned scholars and experts on executive-legislative relationship cum conflicts. Although executive-legislative conflict is not a new phenomenon in Nigeria politics, the scope of this research is limited to conflicts generated by appointment and confirmation of Ibrahim Magu as substantive EFCC chairman.

THEORETICAL REVIEW AND FRAMEWORK

Scholars have extensively written on the nature, cause and character of conflicts among individuals and groups. Depending on the strand of thought to which they represent, such explanations tend to place primary on one particular theory while undermining the relevance of other competing theories. The structural conflict theory has two main sub-orientation: the radical structural theory championed by the

Marxist dialectical school led by Marx and Engels, V.I. Lenin as well as the liberal structuralism represented by Ross, Scarborough and Johan Gal Tung (Ademola, 2006). The Marxist historical Materialism thesis tied conflict to economic structure and social institutions that exist at different point of societal development. The central contention of the theory is that conflicts are inbuilt into a particular ways societies are structured and organized. Thus, conflict among individuals or institutions, such as the executive and legislature, stems from political and economic exclusion, injustice, poverty, exploitation and inequality. Structuralism maintains that conflict is a product of exploitative and unfair nature of human societies, and class domination (Ademola, 2006). Consequently, struggle for domination and exploitation between the executive and legislature in the course of discharging their constitutional roles engenders disharmony and strain relationship. Radical structuralists, such as Karl Marx, Friedrich Engel, V.I. Lenin and Mao Tse Tung have blamed capitalism for being an exploitative system that generates conflict between the proletariat and bourgeois. Impliedly, executive-Legislative conflict in the context of structural theory is inbuilt in a system of government where there is separation or division of powers among the arms of government because each organ may tend to



pursue and project its interest instead of collective interest of the political system. The emphasis of structural theory is, thus, on how the competing interests of groups tie conflict directly into social, economic and political organization of society as well as the nature and strength of interaction within and between the groups (Ademola, 2006). The key to this clash according to the Marxist is that contradictions will end in a revolution, leading to cruel overthrow of the unequal system. Structural theory no doubt is outstandingly strong on the immediate and underlying factors that cause disharmony. It offers a large number of such factors that cause the surfacing and growth of conflicts. However, while economic and social factors are more frequent, political and institutional factors, security factors as well as ethnic factors are likewise decisive to conflict appearance and escalation.

The realist theory or realism is another theory that attempt to explain conflicts. The realist theory emphasizes inherency and traces the cause of conflict to a flaw in human character which is perceived to be egoistic and engaging in the pursuit of personalized self interest defined as power. Thus, conflict between the executive and legislature is related to in ordinate quest for power by member of the institutions both as individuals and group. Legislators and executive

officers are human beings that have egoistic character and desire to acquire power for self gain. The realist theory originated from classical political theory and shares both theological and biological doctrines about an apparent weakness and individualism inherent in human nature (Ademola, 2016). Accordingly, the starting point of executive-legislature conflict is the inherent nature of individual members of both organs to acquire and utilize powers for personal interest. The pursuit of power and dominance cause strain and stress in the relationship that arise in the discharge of their roles or oversight responsibilities. Realism believes that competitive process between actors is the natural expression of conflicts by parties engaged in the pursuit of scare and competitive interests (Morton Deutsch, 1973). Realism has three ingredients; descriptive realism which conceives the world as conflict zone; the explanatory realism which tend to show the genetic flaw which cause mankind to be conflictual and the prescriptive realism which builds on the contentions of descriptive and explanatory realism to assert that decision makers are ethically justified to defend their fundamental interest and ensure self protection by all means (Koesler, 1967). Morgenthau (1973), one of the leading exponents of realism, presented a thesis that realism is a different approach from idealism, a theory he criticized as being rooted in a ethical



and rational political order based on generally valid ideal principles. According to Morgenthau and his co-structural realists, human nature is inherent with selfish, individualistic and conflictive character which propels conflicts. Groups and individuals will at all times pursue their institutional or personal interest defined as power and such interest will come into variance with those of others leading to unavailability of conflict.

The biological theory of conflict views human kind as obviously destructive and instinctively violent beings. Classical theorists like Thomas Hobbes, St. Augustine, and Malthus express the conviction that human beings are driven by natural intuition to self preservation. Owing to this observation, Hobbes described life in the state of nature as something that is solitary, poor, nasty, brutish and short (Ademola, 2006). Thus, conflict arises in the interaction between the executive and legislature as a result of struggle to exercise power, secure personal security and survival at the expense of the others. The biological theory has led to what may be known as innate theory of conflict which argues that conflict is instinctive in all social interactions both at individual, group and institutional level. In other words, conflict is believed to be inborn in man and this can be explained from man's inner properties and attributes, hormonal composition.

Another model that attempt to explicate the nature of conflict is the Frustration-Aggression theory. The theory which John Dollard and his research associate initially advanced in 1939 and has been expanded and modified by scholars like Leonard Berkowitz (1962) and Aubrey Yates (1962) appears to be the most common explanation for violent behaviour arising from inability to achieve needs. In an attempt to elucidate conflicts stemming from aggression, scholars points to gap between what people feel they want or deserve to what they actually get, that is, want-get-ratio and difference between expected need satisfaction and actual need satisfaction (Davies, 1962). Where expectation does not match attainment the tendency is for people to confront those they hold responsible for frustrating that aims. Gurr (1970), in his relative deprivation thesis posits that the greater the discrepancy between what is sought and what seen attainable, the greater will be chances that conflict will result. Consequently, conflict may arise in the interaction between the executive and the legislature if there is discrepancy between what each of the organ seek and what is actually attainable. In other words, when the expectation of any of the organs becomes unattainable, there is tendency for the frustrated organ to be aggressive and non cordial in its attitude towards the other. For instance, if

the legislature is expecting the executive to lobby or bribe its members before it confirms appointment or approves budget but the executive is not forthcoming, the legislature may choose to be aggressive in its relationship with the executive. The main explanation that the frustration-aggression theory provides is that conflict is not just undertaken as a natural reaction or instinct, but it is a product of frustration and that in a situation where the desires of individuals or groups are deprived directly or indirectly by consequence of the societal structure, the feeling of disappointment may cause the person or groups to express their disgust via aggressive attitude directed to those considered to be responsible.

The Human needs theory's assertion is akin to that of Frustration -Aggression and Relative Deprivation theory. Its primary tenet is that all human have basic human needs which they seek to attain and that deprivation and frustration of these basic needs by other groups or individual is capable of causing conflict (Ademola, 2006). Maslow (1943) identified the needs to include: physiological needs, safety needs, belongingness and love, esteem and actualization. Burton (1979), on his part identified response, stimulation, security, recognition, distributive justice, meaning, need for sense of control and need for role defense.

The scholar identified a correlation between frustration which compels human into act of violence and the need on the part of such person to actualize their necessary needs. For him, individuals cannot be taught to accept practices that obliterate their personality and other goals that are attached to their needs and as such they are compelled to fight against the factors, groups and institutions that they see as being accountable for threatening such needs (Burton, 1979). In the context of Human Needs theory, the executive and legislature consist of human beings with human needs. The individuals may tend to be aggressive if the actualizations of their personal and collective needs are threatened. Conflict may arise if legislative members feel that their need for independence is being threatened by executive interference in the election of the leadership of the legislature or in the discharge of their responsibilities. The legislative body in Nigeria has always claimed that their unfriendly reactions to some executive actions are aimed at maintaining and preserving the independence of the legislature in performing its roles.

THEORY OF SEPARATION OF POWER, CHECKS AND BALANCES IN NIGERIA

Nigeria political structure is designed in line with the principles of presidentialism which include separation of powers, checks and balances. (Obidimma and Obidimma 2015). The



doctrine of separation of powers was first propounded by Baron de Montesquieu, a French philosopher. He ascribes liberty in England to separation of the executive, legislative and judicial power (Sabine and Thorson, 1973). Montesquieu, cited in Appadorai (1975), argues that when the legislative and executive powers are united in the same persons or in the same body of magistrate, there can be no liberty; because apprehension may arise, lest the same monarch or senate enact tyrannical laws, and execute them in a tyrannical manner. Similarly, there is no liberty if the judiciary is not separated from the executive and legislature. Aluko and Ojo (1988), contend that separation of powers suggests three different things: that the same powers should not form part of more than one of the three organs of government; that one organ of government should not control or interfere with the exercise of functions of another organ; that once organ of government should not exercise the function of another. Aluko and Ojo, however, failed to realize that separation of power in a presidential system of government is not absolute and that there are areas of shared responsibilities. Thus, Appadorai (1975) contends that a complete separation of power is not found in any modern constitution. All constitution recognized the fact that government is an organic whole that requires a balance between separation of powers necessary

for maintenance of liberty and co-operation with each organs and department. The constitutions recognize that some unions of powers promote harmony in government and some separation makes for liberty while both are essential for efficiency. Madison (1961), one of the pioneers of the USA constitution in his appreciation of the doctrine of separation of power states that accumulation of all powers, legislative, executive, and judiciary in the same hands whether of one, a few or many may justly be pronounced the very definition of tyranny. The principle of checks and Balances complement the principle of separation of powers. According to Larval (1982), the principle of checks and balances means that power should be used to check powers; that no one arm of government should possess absolute power. There should be oversight function.

The 1999 constitution of the Federal Republic of Nigeria recognizes the independent but coordinate existence of the three arms of government. Section 231 (1) of the constitution states that the appointment of Chief Justice of Nigeria shall be made by the president based on recommendation of National Judicial Council subject to confirmation of such appointment by the Senate. Section 58 (1) states that the power of the National Assembly to make law shall be exercised by bill passed by both the Senate and House of representatives and except as otherwise

provided by subsection (5) of this section, assented by the president. Sub section (5) states 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. Section 81 (1) requires that the president shall cause to be prepared and laid before each of the National Assembly at any time in each financial year estimates of the revenue and expenditure of the federation for the next financial year. Section 171 (1) empowers the President to appoint person 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. Subsection (2) of section 171 stipulates that the offices to which this section applies are. Secretary to the government of the federation; ambassador, high commissioner or other principal representative abroad; permanent secretary in any ministry or head of any extra-ministerial department of government of federation however designate; any office on the personal staff of the president. Besides, section 171 (4) states categorically that an appointment to the office of Ambassador, High Commissioner or other principal representatives of Nigeria abroad shall not have effect unless the appointment is confirmed by the senate. Section 143 stipulates the process through which the National Assembly

can remove president from office. The 1999 constitution vested on the judiciary the power to review any act of the executive and legislature and declare it null and void to the extent of its illegality.

APPOINTMENT OF MAGU AS EFCC CHAIRMAN

Mr. Ibrahim Magu was appointed the Acting Chairman of the Economic and Financial Crimes Commission in November 2015 by President Mohamadu Buhari who has always maintained that his administration was determine to fight corrupt practices in Nigeria. The appointment was made by the president sequel to section 171 (1) of the 1999 constitution of Nigeria. After Magu had acted in that capacity for over a year, the Senate refused to confirm his appointment as the substantive chairman of EFCC and demanded that he be replaced on ground of alleged failure of integrity test following security reports against him. However, the presidency which reposed much confidence on the credibility of Magu and his capacity to head the anti-corruption agency perhaps saw the action of the Senate as a measure to sabotage the anti-corruption war as well as an attempt to protect the interest of their members who are under investigation and prosecution by Magu led EFCC.



SENATE'S REJECTION OF MAGU'S CONFIRMATION AS EFCC CHAIRMAN

On December 15, 2016 barely six months after Ibrahim Magu's name was forwarded to the Senate for confirmation as the substantive chairman, the Senate after a close door session announced that it could not proceed and confirm the nomination of Magu based on security reason. Ibrahim Aliyu Abdulahi, chairman Senate committee on Media stated that the Senate of the Federal Republic of Nigeria wished to inform the general public that based on security report available to the Senate, the Senate could not proceed and confirm the nomination of EFCC. According, the Senate had rejected the said nomination and returned the nomination to Mr President for further action. The action of the Senate generated a lot of debates among Nigerians. While some attributed the rejection to fear by corrupt members of the Senate that Magu would not compromise in his charges and prosecution against them, others view it as part of dominance struggle between the executive and legislature.

DEPARTMENT OF SECURITY SERVICE (DSS) REPORT AGAINST MAGU

The report by DSS dated September 21, 2016 and entitled Re:Request for Security Vetting Letter NASS/CS/SA/01/16/08/addressed to the

clerk of the National Assembly accused Magu of being in possession of sensitive EFCC documents after he was removed from the commission during the tenure of Waziri Flarida as EFCC chairperson (DSS Report,2016). According to the report, investigation revealed that in August 2008, following a search at Magu's residence, some sensitive documents of EFCC which were not supposed to be at his disposal were with him. Consequently, he was redeployed to the police after days of detention and later suspended from the force. In December 2010, according to the DSS Report (2016), the police service commission found Magu guilty of action prejudicial to state security, withholding of EFCC file, sabotage, unauthorized removal of EFCC file and acts unbecoming of a police officer and awarded him severe reprimand as punishment.

Furthermore, the DSS report alleged that when Ibrahim Lamorde was appointed EFCC chairman in 2011, he made the return of Magu to the commission a primacy because both men had worked together at the commission when Lamorde served as head of operation of the agency and Magu remained a top official of the commission until he was appointed to succeed Lamorde. Magu was also accused of occupying a residence rented for N40 million for two years at N20 million per annum and the accommodation

was not paid from the commission's finance (DSS Report, 2016).

The report further alleged that Magu regularly embarked on official and private trips through a private carrier, Easy jet and in one of such trips flew to Maduguri alongside the M.D. of a bank who was being investigated by the commission over complexly in fund allegedly stolen by the immediate past minister of petroleum Diezani Alison-Madueke. Besides, he was accused of using solely his police cronies to execute operation in order to cover his track. It was alleged that Magu had refused to prosecute some alleged corrupt officials who he relates with. The report in the light of the foregoing concluded that Magu had failed integrity test and would eventually constitute a liability to anti-corruption stand of the current government (DSS Report, 2016).

IBRAHIM MAGU'S DEFENCE BEFORE ADMINISTRATIVE PANEL

Consequent upon the failure of the Senate to screen and confirm Magu on December 15, 2016 and the subsequent passage of the resolution to the president, the president set up an administrative panel headed by the Attorney general of the federation to look into the alleged security report relied upon by the Senate. Thus the Attorney General of the Federation directed

the EFCC chairman to respond immediately to the charges against him by the DSS (Adebayo, 2017). In a letter dated December 21, 2017 Magu considered all the issue against him and provided point to point response.

In his defence, Magu admitted that official document relating to cases under investigation were found in his private home when raided on the order of Mrs Farida Waziri when she succeeded Mallam Nuhu Ribadu as the EFCC chairman. He nonetheless stated that at that time, he had not formally handed over to Umar Sanda his successor as head of Economic Governance Unit and carrying out his duty at that time was impossible without working from home (Adebayo, 2017). He maintained that the documents found in his house were actually found in his office bag where he kept documents relating to investigation. He admitted that he was reprimanded, recalled and promoted to Assistant Commissioner for Police. Magu claimed that some of them that closely worked with Ribadu were victimized after Ribadu's exit as the chairman of EFCC. According to him, his ordeal was a punishment for being the chief investigation officer for most of the high profile cases involving politically exposed persons of who became very influential in government at the time. He described as preposterous the allegation by DSS that he was recalled in 2012 when he was

serving in the Anambra Police Command to do hatched job for Mr Lamorde. Magu insisted that his job schedule as Deputy Director Department of Internal Affair under Lamorde was simple handling of issues of professional responsibility in the commission and that he had no input in core operations of duties in the commission (Adebayo, 2017).

On the allegation that Mr. Magu occupied a residence rented for him by a questionable business man at N40 million for two years, with another N43 million to lavishly furnish the apartment, the acting EFCC boss said that the entire cost for both the two year rent and the furnishing of the house is N39.628 million. He said that the apartment was secured by the Federal Capital Development Authority, attaching the contract award letter and payment schedule. He denied having penchant for air travel in private jet belonging to Mr. Umar, a retired Air Commodore, who was then being tried for money Laundry and illegal possession of firearms. However, he admitted he had flown the said aircraft on two occasions; one was an offer of ride from Kano to Abuja after an official assignment with two EFCC directors; two when he was traveling to Maiduguri to see his sick mother. He described the incidents as harmless gesture since both of them were members of the Presidential Investigation Committee on arms

procurement and at that time he had no knowledge that Umar was under investigation for any alleged offence. He refuted the allegation that he had flown to Maiduguri with the Managing Director of Fidelity Bank, Nnamdi Okonkwo, who was under investigation by EFCC.

In furtherance, he debunked the claim that he was flamboyant. He said that in one instance he flew on a first class ticket with Emirate Airline to perform lesser Hajj in Saudi Arabia but argued that that was not enough for the DSS to conclude that he was living extravagant life style (Adebayo, 2017). Moreover, he claimed that he chose first class because ticket for other classes had been sold out at the time and that he funded the trip from private pocket. Magu denied ever disclosing official documents or discussing official matter with Umar as alleged by DSS. On accusation of reluctance to arraign Amosu Adesola, the EFCC chairman maintained that among the suspects arrested over the arms procurement scandal, Amosu was the most cooperative. The Commission according to him, recovered ₦2.835 billion cash from Amosu, aside property worth ₦1, 1581,000,000 and \$2,150,000, ε 1,00,000. Magu argued that since a key focus of the investigation was to recover as much proceeds of crime as possible, the EFCC took its time to ensure it had recovered what was possible before arraigning the suspect in court

and that such delay had nothing to do with the wish of any individual.

FINDINGS

The findings reveal that the conflict relationship between the two organs stemmed from struggle for dominance, lack of synergy, constitutional misinterpretation and interest protection. Moreover, the role played by the security agents demonstrated lack of synergy between the chairman of EFCC and the head of DSS. It also shows that the senators who were under EFCC trial and investigation were not comfortable with Magu's confirmation because of his perceived uncompromising nature.

DISCUSSION

The president after reviewing the report of the administrative panel set up to look into the alleged security reason on which the Senate relied to reject the screening and confirmation of Ibrahim Magu as the substantive EFCC chairman, cleared Magu, re-nominated him and forwarded his name to the Senate for the second time (Adisa and Ayodele,2017). Hence, the Senate invited Magu for screening. During the screening exercise, Magu was subjected to rigorous interrogation on several issues bothering on the amount of recovered loot from corrupt individuals, alleged abuse of court order by the

Commission and security report against him. Magu responded to the issues and defended himself on the allegations raised against him by the DSS. At the end of the screening, the Senate for the second time refused to confirm him as the EFCC chairman (Adebayo, 2017).

The Senate still relied on the DSS report (2016) which states that Magu has failed the integrity test and would eventually constitute a liability to the anti-corruption fight of the administration. The Senate in its resolution ordered that the President should immediately remove Magu as the acting chairman and nominate another person for screening and confirmation. According to order 131 of the Senate rules, nominations neither confirmed nor rejected during the session or within 21 working days in the case of ministerial nominees shall be returned by the clerk to the National Assembly to the President of the Federal Republic of Nigeria and shall not again be made to the Senate by the President of the Federal Republic of Nigeria. The insistence of the Senate that Magu must be removed as the acting chairman engendered controversy and conflict between the executive and the legislature (Timoh and Daka, 2017).

The presidency maintained that the Senate had no power to order the removal of Magu since it is within the power of the President to appoint a person into such position (Falana, 2017). The

executive insisted that the president has the authority to retain Magu on acting capacity since the duty of the Senate is to confirm (Jibueze and Onanuga, 2017). Section 171 (1) empowers the President to appoint persons to hold or act in the office to which this section applies and to remove person so appointed from any such office shall vest in the President while section 171 (4) states that appointment to the office of ambassador, high commissioner or other principal representatives of Nigeria abroad shall not have effect unless the appointment is confirmed by the Senate. The executive asserts that since EFCC is an extra-ministerial department of the Federal government which did not fall within the jurisdiction of section 171 (4), the appointment of its chairman does not require Senate confirmation.

Conversely, the Senate relied on section 2 (3) of the EFCC Act to justify its power to confirm the chairman of EFCC. The section of EFCC Act empowers the Senate to confirm any person appointed as chairman of the commission. However, the executive countered the position of the Senate stating that section 2 (3) of EFCC Act is inconsistent with section 171 (1) of the constitution of the Federal Republic of Nigeria and to that extent the resolution of the Senate based on the EFCC Act is null and void. The President based on legal advice by a committee

set up to look at the interpretation of the various sections, insisted on retention of Magu as acting chairman without Senate confirmation since section 171 according to the committee report is clear that certain appointment do not require senate approval. The president was, however, advised by the committee to approach the court for constitutional interpretation of the disputing sections (Adetayo and Akinkuotu, 2017; Jonathan, 2017)

The Senate, on its part, insisted that it has the power to confirm and that Magu must be removed and not re-nominated (Oduns, 2017). The legislative body maintained that EFCC Act 2004 section 2 (3) provides that chairman and members of the Commission other than ex-officio members shall be appointed by the President and the appointment shall be subjected to the confirmation of the Senate. The Senate in protest against the retention of Magu in one of its plenary session refused to consider a letter from the presidency requesting legislative approval for the nomination of 27 resident electoral commissioners. The Senate insisted that no confirmation of executive appointment will be carried out by the legislature until Magu is removed (Akinkuotu, Adesomoju, Baiyewu and Aluko, 2017). According to the law makers the rejection of Magu's nomination means that he should not remain the acting chairman of the

EFCC. The conflict situation attracted divided opinions among Nigerians. While some accused the Senate of being made up of corrupt individuals who wanted Magu to be removed because of his roles in investigating their corrupt practices and subsequent persecution, other believe that the Senate was doing its lawful business and should not be blamed for relying of DSS report to reject Magu.

RECOMMENDATION

- i. The presidency or the Senate should approach the Supreme Court to seek constitutional interpretation of section 171 which empowers the president to make appointment to some head of government agencies without recourse to the Senate.
- ii. Effective liaison and consultation between the executive and legislature on government policies would be helpful in promoting mutual understanding and co-operation between the two organs. Creating forums for the Executive, relevant committees and key members of the National Assembly to come together and share ideas on policy and constitutional matters would help in shaping the scope and timing of policy agenda; enhance the prospects for

building political coalition and cement the relationship between the two organs.

- iii. Government, in partnership with non-governmental organization, should engage in conscious education and training of members of the various organs on their public responsibilities through workshop, conference and seminar. This demands the establishment of effective, strong and well equipped training, and research bureau manned by qualified and knowledgeable professional workers that would provide the organs with necessary information and training needed for optimum performance.
- iv. Both organs should see the supremacy of constitution as uppermost in the discharge of their respective roles and appreciate that the essence of constitutional provision is to ensure good governance through their independent and co-operative roles. National interest rather than personal or group interest should be given primacy in the conduct of their affairs.

CONCLUSION

The paper is an analysis of politics and conflict between the executive and the legislature over the appointment and confirmation of Ibrahim Magu as the chairman of EFCC. It

demonstrates that violation of constitutional provisions, misinterpretation of the constitution; supremacy struggle and protection of individual as well as group interest were factors in that engendered conflict between the executive and the Senate. Thus, the paper suggested that the organs should seek judicial interpretation of the contending sections of 1999 Constitution of Federal Republic of Nigeria to resolve the crisis. Moreover, effective liaison and consultation between the two organs on government policies should be promoted. Regular training and education should be provided to members of the two organs on their constitutional roles. They should in the discharge of their responsibilities give prominence to national interest rather than selfish interest.

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