

**APPOINTIVE POWERS OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF
NIGERIA UNDER THE 1999 CONSTITUTION AS AMENDED**

**NKACHUKWU GRACE OLUEBUBE
GOU/U21/LAW/353**

**BEING A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY
OKOYE UNIVERSITY, ENUGU STATE IN PARTIAL FULFILLMENT OF THE
REQUIREMENT FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS
(LL. B) OF GODFREY OKOYE UNIVERSITY**

**DR. ONWA ALI ONWA
SUPERVISOR**

JULY

DECLARATION

I affirm that this research work titled '**Appointive Powers of the President of the Federal Republic of Nigeria under the 1999 Constitution as Amended**' was done by me in the Faculty of Law, Godfrey Okoye University, Enugu. All the information were deduced from the existing literature which has been duly acknowledged in the work and a list of the source of materials is provided herein. The content of this long essay is original and has not been submitted either in part or full for the award of any degree in this or any other institution.

Date: _____

NKACHUKWU, GRACE OLUEBUBE
GOU/U21/LAW/353

CERTIFICATION

We, the undersigned, certify that this project was completed by **Nkachukwu, Grace Oluebube** with registration number **GOU/U21/LAW/353**, in partial fulfillment of the requirement for the award of Bachelor of Laws Degree (LL. B)

Dr. Onwa Ali Onwa

Supervisor

Date

Dr. G.O. Omeh

Ag. Dean, Faculty of Law

Date

External Examiner

Date

DEDICATION

To God Almighty, my beloved parents, Mr and Mrs. Nkachukwu, my siblings, all of you mean the whole world to me.

ACKNOWLEDGEMENTS

I will first of all thank the Almighty God for bestowing on me his spirit of wisdom, knowledge and understanding the course of this research.

I am particularly grateful to my erudite supervisor, Dr. Onwa Ali Onwa for his endless support, encouragement, guidance and exhaustive supervision throughout the various stages of conducting this research. I thank the Dean of the Faculty of Law, Dr. G.O. Omeh, for his conscientiousness and support. I would be glad to extend my thanks to Prof. B. O Okere for his readiness to impart knowledge. I also extend my appreciation to the entire staff and non-staff of the Faculty of Law for providing a conducive environment which aided the success of this research work.

I would love to acknowledge my family; my father, Mr. Nkachukwu Sunday Anthony, I thank you for always gearing me to be the best version of myself. To my beloved mother and my rare gem, who literally was there always praying, sacrificing and working tirelessly to provide the spiritual, financial and emotional support which pulled me through these years, truly, it is only God who can sufficiently repay you.

To my other course mates who made this LL.B. journey remarkable, I never regret doing this with all of you. Finally, my gratitude goes to all my juniors who have in one way or the other derived motivation from me. The God I serve will see you all through, amen. I thank you all from the deepest part of my heart.

TABLE OF CONTENTS

Title page	i
Declaration	ii
Certification	iii
Dedication	iv
Acknowledgements	vi
List of Cases	ix
List of Statutes	xii
Abbreviations	xv
Abstract	xvii

CHAPTER ONE: INTRODUCTION

1.1 Background to the Study	1
1.2 Statement of the Problem	2
1.3 Research Questions	4
1.4 Aim and Objectives of the Study	5
1.5 Research Methodology	5
1.6 Significance of the Study	6
1.7 Scope of the Study	7
1.8 Limitations of the Study	7
1.9 Literature Review.....	8

CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework	11
2.1.1 Meaning and Nature of Appointing Powers	11
2.1.2 Meaning of Executive Presidential Power	13
2.1.3 Classification of Presidential Appointing Powers	14
2.1.3.1 Confirmation-Bound Appointments	14
2.1.3.2 Sole-Discretionary Appointments	15
2.1.3.3 Recommendation-Based Appointments	15
2.2 Theoretical Framework	19

2.2.1 Separation of Powers Theory	19
2.2.2 Rule of Law Theory	20
2.2.3 Accountability Theory	21

CHAPTER THREE: CONSTITUTIONAL BASIS OF THE PRESIDENT'S APPOINTIVE POWERS

3.1 Overview of Executive Powers under the 1999 Constitution	21
3.2 Senate Confirmation Appointments	23
3.2.1 Ministers of the Federation	25
3.2.2 Chief Justice of Nigeria and Justices of Superior Courts ...	26
3.2.3 Attorney-General of the Federation	27
3.2.4 Heads of Security Agencies	28
3.2.5 Heads of Independent Executive Bodies	30
3.3 Sole Discretionary Appointments	31
3.4 Recommendation or Consultative Appointments	32
3.5 Checks and Limitations	33
3.5.1 Federal Character Principle	34
3.5.2 Senate Confirmation	36
3.5.3 Judicial Review	36
3.5.4 Public Scrutiny	37
3.6 Courts Interpreting the Powers of Appointment	37
3.7 Comparison to Past Constitutional Regimes	38

CHAPTER FOUR: ISSUES, CHALLENGES AND COMPARATIVE PERSPECTIVES

4.1 Political and Legal Controversies Surrounding Appointments ...	40
4.2 Misuse of Appointing Powers and Implication to Governance ...	41
4.3 Federal Character Principle and Meritocracy	43
4.4 Judicial Review of Presidential Appointments	44
4.5 Ambiguities and Gaps in the Constitutional Framework ...	46
4.6 Comparative Perspectives	48
4.6.1 United States	48

4.6.2 Kenya	49
-------------------	----

CHAPTER FIVE: SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings	51
5.2 Recommendations	53
5.3 Conclusion	54
Bibliography	55

LIST OF CASES

A.G. Lagos State v. A.G. Federation (2003) 12 NWLR (Pt. 833) 1 (SC)	44
Adesanya v. President of the Federal Republic of Nigeria (1981) 2 NCLR 358 (SC)	34,42
Attorney-General of Abia State v. Attorney-General of the Federation (2002) 6 NWLR (Pt. 763) 264	35
Attorney-General of Bendel State v. Attorney-General of the Federation (1981) 10 SC 1	35
Attorney-General of the Federation v. Abubakar (2007) 10 NWLR (Pt. 1041) 1 (SC)	21, 43
Attorney-General of the Federation v. Atiku Abubakar (2008) 1 SC (Pt. II) 1	21
Attorney-General of the Federation v. Guardian Newspapers Ltd (1999) 9 NWLR (Pt. 618) 187	36
Attorney-General of the Federation v. Senate of the National Assembly (1983) NCLR 269	45
Dapianlong v. Dariye (2007) 8 NWLR (Pt. 1036) 332	46
Eleklu-Habeeb v. Attorney-General of the Federation (2012) 13 NWLR (Pt. 1318) 423 (SC)	36, 43
Federal Character Commission v. Laoye	40
Governor of Ekiti State v. Fakiyesi (2009) 18 NWLR (Pt. 1173) 28	38
Governor of Kaduna State v. Kagoma (1982) 6 SC 87	36
Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423	46

Lakanmi v. Attorney-General (Western State) (1971) 1 UILR 201	18, 35
Madukolu v. Nkemdilim (1962) 2 SCNLR 341	37
Marwa v. Nyako (2012) 6 NWLR (Pt. 1296) 199	46
Nganjiwa v. Federal Republic of Nigeria (2017) 13 NWLR (Pt. 1581) 454 (CA)	36
Ojukwu v. Military Governor of Lagos State (1986) 1 NWLR (Pt. 18) 621	19
Onuoha v. Okafor (1983) 2 SCNLR 244	39
President of the Federal Republic of Nigeria v. Nigerian Bar Association (unreported)	54
Saraki v. Federal Republic of Nigeria (2016) LPELR-40013(SC)	48
Shitta-Bey v. Federal Public Service Commission (1981) 1 SC 40	33
Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517	37
University of Ilorin v. Oluwadare (2006) 14 NWLR (Pt. 1000) 751	38

TABLE OF STATUTES

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Section 5(1)	21
Section 14(3)	33, 40
Section 147(1)	24
Section 147(2)	24, 39
Section 147(3)	25
Section 150(1)	26
Section 153	29
Section 154	29
Section 171	30
Section 215(1)(a)	27, 31
Section 231(1)	25, 31
Section 231(2)	25
Section 238(2)	25
Section 271	26
Third Schedule Part I	29

Federal Character Commission (Establishment, Etc.) Act 2000

Section 1	33
-----------------	----

Legal Practitioners Act, Cap L11, LFN 2004

Section 2	26
-----------------	----

National Security Agencies Act, Cap N74, LFN 2004

Section 1	27
-----------------	----

LIST OF ABBREVIATIONS

AGF	Attorney-General of the Federation
CA	Court of Appeal
CFRN	Constitution of the Federal Republic of Nigeria
CJN	Chief Justice of Nigeria
FCC	Federal Character Commission
FRN	Federal Republic of Nigeria
IGP	Inspector-General of Police
INEC	Independent National Electoral Commission
LFN	Laws of the Federation of Nigeria
NCLR	Nigerian Constitutional Law Reports
NJC	National Judicial Council
NWLR	Nigerian Weekly Law Reports
PSC	Police Service Commission
SC	Supreme Court
UILR	University of Ife Law Reports

ABSTRACT

This study critically examines the appointing powers of the President under the 1999 Constitution with a view to determining the constitutional basis, scope, limitations, and implications of such powers within Nigeria's democratic framework. The study adopts a doctrinal legal research methodology, relying on primary and secondary sources of law. The findings reveal that although the Constitution provides mechanisms such as Senate confirmation, judicial review, and the federal character principle to regulate presidential appointments, these safeguards have not always been effective in preventing excessive executive influence. The study further finds that ambiguities in certain constitutional provisions and political considerations often undermine transparency, merit, and accountability in the appointment process. Comparative analysis of selected jurisdictions demonstrates the importance of stronger institutional checks in maintaining a balance between executive discretion and democratic accountability. The study concludes that while presidential appointing powers remain indispensable to effective governance, their exercise must conform strictly to constitutional principles, the rule of law, and the requirements of transparency, fairness, and national integration. The study recommends constitutional and institutional reforms aimed at strengthening oversight mechanisms, enhancing compliance with the federal character principle, promoting merit-based appointments, and ensuring greater accountability in the exercise of presidential appointing powers.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The Federal Republic of Nigeria is a presidential system of government as found on the principle of separation of powers as entrenched in its constitutional design. It is a pillar of the modern democratic government and therefore requires a balanced check and balances to ensure that one arm of government does not exceed its authority and may turn tyrannical.¹ In this context, the executive prerogative enshrined in the President by Section 5 of the 1999 Constitution is immense, with a diversity of functions that are vital in management of the state.² The power to appoint persons to important governmental posts is some of the most important and most important of these executive powers. The assigning authority is not merely a helper administrative responsibility; it is a driver hub through which a President influences the policy of the populace, produces the governmental programmes, and also designs the overall direction, nature, and efficiency to the management.³

This power has limits and is expressed in different provisions in the Constitution of 1999. The level of the appointments is high-ranking like Ministers, and Justices of the Supreme Court, as well as heads of sensitive independent commissions like the Independent National Electoral Commission (INEC) and down to the personal staff and ambassadors of the President.⁴ The controversial aspect of this power as the object of constitutional law and political argue is that this

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 4, s 5 and s 6.

² De Smith S A, *Constitutional and Administrative Law* (7th edn, Penguin 2013) 45.

³ CFRN 1999 (as amended) s 5.

⁴ B O Nwabueze, *Presidentialism in Commonwealth Africa* (C Hurst & Co 1974) 112.

power is not absolute. The governance of the Constitution cleverly circumvents the sole and absolute presidential discretion coupled with the shared authority of Senate confirmation, shooting the principle of checks and balances right into the appointment process.⁵ This relationship of the executive initiative and legislative control is created to provide transparency, accountability, and competence selection of capable individuals.

Practical interpretation of these constituents of the constitution, however, has been a cause of swirling controversy and frequent debate in the Fourth Republic of Nigeria. “Presidential appointive powers have frequently been criticized as proposing a related patronization, undue subordination of merit to politics, the controversial execution of the federal character principle.⁶ Cases of tardy selection of officials, adoption of acting as a way of circumventing the legislative process, and clashes of the Presidency and the Senate regarding confirmation hearings all point to the unrested current state of the constitutional system.⁷ Thus, the study critically analyses the appointing powers of the President.

1.2 Statement of the Problem

The presidential appointive powers as outlined in the constitution of 1999 of the Federal Republic of Nigeria has a very elaborate framework of how the executive discretion can be combined with legislative control with the view of bringing about accountability and good administration in office.⁸ There is, however, a big gap between this constitutional theory and a practical reality of this investigation into the application of this theory. Although the exercising of presidential

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 147, 231, 153.

⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 147(2), 171(2), 238.

⁷ E O Ekhaton, ‘The Federal Character Principle and the Challenges of National Integration in Nigeria’ (2015) 9 *African Journal of Legal Studies* 89.

⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended).

appointing powers has always been a subject of political perplexity, institutional rivalry and absence of governance in the democratic practice of Nigeria exists.⁹ Despite the apparent provisions aimed at set up the system of checks and balances, the presidential powers of appointment have been the center of weaknesses in political matters.¹⁰

The essence of the inquiry presented by the research is the lack of functionality of the constitutional checks on presidential powers with respect to appointing officials, which have caused the possibility of misuse and accompanying adverse outcome of democracy and governance in Nigeria. This lack of effectiveness is being exhibited in a few important ways. First of all, the confirmation authority of the Senate that serves as one of the most important checks of the legislature is frequently viewed as undermined by the partisan politics and thus giving birth to the so-called rubber-stamp effect or vice versa to gridlock and political rejections that may not be grounded in merit or constitutional standards.¹¹ Second, the broad discretionary authority of the President in Section 171 of the Constitution, especially the appointment of key officials such as the Secretary to the Government of the Federation and the Head of the Civil Service, has little legislative restraint given, and creates a danger of patronizing the main stream executive bureaucracy and politicising it.¹²

The federal character principle of the constitution, which aims to integrate the nation and make it inclusive, has been actually carried out in a way that gives more focus to geographical dispersion rather than ability and quality, which could compromise the standards and effectiveness of governance. Fourth, although judicial oversight of appointments is basically required by the

⁹ Y O Alli, *The Nigerian Constitution: A Critical Appraisal* (Malthouse Press 2018) 203.

¹⁰ J A Ayoade, 'Godfather Politics in Nigeria' (2006) 10 *Journal of African Elections* 79.

¹¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 171.

¹² Federal Character Commission (Establishment) Act 1995.

constitution, it is frequently blocked by the doctrine of the political question and factual timeliness, which restricts its efficiency as an active measure of executive misconduct.¹³

Such issues when added together make the environment problematic as appointments might not necessarily be in the best interests of the people but political expediency. This casts the separation of powers in Nigeria in a dark shade as far as the rule of law is encouraged and the achievement of accountable governance in Nigeria. The analysis of these provisions in the framework of their urgent necessity is therefore necessitated by the need to critically deconstruct these provisions, to pinpoint the gaps and challenges of operation and to offer viable recommendations that may enable a fall-in-order restoration of the system to its original aim of effective, accountable and inclusive governance.

1.3 Research Questions

This research is guided by the following fundamental questions:

1. What are the constitutional scope and limitations of the appointing powers of the President?
2. To what extent have the constitutional checks and balances, particularly the role of the National Assembly in preventing the abuse of presidential appointing powers in Nigeria?
3. How has the implementation of the Federal Character Principle, under Section 14(3) of the 1999 Constitution, impacted the tension between merit and geo-political inclusivity in presidential appointments?
4. What legal and institutional reforms can be proposed to enhance the transparency, accountability, and effectiveness of the presidential appointing process in Nigeria?

¹³ *Attorney-General of the Federation v Abubakar* (2007) 10 NWLR (Pt 1041) 1.

1.4 Aim and Objectives of the Study

The primary aim of this research is to conduct a comprehensive critical analysis of the appointing powers of the President under the 1999 Constitution, with a view to identifying the gaps and challenges in its application and proposing viable recommendations for reform.

To achieve this broad aim, the study pursues the following specific objectives:

1. To examine the constitutional framework and delineate the different categories of the President's appointing powers.
2. To evaluate the efficacy of the mechanisms of checks and balances of the National Assembly in regulating the exercise of these appointing powers.
3. To assess the implementation of the Federal Character Principle in presidential appointments and its impact on the quest for both meritocracy and national integration.
4. To propose concrete and actionable legal and institutional reforms aimed at enhancing the transparency, accountability, and overall effectiveness of the presidential appointment process in Nigeria.

1.5 Research Methodology

This research will adopt a doctrinal legal research methodology, an approach deemed most appropriate given the study's fundamental concern with the systematic and critical exposition of the legal principles, rules, and doctrines governing presidential appointing powers under the 1999 Constitution. The methodology entails a detailed analysis of the law as established in written documents and authoritative texts. The primary sources of data will consist of primary legal materials, notably the Constitution of the Federal Republic of Nigeria 1999 (as amended), relevant

Statutes of the Federation, as well as judicial decisions from Nigerian courts particularly the Supreme Court and the Court of Appeal that have authoritatively interpreted the relevant constitutional provisions on executive powers, separation of powers, and appointments. These will be complemented by Rules of Court and other pertinent subsidiary legislation. These primary sources will be supplemented extensively by secondary sources. These include textbooks and commentaries by renowned Nigerian constitutional law scholars, articles in reputable law journals and periodicals, published conference proceedings, lectures, scholarly papers, and credible online legal databases and resources.

1.6 Significance of the Study

This study is significant both academically and practically. Academically, it contributes to the existing body of knowledge on constitutional law, executive powers, and democratic governance in Nigeria. It provides a detailed analysis of the constitutional provisions regulating the appointing powers of the President and examines the effectiveness of the safeguards established to prevent abuse of such powers. The study will be beneficial to legal scholars, researchers, students of constitutional and administrative law, and policymakers seeking a deeper understanding of the constitutional framework governing presidential appointments. It will also serve as a useful reference material for future researchers interested in executive powers, separation of powers, and constitutional governance.

Practically, the study will assist lawmakers, judicial officers, government officials, and constitutional reform bodies by identifying gaps and challenges in the current appointment process. The findings and recommendations of the study may contribute to reforms aimed at enhancing transparency, accountability, meritocracy, and compliance with constitutional principles in the

exercise of presidential appointing powers. Furthermore, the study will promote public awareness of the constitutional limitations placed on presidential authority and reinforce the importance of checks and balances in sustaining democratic governance and the rule of law in Nigeria.

1.7 Scope of the Study

This research is delimited to a comprehensive examination of the appointing powers of the President of the Federal Republic of Nigeria as expressly provided for and limited by the 1999 Constitution (as amended). The analysis will focus primarily on the constitutional framework established in sections 5, 147, 148, 150, 151, 153, 154, 171, 231, and other relevant provisions that directly confer and regulate the President's authority to make appointments. Geographically, the study is centered on the Nigerian legal system. In terms of substantive content, the study will cover the classification of appointing powers, the constitutional checks and balances on these powers, and the legal and political issues arising from their exercise from 1999 to the present day. It will critically analyse the roles of the Senate and the judiciary in the appointment process. The study will also explore the impact of the Federal Character Principle on presidential appointments.

1.8 Limitations of the Study

This study encountered certain limitations. One limitation is the scarcity of judicial decisions that directly address presidential appointing powers under the 1999 Constitution, thereby restricting the availability of extensive judicial precedents for analysis. Another limitation is the reliance on secondary sources such as textbooks, journal articles, and commentaries, since the research adopts a doctrinal methodology and does not involve empirical data collection. Consequently, some practical political considerations surrounding presidential appointments may not be fully captured. The study is also limited to the Nigerian constitutional framework, particularly the provisions of

the 1999 Constitution (as amended), and does not undertake an extensive comparative analysis of appointment systems in other jurisdictions except where necessary for illustration. Despite these limitations, they do not diminish the validity, relevance, and reliability of the findings and conclusions reached in this research.

1.9 Literature Review

There is a considerable volume of academic literature on the general subject of executive power under the Nigerian Constitution, and the particular power of appointment has been discussed, but frequently as part of a larger discussion. This review will keep a survey of the important contributions and find out the underlying perspectives and gaps that are to be addressed by this current research.

Policymaking Literature on the constitutional law on the presidency of the Federal Republic of Nigeria offers crucial background on the issue of the executive authority as endowed to the President. The Presidential Constitution of Nigeria by Nwabueze can be seen as an early and extensive examination of the constitution of 1979, which was the predecessor to the 1999 document.¹⁴ Nwabueze carefully analyses the limits of the executive authority such as appointments and emphasizes the possibility of the collapse in the executive and legislative branches a conflict that is very present to date.

Equally, Sagay in the book “Nigerian Law of Constitution” similarly commentates on the 1999 Constitution and discusses the provisions of the presidential appointments and the role of Senate as a significant warning of executive discretion.¹⁵ Though they form the basis of law, they do not

¹⁴ B O Nwabueze, *The Presidential Constitution of Nigeria* (C Hurst & Co 1982).

¹⁵ I E Sagay, *Nigerian Law of the Constitution* (Spectrum Books 2000).

so much include an exclusive and critical analysis of the appointive power within the current political environment of the Fourth Republic.

Akintunde in *The Legislature and Executive in Nigeria*, gives a more narrow focus to the specific relationship defining executive and legislature in the Presidential Democracy of Nigeria.¹⁶ Akintunde examines the legislative check and balances, with or without the Senate confirmation power. He claims that the utility of such a check, in fact, is frequently subverted by partisan loyalty in that he labels it a confirmatory rubber-stamp in many cases. This treatise is important to this current research study because it directly addresses one of the primary issues the ineffectiveness of constitutional checks. Nevertheless, the content of Akintunde is more extensive, and all of executive-legislative relations are discussed, so there is potential to make a narrower focus of the investigation specifically on the process of appointment.

As far as the Federal Character Principle is concerned, in his article, *The Federal Character Principle and National Integration in Nigeria*, Elaigwu presents a critical view on the subject of political science.¹⁷ Although he examines the intention of the principle to bring together the nation, he goes on to question how it is applied regardless of the fact that it can occasionally exaggerate the feelings of ethnic sentiments when it is viewed to be more of a quota system. Concerning the legal perspective, Ojo analyzes the constitutional underpinning and justiciability of the Federal Character Principle with the view that, through its political manipulation, the principle has undermined its legal binding.¹⁸ Collectively, all these works shed light on the unending conflict between inclusiveness and meritocracy. The current study will develop on this discussion further

¹⁶ A A Akinseye-George, *The Legislature and Executive in Nigeria* (Malthouse Press 2010).

¹⁷ I Elaigwu, 'The Federal Character Principle and National Integration in Nigeria' (1985) *National Institute for Policy and Strategic Studies Journal*.

¹⁸ E O Ojo, 'Federal Character Principle and Its Implications for National Integration' (2009) *Journal of Political Studies*.

by directly assessing the mode in which this tension is applied within and possibly in derailment of the presidential appointing powers.

The theoretical and doctrinal premises of this work lie on the classical and contemporary literature of the subject on separation of powers. Locke and Montesquieu philosophical basics used are simply inevitable whereas the modern jurists of Nigeria have changed the philosophies to fit the Nigerian context.¹⁹ This doctrine was confirmed by the Supreme Court in such cases as *Attorney-General of Bendel State v Attorney-General of the Federation*, which gives the jurisdictional framework behind a discussion of the constitutional impediments to presidential authority.²⁰

The literature has a discernible void in terms of a detailed, critical and comprehensive legal examination of the powers of the President to assign based on the 1999 Constitution that incorporates a systematic categorization of the assigning powers, a critical examination on the effectiveness of its checks and balances, an examination of the influence of the Federal Character Principle, and a comparative approach. Although they are discussed in the extant literature to a peripheral extent, none of them brings them altogether to a dedicated study in order to specifically diagnose the drawbacks of the existing system and suggest specific legal and institutional changes. The gap is what the present study attempts to address, through offering a comprehensive and critical look into the appointive powers of the President, both constitutionally, and in its practical challenges and possibilities of being reformed.

¹⁹ J Locke, *Two Treatises of Government* (1689); C de Montesquieu, *The Spirit of Laws* (1748).

²⁰ *Attorney-General of Bendel State v Attorney-General of the Federation* (1981) 10 SC 1.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

In this research, the conceptual framework establishes the core principles and classifications essential for understanding the appointing powers of the President under the 1999 Constitution. This section systematically examines the fundamental concepts of executive power, presents a tripartite classification of appointing powers, analyzes constitutional checks on these powers, and explores the federal character principle as a unique Nigerian constitutional concept that shapes presidential appointments.

2.1.1 Meaning and Nature of Appointing Powers

Appointing power is the power vested in the executive branch of government, especially in the President, to nominate, pick and make a formal appointment to fill the office of public in the machinery of governance.²¹ This power is a key part of the successful operation of the executive in a constitutional government since it empowers the President to establish governmental institutions and delegation of duty of policy making and execution.²² The President puts executive power into practical use under the constitution and provides continuity of operation in the government through the exercise of appointing power.²³

Under the Nigerian experience, the Constitution of 1999 (as amended) does not explicitly present one and only definition of the power of appointment, but implicitly gives this power by means of a few clauses. Section 5(1) of the Constitution endows the President with the executive powers of

²¹ B O Nwabueze, *The Presidential Constitution of Nigeria* (C Hurst & Co 1982).

²² N Tobi, *Sources of Nigerian Law* (MIJ Publishers 1996).

²³ I E Sagay, *Nigerian Law of the Constitution* (Spectrum Books 2000).

the Federation, that is, the right to appoint people to offices, which are created by the Constitution or by a law of the National Assembly.²⁴ All of these provisions make up the legal basis of the presidential appointing authority.

Nwankwo has argued that the appointive authority of the Nigerian President has moved outside the executive system and into the judiciary and independent institutions which signify the key place of the presidential in designing the forms of governance perceived in the presidential system.²⁵ On the same note, researchers have noted that, the Nigerian President has the wide powers to appoint and dismiss public officers with constitutional constraints of Senate confirmation, judicial review and federal character principle.²⁶

Therefore, the appointment of power in Nigeria is not only a prerogative of administrative convenience but an important constitutional process through which the impulse of federalism, accountability and separation of power is implemented.²⁷ Its practice must then be in line with the culture of the rule of law and the general requirements of good governance.²⁸

Fiduciary in its core nature is appointment power, one that is exercised on behalf of the people.²⁹ This description presents large constitutional limitations upon its exercise in that the appointments made must be made in the public interest, not out of personal interest, political or partisan motives.³⁰ This fiduciary character of this power makes it fundamentally different as compared to the case of the employment at private levels and mandate of elections and one can find it within

²⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 5(1).

²⁵ B N Nwankwo, *Constitutional Law in Nigeria* (Malthouse Press 2013).

²⁶ M O Kayode, *Constitutional Law in Nigeria* (Ababa Press 2008).

²⁷ E C S Wade and A W Bradley, *Constitutional and Administrative Law* (Longman 1985).

²⁸ H W R Wade and C F Forsyth, *Administrative Law* (11th edn, Oxford University Press 2014).

²⁹ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

³⁰ E Malemi, *The Nigerian Constitutional Law* (Princeton Publishing 2012).

the context of the constitutional democracy and within the sphere of the accountability to the citizens.³¹

The constitutional role played by the exercise of appointing power in the context of the Nigerian state can serve several roles: appointing power allows the President to form his government, allow the implementation of the government policies, and provide the continuity of the state administration.³² Nevertheless, this power is not absolute but is restricted by constitutional restraints, acts and judicial review which combine to give it a check against which its exercise is in conformity to democratic principles and constitutionalism.³³

2.1.2. Meaning of the Executive Presidential Power.

Executive presidential power refers to the overall authority that is bestowed to the President who is the head of state, the head of government, and the executive head of the Federation.³⁴ This power becomes the main constitutional basis of the 1999 Constitution, namely, section 5(1), which states that the executive powers of the Federation would be vested on the President and could be exercised by him directly or indirectly by the Vice-President and Ministers of the Government of the Federation.³⁵

The executive presidential powers have the following three basic dimensions; the execution and maintenance of the Constitution, the execution of all the laws that are drafted by the National Assembly, and the overall administration and governance of the country.³⁶ This three-sided sphere

³¹ F O Okunola, *Administrative Law in Nigeria* (University Press 1990).

³² Y Osinbajo, 'Separation of Powers in the Nigerian Constitution' (1991) *Nigerian Law Journal*.

³³ Constitution of the Federal Republic of Nigeria 1999 (as amended).

³⁴ M J C Vile, *Constitutionalism and the Separation of Powers* (Oxford University Press 1967).

³⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 5(1).

³⁶ A O Obaseki, *The Judiciary and Constitutionalism in Nigeria* (Ibadan University Press 1998).

makes the President the key contributor to the government policy and administration of the country.³⁷

The nominating power is an essential element of the executive power which is the main process by which the President forms his government and fulfilment of his reflections and vision of administration.³⁸ The President is not obligated to nominate crucial positions and this would significantly hamper his role as a law enforcer and in the management of the government.³⁹ The appointive character of power is executive: it is based on the fact it is an administrative role required to execute the governmental policies and to take the state machinery into successful working.⁴⁰

2.1.3 Classification of Presidential Appointing Powers

The Constitution of 1999 provides a rather sophisticated system of presidential nomination, developing three distinct classes of appointments depending on the extent of executive prerogatives and procedural demands.⁴¹ Such categorization is a measure of constitutional balance of effective government with required checks by the executive so that executive power is not used without checks.⁴²

2.1.3.1 Confirmation-Bound Appointments.

This type includes appointments which must have the recommendation and approval of the Senate, a main constitutional checkpoint on presidential judgment.⁴³ The notable examples are the

³⁷ I A Ayua, *The Nigerian Constitution and the Rule of Law* (NIALS 1993).

³⁸ E O Akanki, *Essays on Constitutional Law in Nigeria* (University of Lagos Press 1995).

³⁹ C O Okeke, *Constitutionalism in Africa* (Fourth Dimension 1997).

⁴⁰ O Hood Phillips, *Constitutional and Administrative Law* (Sweet & Maxwell 2001).

⁴¹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴² *Ibid.*

⁴³ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 147, 154, 231.

ministerial appointments under section 147 where the President has to appoint one minister in each state subject to Senate confirmation and appointees to superior courts under section 231 and appointment to leadership of independent constitutional bodies such as INEC under section 154.⁴⁴ This is done by having a balanced presidential initiative and legislation to these high-level offices created by the constitution.⁴⁵

2.1.3.2 Sole-Discretionary Appointments.

This group includes those nominations that may not need third party endorsement but are solely at the will of the President.⁴⁶ Under section 171 of the Constitution, the President has powers to appoint officials such as the Secretary to the Government of the Federation, the Head of the Civil service, the Ambassadors as well as other personal staffs.⁴⁷ As much as this simplifies the executive efficiency and flexibility in the administration part, it requires effective accountability measures since the administration is not subjected to direct legislative oversight.⁴⁸

2.1.3.3 Recommendation-Based Appointments.

This intermediate group entails appointments subject to preceding suggestion or counseling by established institutions.⁴⁹ Section 215 of the Nigeria Police Act provides that since the appointment of the Inspector-General of Police is a section 231 office hold, a recommendation of the National Judicial Council is necessary, whereas under section 215 the appointment of the Inspector-General of Police on section 231 offices must be made at the advice of the Nigeria Police Council.⁵⁰ This

⁴⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 147, 154, 231.

⁴⁵ M J C Vile, *Constitutionalism and the Separation of Powers* (Oxford University Press 1967).

⁴⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 171.

⁴⁷ *Ibid.*

⁴⁸ J O Ojo, *Constitutional Law and Military Rule in Nigeria* (Evans Brothers 1987).

⁴⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁵⁰ Nigeria Police Act 2020 s 7; Constitution of the Federal Republic of Nigeria 1999 (as amended) s 215.

model brings technical skills and institutional consensus into the process of appointing an individual with the position that means that the specialized posts are occupied not as by mere political whimsicality.⁵¹

2.1.4 Checks and Balances over Appointive Powers.

The constitutional system setting up the checks and balances system tries to curb absolute discretion and authority of the President in the exercise of this important executive power by offering several checks and balances on the executive appointment power of the President.⁵² The checks are of varying levels of governance structure.

The most salient of them all is the Senate confirmation requirement on major appointments to be made under the Constitution in section 147, 154 and 231.⁵³ Such a legislative check has the merit of subjecting important appointments to democratic examination and the President would not be allowed to cram important government bodies with his or her loyalists at his or her own will.⁵⁴ The fact that the Senate has the authority to veto nominees is an effective check to presidential discretion.⁵⁵

Another major check to the appointive powers is the judicial review. The judiciary also has the powers to decree any form of appointment on grounds that it have been done contrary to the constitutional provisions.⁵⁶ This authority was reaffirmed in *Nwaogwugwu v President, FRN*, by the court stating that strictly following the procedure on appointment by the constitution is not

⁵¹ T R S Allan, *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press 2001).

⁵² J N Ogu, *Modern Administrative Law in Nigeria* (CIDJAP Press 2010).

⁵³ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 147, 154, 231.

⁵⁴ *Ibid.*

⁵⁵ P P Craig and G de Búrca, *EU Law: Text, Cases and Materials* (Oxford University Press 2015).

⁵⁶ S O Akintola, *Public Law in Nigeria* (Abuja Law Press 2016).

optional but obligatory.⁵⁷ The courts therefore act as the final adjudicator of the constitutionality of the presidential nominations.⁵⁸

Other constraints to the informal institutional checks are political accountability. Informal and yet effective checks on presidential discretion are provided by public scrutiny, media control, and monitoring by the civil society.⁵⁹ The need of openness regarding the appointments process and the possibility of social backlash leading to different political expenses delivering dubious appointments.⁶⁰ In addition to this, we have the Federal Character Principle under section 14(3) that is a substantive check in that it necessitates that there is geographical distribution and inclusiveness in appointments.⁶¹

These division of powers and checks and balances demonstrate the constitutional attempt at ensuring that power is not concentrated and that appointive power is made an exercise in trust to the people as opposed to a prerogative.⁶²

2.1.5 Federal Character Principle.

The Federal Character Principle is a unique constitutional instrument, which is aimed at enhancing national cohesion, inclusiveness and ensuring that individuals representing only a small number of states in the nation or belonging to certain ethnic groups are not allowed to exercise uncontrolled power in government.⁶³ It is contained in section 14(3) of the 1999 Constitution, which stipulates that the Federal Government of the Federation or any of its agencies shall be conducted in a fashion

⁵⁷ *Nwaogwugwu v President, FRN (2007) CA/A/116/03 (Court of Appeal, Abuja Division).*

⁵⁸ *Ibid.*

⁵⁹ F A Olorunfemi, *Constitutional Law in Nigeria* (Ekiti State University Press 2015).

⁶⁰ S A de Smith, *Judicial Review of Administrative Action* (Sweet & Maxwell 1995).

⁶¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 14(3).

⁶² T R S Allan, *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press 2001).

⁶³ I Elaigwu, *Federalism and National Integration in Nigeria* (NIPSS 1983).

that reflects the federal nature of Nigeria and the necessity to foster national oneness, besides being able to command national allegiance.⁶⁴

This is discussed as a substantive restriction to the presidential appointive powers in that geographical distribution and fairness in appointing to the governmental office is mandated by the executive.⁶⁵ The legal obligation of the constitution is not just a question of geographical aspect, but of a variety of segments in the society which renders the Nigerian federal system a set of expression in reality.⁶⁶

Part 1(C) of the Third Schedule to the Constitution is specifically provided that the Federal Character Commission should oversee and administer adherence to this principle.⁶⁷ The Commission has an oversight mandate, which involves the investigation of any complaint of marginalization and that the nomination of individuals to positions in the government is diverse in the country.⁶⁸

Nonetheless, this principle has been applied in generating a lot of jurisprudential and political debate relating to its conflict with meritocracy.⁶⁹ Although the principle seeks to promote the cohesion of the population as a nation, its critics state that its use occasionally undermines competence and effectiveness within the administration of the state.⁷⁰ However, the constitutionality of the principle has been supported by the judiciary, who has accepted it as one

⁶⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 14(3).

⁶⁵ E Malemi, *The Nigerian Constitutional Law* (Princeton Publishing 2012).

⁶⁶ K C Wheare, *Federal Government* (4th edn, OUP 1963).

⁶⁷ CFRN 1999, Third Schedule Part I(C).

⁶⁸ Federal Character Commission (Establishment, etc.) Act Cap F7 LFN 2004.

⁶⁹ C O Okeke, *Constitutionalism in Africa* (Fourth Dimension 1997).

⁷⁰ J O Ojo, *Constitutional Law and Military Rule in Nigeria* (Evans 1987).

of the founding goals of the principle to deal with historical imbalances and instead to bring fair representation.⁷¹

The Federal Character Principle is therefore a distinctive Nigerian method of managing diversity using constitutional means and a major influence on the situation in which presidential power under appointive prerogative is utilized.⁷²

2.2 Theoretical Framework

The theoretical model offers the analytical prisms in which the appointing authorities of the President are explored.⁷³ This part will describe the theoretical bases of the constitutionality of the executive power regarding the reason why various checks and balances are present and how they justify exercising the presidential power.⁷⁴ These theories the doctrine of separation of powers, the rule of law, accountability theory all provide a principled framework on which the legal and institutional limits to presidential appointments in the Nigerian constitutional democracy can be seen.⁷⁵

2.2.1. Classical Theory

Classical theory, best explained by Montesquieu, which is concretely reflected in the Nigerian constitutional system with the clear separation of powers described in the 1999 Constitution in sections 4, 5 and 6 of the constitution.⁷⁶ Separation of powers is one of the core principles of constitutional democracy which argues that the powers of the government must be divided into

⁷¹ *Attorney-General of the Federation v Abubakar* (2007) 10 NWLR (Pt 1041) 1.

⁷² I A Ayua, *The Nigerian Constitution and the Rule of Law* (NIALS 1993).

⁷³ M J C Vile, *Constitutionalism and the Separation of Powers* (OUP 1967).

⁷⁴ P P Craig, *Administrative Law* (Sweet & Maxwell 2016).

⁷⁵ T R S Allan, *Constitutional Justice* (OUP 2001).

⁷⁶ J Locke, *Two Treatises of Government* (1689).

three separate branches namely the executive, legislature, and the judiciary in order to forestall the concentration of power which would in turn have tyrannical powers.⁷⁷

This doctrine is presented in the system of checks and balances that accessorize its practical application in terms of presidential powers of making appointments.⁷⁸ The Constitution has allowed the President the discretion to appoint officials, but major offices should be confirmed by the legislature, which will limit presidential discretion and render presidential authority to another organ of the government, the legislature.⁷⁹ Such a constitutional set up will ensure that the executive does not take control of all levels of government unilaterally by executive powers of appointment.⁸⁰

Nigerian Supreme Court has repeatedly stated that this doctrine is very critical in the preservation of constitutional governance. The court in the case of *Attorney-General of Bendel State v Attorney-General of the Federation*, pointed out that separation of powers is the foundation of democracy and imperative to the safeguarding of liberty.⁸¹ The Senate confirmation requirements with regard to key appointments are a sensible application of this constitutionalism philosophy whereby no single arm of government has a free hand to control how state institutions should be constituted.⁸²

The interaction of presidential initiative and legislative control over the process of making presidential appointments is therefore an example of the work of the separated powers in an interactive and not an isolated manner.⁸³ This moderate step allows effective governance without

⁷⁷ CFRN 1999, ss 4, 5 and 6.

⁷⁸ A Bradley, K Ewing and C Knight, *Constitutional and Administrative Law* (Pearson 2018).

⁷⁹ I E Sagay, *Nigerian Law of the Constitution* (Spectrum 2000).

⁸⁰ B O Okonkwo, *Introduction to Nigerian Law* (Spectrum 2000).

⁸¹ *Attorney-General of Bendel State v Attorney-General of the Federation* (1981) 10 SC 1.

⁸² Y Osinbajo, 'Separation of Powers in the Nigerian Constitution' (1991) *Nigerian Law Journal*.

⁸³ M Elliott and R Thomas, *Public Law* (OUP 2017).

interfering with the executive overreach, which is the constitutional focus of a government that is limited.⁸⁴

2.2.2. The Rule of Law

The rule of law doctrine stipulates that every government move to act should adhere to stipulated legal norms and procedures which are a formal restraint on executive discretions.⁸⁵ The three components of this doctrine are: the overriding sovereignty of regular law, equality before the law, and the primacy of ordinary law as embodied in the law through judicial rulings, its typical formulation by A.V. Dicey.⁸⁶

The rule of law requires that any action taken in reference to presidential appointments should have its origin and boundaries in the Constitution and other statutes.⁸⁷ This involves the strict compliance to guidelines as prescribed in procedures such as constitutional timelines, qualifications requirement and confirmation where necessary.⁸⁸ Judicial review helps limit executive discretion within established legal parameters through placing on the appointor the duty of judicial review to ensure that those appointed adhere to the said legal requirements, considering that the judiciary is the protector of the Constitution.⁸⁹

The Nigerian judiciary had always used the rule of law to nullify that appointing invalidly based on the provisions of the constitution.⁹⁰ Such judicial supervision would serve to guarantee that the discretion of appointment made by the President is exercised as a legal and not an arbitrary

⁸⁴ H W R Wade and C F Forsyth, *Administrative Law* (OUP 2014).

⁸⁵ A V Dicey, *Law of the Constitution* (Macmillan 1959).

⁸⁶ Ibid.

⁸⁷ N Tobi, *Sources of Nigerian Law* (MIJ 1996).

⁸⁸ A A Obilade, *The Nigerian Legal System* (Spectrum 2001).

⁸⁹ S A de Smith, *Judicial Review of Administrative Action* (Sweet & Maxwell 1995).

⁹⁰ *Lakanmi v Attorney-General (Western State)* (1971) 1 UILR 201.

prerogative and secure the constitutional checks between executive effectiveness and judicial responsibility.⁹¹

2.2.3 The Theory of Accountability

Accountability Theory is an approach that assumes the responsibilities of people in the position of public authority to be accountable and responsible to their actions and decisions and is a key tenet of good governance.⁹² This theory argues that the authority of the people such as the appointive power by the President must be truly exercised on behalf of the people and this should be done in a transparent and responsive manner.⁹³

When it comes to presidential appointments, accountability comes in several forms that make appointments to be in the interest of the populace, and not that of personal or partisan gain.⁹⁴ The Senate confirmation, judicial review, and public scrutiny predetermined by the constitution all constitute an accountability mechanism, which limits presidential discretion.⁹⁵ Moreover, the fact that appointive power is fiduciary places an ethical burden on the President to provide a rationale of appointments on the basis of merit and national interest.⁹⁶

The accountability theory therefore offers the philosophical context of explaining the need of checks on appointive powers in order to have legitimate government.⁹⁷ It alters the appointive jurisdiction into a civil trust, which guarantees that government is being conducted in the interest of the common good and not as a basis of personal gain.⁹⁸

⁹¹ A O Obaseki, *The Judiciary and Constitutionalism in Nigeria* (Ibadan 1998).

⁹² P P Craig and G de Búrca, *EU Law* (OUP 2015).

⁹³ H Arendt, “On Violence”, (1970), MacMillan Publishers, London, p. 32

⁹⁴ J A G Griffith and M Street, *Principles of Administrative Law* (Pitman 1973).

⁹⁵ B Schwartz, *Administrative Law* (Little Brown 1991).

⁹⁶ O Hood Phillips, *Constitutional and Administrative Law* (Sweet & Maxwell 2001).

⁹⁷ M Elliott, *The Constitutional Foundations of Judicial Review* (Hart 2001).

⁹⁸ S O Akintola, *Public Law in Nigeria* (Abuja Law Press 2016).

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK ON THE PRESIDENT'S APPOINTING POWERS

3.1 Overview of the Executive Powers under the 1999 Constitution

The rules governing the powers of appointment on the part of the President can be found in the much larger constitutional framework regarding the powers of the executive under the 1999 Constitution.⁹⁹ The chief source of this power is the section 5(1), that contains the provision that the executive powers of the Federation shall be vested in the President and may be exercised by him whether acting personally or as the Vice-President and Ministers of the Government of the Federation or as officers in the public service of the Federation.¹⁰⁰

The exercise of executive power is so broad in its scope that it embraces three basic dimensions, the implementation and enforcement of the clauses of the Constitution itself; implementation and enforcement of every law enacted by the National Assembly; the day-in-day-out running of the business of the Federal Government of Nigeria.¹⁰¹ The Supreme Court has described such giving of authority as limited but broad and vast as it is limited to the guidelines of the Constitution.¹⁰²

The appointing power is an inevitable part of this executive power, and is the key constitutional tool by which the President makes his government and executes his administration.¹⁰³ The President would be severely weakened in his ability to execute legislations and influence and

⁹⁹ B O Nwabueze, *Presidentialism in Commonwealth Africa* (London: C Hurst & Co, 1974) 112–115.

¹⁰⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 5(1).

¹⁰¹ T O Elias, *The Nigerian Legal System* (London: Routledge & Kegan Paul, 1963) 87.

¹⁰² *Attorney-General of the Federation v Abubakar* (2007) 10 NWLR (Pt 1041) 1 (SC) 50–51.

¹⁰³ E Malemi, *Constitutional Law of Nigeria* (Lagos: Princeton Publishing Co, 2012) 221–223.

structure policies, as well as handle affairs of state, since they lack the ability to appoint key officials to various government positions.¹⁰⁴

The constitutional architecture so provides a direct nexus between the general executive power that is possessed by the President, and the particular power to make appointments, which is an incident of the former.¹⁰⁵ Nevertheless, this authority has been cautiously bounded by certain provisions of the constitution, each subject to their procedural specifications.¹⁰⁶

3.2 Senate-confirmation Appointments.

A major set of presidential nominations laid out in the Constitution of 1999 is that the Senate must approve or reject the nomination, which is an important mechanism in the constitution to check and balance.¹⁰⁷ This is necessary so that in the case of essential depots of state, the Presidential right of nomination can be checked and lawfully approved by the Congress, so that the executive cannot unilaterally take control of important governmental institutions.¹⁰⁸

The constitutional justification behind this need is to guarantee democratic accountability and also qualitative examination of individuals charged to high public office.¹⁰⁹ The Constitution enables the people to have a modicum of representation in the process of appointment since the Senate is an elected body to represent the people.¹¹⁰ It is a democratic filtering mechanism that will ensure that only those who have the required qualifications, character and competence are selected in sensitive positions.

¹⁰⁴ P P Craig, *Administrative Law* (8th edn, London: Sweet & Maxwell, 2016) 34–36.

¹⁰⁵ M Elliott, *The Constitutional Foundations of Judicial Review* (Oxford: Hart Publishing, 2001) 58–60.

¹⁰⁶ H W R Wade and C F Forsyth, *Administrative Law* (11th edn, Oxford: Oxford University Press, 2014) 19–22.

¹⁰⁷ I E Sagay, *Nigerian Law of the Constitution* (Ibadan: Spectrum Books Ltd, 2000) 145–147

¹⁰⁸ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, London: Macmillan, 1959) 202–204.

¹⁰⁹ M J C Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1967) 45–47.

¹¹⁰ J A G Griffith and H Street, *Principles of Administrative Law* (5th edn, London: Pitman, 1973) 66–68.

The Supreme Court has confirmed the obligation of such a requirement by saying that all appointments made without Senate confirmation where such confirmation is to be made are invalid under the constitution. Such a judicial office imbalances the constitutional system of checks and balances and emphasizes the fact that the position of the Senate confirmation is not a sham duty but a real one.¹¹¹

Those particular offices, which will be discussed in this paper under the headings of sub-sections that are to be filled by Senate confirmations are Ministers of the Government of the Federation, the Chief Justice of Nigeria and other Justices of higher courts, the Attorney-General of the Federation, he heads of the major security services and the chairs and members of essential independent executive bodies and commissions.¹¹²

3.2.1 Ministers of the Federation

Ministers appointment is one of the biggest exercises of the Presidential powers of appointment that are subject to Senate confirmation. In the Constitution of 1999 in the section of 147(1) it states that There shall be such offices of Ministers of the Government of the Federation, as may be created by the President. But this authority to make offices is instantly qualified by the provision of section 147 (2), that-Any appointment to the office of Minister of the Government of the Federation shall be liable to confirmation by the Senate.¹¹³

According to this constitutional structure, there is an express chain of command, with the President in the first place having the initiative to create ministerial offices, and nominate individuals to

¹¹¹ *Shitta-Bey v Federal Public Service Commission* (1981) 1 SC 40, 56–57.

¹¹² A Bradley, K Ewing and C Knight, *Constitutional and Administrative Law* (17th edn, London: Pearson, 2018) 402–404.

¹¹³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 147(1)–(2).

occupy the same, which would only take effect as appointments once confirmed by the Senate.¹¹⁴

This requirement has been interpreted as a must by the Supreme Court which reported that a ministerial appointment that is not confirmed by the Senate is incomplete and absent of validity.¹¹⁵

Another unique aspect of the appointment of the ministers is the requirement of federal character found in section 147(3) stating that, The President shall appoint not less than one Minister to each of the States, who shall be an indigene of such State. This provision entails mandatory geographical dispersion in appointing ministers and hence every state of the federal government is included in the Federal executive council.¹¹⁶

The Senate confirmation and federal character requirements here form a complicated system of appointing the president balancing national representation, legislative control, and presidential discretion in appointing. This non-single-officer requirement is indicative of the need by the Constitution to balance efficiency in the performance of the executive and democratic accountability and national cohesiveness.¹¹⁷

3.2.2 Chief Justice of Nigeria and Justices of Superior Courts

Judicial officers confirmed to superior courts is another distinct category of the confirmation-bound category of appointments which is a two-layered check system that balances the two branches of executive and judicial with inputs of the legislature. Section 231(1) of the Constitution says that the appointment of the Chief Justice of Nigeria shall be done by the President on the

¹¹⁴ K C Wheare, *Federal Government* (4th edn, Oxford: Oxford University Press, 1963) 90–92.

¹¹⁵ *Adesanya v President of the Federal Republic of Nigeria* (1981) 2 NCLR 358 (SC) 375.

¹¹⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 147(3).

¹¹⁷ I Elaigwu, *Federalism in Nigeria under the Presidential Constitution* (Jos: University of Jos Press, 1983) 134–136.

recommendation of the National Judicial Council though such appointment would be subject to confirmation by the Senate.¹¹⁸

The constitutional framework provides a three-step procedure in the appointment of judges: At the start of the process, which is recommended by the National Judicial Council (NJC), it is appointed by the President, and approved by the Senate. This elaborate design is an indication of the commitment of the Constitution to the independence of the judiciary system with democratic accountability.

This is true of the appointment of Justices of the Supreme Court by section 231(2), Justices of the Court of Appeal by section 238(2), Chief Judges and Judges of State High Courts by section 271 and 281.¹¹⁹ The unanimous use of the mechanism throughout all the higher courts can be taken as the hint of the constitutional significance of the autonomy, competency, and responsibility of the judicial system.¹²⁰

The initial parameter of NJC in initiating recommendations, is a technical filtering mechanism where only competently competent and ethically suitable law experts will be offered the appointment. The confirmation power of the Senate by then provides a democratic check and the formal appointment power of the President ensures the role of the President as being constitutional in the process.¹²¹ The purpose of this collaborative appointment system is to prevent the executive realized unilateral stuffing of the judiciary with people they like as well as to ensure the judiciary

¹¹⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 231(1).

¹¹⁹ N Tobi, *Sources of Nigerian Law* (Lagos: MIJ Publishers Ltd, 1996) 212–214.

¹²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 238(2), 271(1), 281(1).

¹²¹ S A de Smith, H Woolf and J Jowell, *Judicial Review of Administrative Action* (5th edn, London: Sweet & Maxwell, 1995) 78–80.

is not turned into an oligarchy of its own. The system is a sophisticated way of the Constitution to uphold the fine balance of powers between the three arms of the government.

3.2.3. Attorney-General of the Federation.

One of the exceptional constitutional offices which bestows upon the holder the executive as well as the legal and political powers in a single capacity is a unique office of the Attorney-General of the Federation (AGF). The constitution of 1999 in Section 150(1) states that, There shall be an Attorney-General of the Federation who shall be Chief Law Officer of the Federation and a Minister of the Government of the Federation.¹²²

The AGF appointment is done under the dual process that has been set out in the case of Ministers under section 147 that involves presidential nomination followed by Senate confirmation. But the office has other constitutional qualifications and duties which make it different in comparison to other normal ministerial assignments. AGF should qualify as a legal practitioner in Nigeria and has to have been a practitioner in Nigeria not less than a ten-year period.¹²³

The peculiarity of this office is that it is a dual character the political executive position and at the same time the chief legal officer of the federation. The AGF being a Minister forms a part of the political team of the President and is at the discretion of the President. At the same time, being the Chief Law Officer, AGF has constitutional duties to the Nigerian state which are beyond the political loyalty”.¹²⁴

¹²² Constitution of the Federal Republic of Nigeria 1999 (as amended) s 150(1).

¹²³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 147(2).

¹²⁴ Legal Practitioners Act Cap L11 Laws of the Federation of Nigeria 2004 s 2.

Such duality generates the possibility of conflict between the AGF acting as a political appointee and as the custodian of the rule of law that should act on their own and decide on matters without bias within the Constitution. This confirmation role of the Senate is therefore, an added advantage of making sure that the individual entering such a sensitive office is not only qualified and legally fit to be in such a constitutional and tricky position of duality but also has the character and independence to manoeuvre the constitutional position of the office.¹²⁵

The constitutional structure is indicative of the sensitive nature of maintaining the executive nature of the office and at the same time making sure that the holder of the office could honorably play the hallowed duty of serving as the protector of the rule of law in Nigeria.¹²⁶

3.2.4 Heads of Security Agencies

Such appointment of leaders of key security and law-enforcement agencies is a significant category under the confirmation-bound appointments since the performance of such agencies is delicate in nature and political responsibility in security governance is necessary. Although constitutional convention and legislative intervention have changed the position of Senate confirmation on all heads of security agencies, policy and practice have historical roots where political integration demanded that legislative bodies must be involved in ensuring that important security agencies like these are managed.¹²⁷

The Inspector-General of Police (IGP) is appointed to the position that is most constitutionally based in matters touching on security. Under section 215(1)(a) of the Constitution it is stated that

¹²⁵ C F Forsyth, *Judicial Review and the Constitution* (Oxford: Hart Publishing, 2000) 145–147.

¹²⁶ O Hood Phillips, P Jackson and P Leopold, *Constitutional and Administrative Law* (8th edn, London: Sweet & Maxwell, 2001) 389–391.

¹²⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 215(1)(a).

the IGP will be appointed by the President following the recommendation of the Nigeria Police Council. The Nigeria Police Council, which is created in Part 1 in the Third Schedule to the constitution, is comprised of the President as the Chairman, Governor of each State, Chairman with the Police Service Commission, and IGP. This three-tiered appointment system provides a federal-state consultation in the appointment of the police leadership. Other highly sensitive security apparatuses such as the Chief of Defense Staff, Chief of Army Staff, Chief of Naval Staff and Chief of Air Staff have acquired a practice of being appointed by the Senate but this is largely done on statutory grounds and not by constitutional mandate. These appointments are based on the legal framework of the National security agencies act alongside the respective Acts that lay the groundwork of the armed services.¹²⁸

The rising norm of the Senate confirmation of security chiefs is indicative of the rising acknowledgement of legislative accountability of security governance. This will increase democratic accountability and make sure that people who are selected to such sensitive posts have the confidence of the people throughout the country. The constitutional and statutory systems of these appointments attempt to strike the right balance between efficiency of operation and accountability in politics to establish that proper security governance necessitates professional competence in tandem with democratic legitimacy.¹²⁹

3.2.5 Heads of Independent Executive Bodies

A number of independent executive bodies and commissions introduced by the Constitution of 1999 is aimed at monitoring the important spheres of the national life and guaranteeing the

¹²⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) Third Schedule, Part I.

¹²⁹ National Security Agencies Act Cap N74 Laws of the Federation of Nigeria 2004 s 1.

adequate operation of the democracy in Nigeria. The Senate has to confirm the appointment of the chairman and the members of these bodies indicating their criticality and necessity to keep them out of sheer executive influence. This is specifically named in the Constitution in sections 153 and 154 and encompasses: the Code of Conduct Bureau, the Council of State, the Federal Character Commission, the Federal Civil Service Commission, the Independent National Electoral Commission (INEC), the National Judicial Council, the National Population Commission, the Police Service Commission as well as the Revenue Mobilisation, Allocation and Fiscal Commission.¹³⁰

These bodies have standard constitutional procedures in appointing them. In section 154(1) it is stated that, the membership of any of the bodies so established shall, subject to the stipulations in this Constitution, be appointed by the President, and subsection (2) inferred that, the Senate should confirm the nomination. This is because the constitutional justification of having Senate confirmation over such appointments is to be assured of independence, credibility and impartiality of these vital institutions. This system of checks and balances that the Constitution establishes by means of the inclusion of the Senate in the appointment process helps to ensure that the President will not be allowed to pack these institutions with partisan loyalists and undermine their independence.¹³¹

This is especially important with respect to others such as the actions of bodies such as the INEC as the execution of free and fair election by the constitutions of a country mandates an absolute impartiality and independence by the body/organization on the side of the executive branch. The confirmation process is a democratic filter to keep appointment to such sensitive positions to only

¹³⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 153–154.

¹³¹ *ibid* s 153(1).

those people of unquestionable integrity and competence. The Supreme Court has further confirmed the compulsory part of Senate confirmation on these appointments and that any move to avoid the Senate confirmation makes such appointments to be null and void.¹³²

3.3 Sole Discretionary Appointments

Section 171 of the Constitution contain the power to appoint some key officers to the President free of any further approval or confirmation. However, compared to the confirmation-bound appointments the 1999 Constitution creates a large category of appointments, which lie in the exclusive and sole discretion of the President. The offices to which this discretionary power will be applied are those of the Secretary to the Government of the Federation, Head of the Civil Service of the Federation, Ambassadors and High Commissioners, Permanent Secretaries in the Federal Civil Service, the Chief of Staff to the President, the Principal Secretary to the President, and heads of any extra-ministerial departments of the Government of the Federation.¹³³

The constitutional purpose of granting such extensive power to make appointment to such an extent to only the President is to have an efficient and coordinated administration of the executive. Such appointments usually entail officers who cannot do away with making the center of the Presidential administration and play a crucial role in the day-to-day operations of the presidency and the federal bureaucracy. The fact that the President is not required to provide confirmation can make him, from his government almost instantly and create a team of individuals that sees his vision and approach to work.¹³⁴

¹³² I A Ayua, *The Rule of Law in Nigeria* (Ibadan: Heinemann Educational Books, 1993) 55–57.

¹³³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 171.

¹³⁴ *ibid.*

The wide discretionary authority is not, however, quite unlimited. Although unconfirmed by legislation, it still is limited by other constitutional provisions, such as the Federal Character Principle established by section 14(3) and the general rule that all the executive domain is to work within the confines of the Constitution. Moreover, the courts will still have the power to check such appointments on how much of what is in the constitution, specifically on qualifications and due process. This accumulation of such a large amount of appointing power in the presidency will symbolize a fine constitutional balance between the efficiency of executive governance and the ability to provide democratic accountability, and both chances of good government on the one hand and the possibility of patronage and non-transparency on the other.¹³⁵

3.4 Recommendation or Consultative Appointment.

It is the second provision of the Constitution of 1999 which introduces a specific type of presidential appointments under which the executive power does not work alone but is conditional on being recommended or consulted with other constitutional institutions. It is an advanced constitutional process, a hybrid approach whereby institutional expertise and collective decision-making are reflected in the appointment procedure and hence, limiting pure presidential discretion with expert input and increased involvement of more stakeholders as a whole.¹³⁶

The best illustration of this class is the nomination of judicial officers. As discussed above under section 231(1), it requires the President to appoint the Chief Justice of Nigeria upon the recommendation of the National Judicial Council. The requirement within the constitution guarantees that appointment to judgeship is launched and checked by the top of the legal profession

¹³⁵ A A Obilade, *The Nigerian Legal System* (Ibadan: Spectrum Books Ltd, 2001) 178–180.

¹³⁶ B O Okonkwo and M Naish, *Introduction to Nigerian Law* (2nd edn, London: Sweet & Maxwell, 2000) 223–225.

thus ensuring that judicial integrity is not simply pegged on political considerations and that the quality of the output by a legal system remains intact. Likewise, the President in section 215(1)(a) directing the appointment of the Inspector-General of Police cannot be done without the recommendation of the Nigeria Police Council. The composition of the Police Council that covers the President, all the state governors, the Chairman of the Police Service Commission and the Inspector-General of Police makes sure that the interests of both the federal and state are well addressed in appointing the best police officer in the country according to the federal structure in Nigeria.¹³⁷

The constitutional importance of such a model which is based on the recommendation is the intentional division of powers in appointing the executive with other specialized institutions. Although the President will exercise the formal power of appointment, the initiating and recommendatory power lies with those bodies that have technical expertise, institutional knowledge or a representative nature. This gives rise to a system of collective accountability which has improved the quality of appointments in sensitive offices as well as the democratic nature of appointments. The judiciary has continuously construed the words usage of recommendation and advice in these constitutional contextual situations as establishing compulsory processes as opposed to voluntary consultations. Rejection of what is necessary to receive the needed recommendation or advice to make such appointments is enough to render such appointments constitutionally invalid since they would amount to an exercise of power that is not granted in the Constitution of the President.¹³⁸

¹³⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 231 and 215.

¹³⁸ *Lakanmi v Attorney-General (Western State)* (1971) 1 UILR 201, 215–217.

The approach of the Constitution to the balancing of executive power against institutional experience and experience, especially of offices that need technical skills, whose duties should be independent of direct executive political connection, or whose popularity must cut across the multifaceted federation of Nigeria is therefore reflected in this method of appointment.

3.5 Checks and Limitations.

The Constitution of 1999 provides a detailed system of checks and restrictions to the appointment actors of the President, to avoid the abuse of executive power by an ad-hoc and unconstitutional act.¹³⁹ These mechanisms work at various levels whereby law can be embarked on through legislative checks and balances through legislative oversight, judicial checks and balances and constitutional principles and citizen checks and balances where the appointment of the president follows the norms of democracy, meritocracy and the federal system of the country of Nigeria. It is this method of balanced governance that echoes the initial core value, namely that executive authority, even the authority of appointment cannot be overstepped beyond the regulated limits of the law, and it should be questioned accordingly.¹⁴⁰

3.5.1 The Federal Character Principle.

The Federal Character Principle is a substantive restriction on presidential appointments stated in section 14(3) of the Constitution: it states that the constitution must specify that government bodies will contain a reflection of the federal diversity in Nigeria. Judicial interpretations confirm that this principle is legally binding and is operationalised by the Federal Character Commission (Establishment, etc.) Act 2000 which contains the statutory framework of operation.¹⁴¹ The federal

¹³⁹ E O Akanki, *Essays on Constitutional Law* (Ibadan: University Press Plc, 1995) 90–92.

¹⁴⁰ J O Ojo, *Constitutional Law and Military Rule in Nigeria* (Ibadan: Evans Brothers, 1987) 121–123.

¹⁴¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 14(3).

character requirement assures fair representation amongst the states and ethnic groups of Nigeria hence the President does not have many choices of favoring certain regions or ethnic group when making appointments.¹⁴²

3.5.2 Senate Confirmation

The Constitution requires that Senate confirmation should be done on major presidential nominations such as ministers, judicial officers, and heads of independent commissions.¹⁴³ The courts have always upheld the necessity of this requirement and most of the recent jurisprudence has invalidated appointment which was not done with due confirmation.¹⁴⁴ This better check of legislature oversees important government appointments.

3.5.3 Judicial Review

The courts have the power to reject presidential appointments on the grounds of nonconformity. The cases of the Supreme Court create the precedent that all appointments done contrary to the constitutional procedure are invalid.¹⁴⁵ This judicial check is an essential process of creating constitutional limits to the executive authority.

3.5.4 Public Scrutiny

Other than formal constitutional procedures, civil society, media and the citizenry offer even more check to presidential appointment choices. Informal accountability mechanisms are provided by transparency in Senate confirmation elections, investigative journalism and lobbying by the

¹⁴² Federal Character Commission (Establishment, etc.) Act 2000.

¹⁴³ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 147(2), 231(1), 154(1).

¹⁴⁴ *Adesanya v. President of Nigeria* (1981) 2 NCLR 358 (SC).

¹⁴⁵ *Governor of Kaduna State v. Kagoma* (1982) 6 SC 87.

professional associations as supplements to formal checks. These procedures promote meritocratic promotions, detergent political favouritism and improve the level of trust of people in governance.

3.6 Courts Interpreting the powers of appointment.

The judiciary of Nigeria has been very instrumental in establishing the boundaries and the boundaries of presidential powers of appointing people at will by its landmark constitutional interpretations. It has always been ruled in the courts that the President should use appointive powers without going against the constitutional provisions.

In *Nganjiwa v Federal Republic of Nigeria*, the court struck down the appointment of the Director-General of the National Pension Commission on the basis of his failure to comply with the National Pension Commission Act, noting that the procedures laid down under the Federal legislation on appointments which position is held by William Pringle was obligatory.¹⁴⁶ In *Attorney-General of Bendel State v Attorney-General of the Federation* in which the Supreme Court reaffirmed that although the executive powers of the President are broad and far reaching, they do not have boundaries and should be used in harmony with the provisions of the Constitution.¹⁴⁷ The significance of this interpretation is that the power of appointment, though in the hands of the President, is still subject to constitutional checks in the form of legislative approval to such power and compliance with legislative qualifications.

The judicial system has also discussed the controversial aspect of appointments of acting. The Supreme Court ruled that it was unconstitutional to remove a Chief Judge without the recommendation of the National Judicial Council, in *Elelu-Habeeb v. A.G. Federation*, it was

¹⁴⁶ *Nganjiwa v Federal Republic of Nigeria* (2017) 13 NWLR (Pt. 1581) 454 (CA).

¹⁴⁷ *Attorney-General of Bendel State v. Attorney-General of the Federation* (1981) 10 SC 1.

stated that the constitutional protection could not be undermined by the acting of appointing someone to a position.¹⁴⁸

Also, in *A.G. Lagos State v. A.G. Federation*, the Supreme Court highlighted that the executive powers of the President such as appointing powers should be undertaken in hope of the Constitution and prevailing laws.¹⁴⁹

3.7 Comparison to Past Constitutional Regimes

The history of presidential powers to make appointments in Nigeria shows a lot of diversity in various constitutional governments, a result of philosophies of governance and administration.

Nigeria had a parliamentary system with executive being vested on the Prime Minister as the head of government under the 1963 Republican Constitution and President a ceremonial head of state. The powers of the Prime Minister in appointing were cross-vetoed, and hence shared with the cabinet and liable to parliamentary confidence.¹⁵⁰ This was totally in contrast to the present day presidential system in which appointive powers have been centralized in the executive presidency.

The 1979 Constitution brought the American form of the presidential system which still remains significantly in the 1999 Constitution. Nonetheless, the 1979 Constitution included more detailed mechanisms to have the legislation reviewed, such as giving the Senate a tight deadline on how to evaluate presidential nominees.¹⁵¹ In the existing constitution, some of the executive-legislative

¹⁴⁸ *Elelu-Habeeb v. Attorney-General of the Federation* (2012) 13 NWLR (Pt 1318) 423 (SC).

¹⁴⁹ *Attorney-General of Lagos State v. Attorney-General of the Federation* (2003) 12 NWLR (Pt 833) 1 (SC).

¹⁵⁰ Constitution of the Federal Republic of Nigeria 1963.

¹⁵¹ Constitution of the Federal Republic of Nigeria 1979.

conflicts in regard to appointments have been witnessed with the constitution relatively preserving the executive- legislature fundamental structure.

The military regimes (1966-1979, 1983-1999) do their businesses by the decree that vested total appointive powers to the Head of State.¹⁵² This was characterized by the Constitution (Suspension and Modification) Decree No. 1 of 1966 that gave the military rulers unrestricted powers to make appointments without legal checks or judicial controls. This era was the opposite of constitutional democracy where appointive powers were carried as pure prerogative powers, as opposed to a public trust.

¹⁵² Constitution (Suspension and Modification) Decree No. 1 of 1966.

CHAPTER FOUR

ISSUES, CHALLENGES AND COMPARATIVE PERSPECTIVES

4.1 Political and Legal Controversies Surrounding Appointments

Presidential powers of appointing under the 1999 Constitution have brought about a lot of political and legal controversies that highlight tensions in the Nigerian system of democracy. The major issue that has been raised is the constant bickering between the executive and the legislature over the constitutional mandate of the Senate in confirming key appointments.¹⁵³ The confirmation process has in other cases been accused of being politicized as the Senate has been displayed to either serve as a rubber stamp of the nominees of the President or reject the nominees due to perceived political reasons rather than on merit.¹⁵⁴

The other argument which has arisen frequently is the application of the Federal Character Principle which is aimed at facilitating the national integration.¹⁵⁵ The principle aims at providing equitable representation in the different regions of Nigeria but critics believe that it tends to place experience on geographical dispersion and tends to work against institutional efficiency and effectiveness.¹⁵⁶

Such controversies demonstrate the thinness of the line that the Constitution tries to negotiate between the discretion of the executive and legislative control. They also indicate how the ideals of accountability, meritocracy, and good governance can be challenged once their applied use of

¹⁵³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 147(2)–(3).

¹⁵⁴ I E Sagay, *Nigerian Law of the Constitution* (Spectrum Books Ltd 2000).

¹⁵⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 14(3).

¹⁵⁶ B O Nwabueze, *The Presidential Constitution of Nigeria* (C Hurst & Co 1982).

appointive powers results in the ideals being exploited in support of political expediency rather than in benefiting the public interest.¹⁵⁷

4.2 Misuse of Appointing Powers and Implication to Governance.

The practice of presidential appointing powers in Nigeria has over the years provided a pattern of conduct, which stretches or evades constitutional boundaries. These practices are of great implications on governance, institutional integrity and democratic accountability.¹⁵⁸ A tendency that is revisiting abuse is the endless dependence on long-term employment arrangements in major federal institutions to dodge the constitutional demand of senatorial confirmation.¹⁵⁹ The case in point is the long service of Ibrahim Magu as the Acting Chairman of the Economic and fiscal Crimes Commission (EFCC) who served almost five years even when the Senate turned down his appointment on several occasions.¹⁶⁰ This tactic dilutes the constitutional checks and balances design through enabling the Executive to strategically keep in check the institutions without legislative checks.¹⁶¹

These practices help to create instability in institutions which are affected. Appointees in office under a sense of insecurity may fear taking decisive administrative action because they are afraid of putting their bosses off. This riskiness weakens the autonomy of the institution and affects the future planning of the policy.¹⁶² The courts have recognized similar issues when it comes to unlawful removal or appointments. As an example, in *Elelu-Habeeb v Attorney-General of the*

¹⁵⁷ A O Akintunde, *The Legislature and Executive in Nigeria* (Malthouse Press 2014).

¹⁵⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 171.

¹⁵⁹ O C Okeke, 'Executive Dominance and Democratic Governance in Nigeria' (2015) *Nigerian Journal of Public Law* 112.

¹⁶⁰ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

¹⁶¹ M O Ogundipe, 'Separation of Powers and Constitutionalism in Nigeria' (2012) *University of Lagos Law Review* 78.

¹⁶² T O Elias, *The Nigerian Legal System* (Routledge 1963).

Federation, the Supreme Court reminded that those powers to make appointments by the executive should follow the stipulated constitutional provisions, especially when the institutional autonomy is in question.¹⁶³ As much as this case was about the appointment of judges, the rationale is part of what is expected of the Court in terms of compliance to a due process that is a larger contribution of the Constitution.

The other important aspect of abuse is the manipulation of the federal character principle. Although the Constitution mandates that national diversity is reflected in appointments, this has not been documented in a flawless manner since some appointments have been made on grounds of favors to politically loyal political figures and not inclusion.¹⁶⁴ This conflict has been recognised in law. Essentially, as affirmed by the Court of Appeal in the case of *Federal Character Commission v Laoye*, appointments should not be made contrary to the principle of federal character and that non-conformity is subject to judicial scrutiny.¹⁶⁵ However, partial or token compliance remains in the field, leading to the tendency in the minds of the population that they are excluded and undermining the purpose of the principle as nation-building.

Also, in some occasions politically motivated appointments have resulted into evident breaches of statutory qualification requirements. In *Shitta-Bey v Federal Public Service Commission*, the Supreme Court ruled that the Executive had no right to ignore statutory prerequisites that regulated appointments of people to offices.¹⁶⁶ This ruling further strengthens the principle of law on how

¹⁶³ *Elelu-Habeeb v Attorney-General of the Federation* (2012) 13 NWLR (Pt 1318) 423 (SC).

¹⁶⁴ J I Elaigwu, 'The Federal Character Principle and National Integration' (1987) *Nigerian Institute of International Affairs Monograph Series*.

¹⁶⁵ *Federal Character Commission v Laoye* (1989) 2 NWLR (Pt 106) 652 (CA).

¹⁶⁶ *Shitta-Bey v Federal Public Service Commission* (1981) 1 SC 40 (SC).

people are appointed but also underscores the inconsistency between judicial utterances and repetitive executive behavior.

Collectively, these usurped powers of appointment reduce the efficiency of the institutions, kill civic confidence, and invert the constitutional balance of power. Although judiciary is an important checkpoint, its practical application rules out the problematic issues that require reform of the system and an increased legislative control which may guarantee responsibility in presidential appointments.¹⁶⁷

4.3 Federal Character Principle and Challenges of Inclusiveness.

Federal Character Principle is an administrative constitutional provision made under section 14(3) of the 1999 Constitution, which strives to facilitate national integration and ensure that this is not overtaken by a specific state or ethnic group in government.¹⁶⁸ Nevertheless, the application of this principle has brought about serious issues of a number of competing interests between inclusiveness and meritocracy.¹⁶⁹

As a matter of fact, the practical use of the Federal Character Principle has consistently focused on the geographical representation at the cost of professional competence and merit. This has even led to appointment on grounds of state of origin than qualification leading to poor performance and efficacy of public institutions.¹⁷⁰ The execution of the principle has also been faced with the

¹⁶⁷ A O Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979).

¹⁶⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 14(3).

¹⁶⁹ K C Wheare, *Federal Government* (4th edn, Oxford University Press 1963).

¹⁷⁰ B O Nwabueze, *Constitutionalism in the Emergent States* (C Hurst & Co 1973).

criticism of concentrating on the elite accommodation only without regard to the wider structural imbalance that the different populations of Nigeria have.¹⁷¹

More so, the Federal Character Commission, which was formed to ensure that this principle is respected, has struggled to enforce real-world inclusiveness as opposed to connecting this principle to mere numbers. Political interference and the restricted enforcing capabilities of the commission have interfered with its work most of the time, and made it less powerful in terms of protecting fair representation.¹⁷²

The crisis between federal character requirement and appointments made on basis of merit is one of the deep rooted issues in the Nigerian public service. Although the principle is meant to bring together nationally, its practical use currently brings about the feeling of tokenism in some cases and strengthens the ethnic segregation that the principle is meant to cushion.¹⁷³

4.4 Judicial Review of Presidential Appointments.

The issue of judicial review in Nigeria is an imperative constitutional protection mechanism against the abuse of the powers of the President or over-exertion of the powers of the President as Nigeria's Head of State. Even although the Constitution of 1999 grants the President much more powers in appointing persons, these are not absolute. The actions of all the executive should be within constitutional process, statutory qualification and substantive democratic process (rule of law, separation of powers, etc.) the courts have repeatedly said.

¹⁷¹ T O Elias, *The Nigerian Legal System* (Routledge 1963).

¹⁷² Constitution of the Federal Republic of Nigeria 1999 (as amended) s 153.

¹⁷³ Y Osinbajo, 'Federalism and the Nigerian Constitution' (1999) *Nigerian Bar Journal* 23.

The most important one is *Elelu-Habeeb v Attorney-General of the Federation* which led to the Supreme Court ruling that, the National Judicial Council (NJC) must be involved in any process of removal and replacement of a Chief Judge by the executive. The reasoning in the case was relevant to the President's appointment authority for judicial officers as removal proceedings are inherently tied to the judiciary's constitutionally prescribed procedures involving the NJC.

In a similar manner, *Eze v Governor of Abia State* had the Court of Appeal set aside an appointment made without adherence to the provisions of the law, thus maintaining the strict adherence to the law and the letter of the law in public office appointments. This rule also applies to federal appointments, and it is clear that no matter how much discretion the president has, he cannot disregard the qualifications provisions of the law.

In *Attorney-General of the Federation v Abubakar*, the Supreme Court has also given general directions about limitations of the executive powers, which requires that all activities of the executive be in accordance with the constitution. This judgment further confirms that appointments by the President that are made in contravention of the constitutional provisions, the constitutional safety valves, or requirement for federal character are subject to challenge in court.

In addition, the Supreme Court in *A.G. Federation v A.G. Abia State (No. 2)* made it clear that Federal Character Principle of section 14(3) of the Constitution must be reflected in federal appointments. This lays the groundwork for judicial review of the President's appointing authority within the principles of inclusiveness and national balance.

These are important precedents but practical hurdles to judicial review remain. Judicial action typically occurs after appointments have been made and at times following the appointment of the

appointees, bringing corrective action further removed in time. In addition, when appointments are made in highly political situations, courts sometimes rely on the political question doctrine in order to exercise restraint. Even so, judicial review is a powerful tool for curbing excesses of the Executive, strengthening constitutionalism, and ensuring that appointments by the President are made within the bounds of the law.

4.5 Ambiguities and Gaps in the Constitutional Framework

Presidential appointment power is a big puzzle with a number of ambiguities and omissions in the 1999 Constitution, which are not adequately defined or represented. The Constitution is quite specific about the distinction between Senate confirmation appointments and the President's appointments, but it is rather vague on the issues of acting appointments, and their duration and scope. The lack of information has made a constitutional opening for long-term retention of officials in acting capacities, thus reducing the scrutiny of the Senate and putting strain on the Executive and Legislature.

It was these gaps that have been noted in judicial decisions. The Court of Appeal in *Oluwadare v Oba Adebawale* said interpreting Constitution provisions strictly was the way to go where the Constitution is silent or ambiguous so as to preserve constitutional intent. But courts also have recognized that some situations of appointments are left in constitutional areas where there is no direct direction, leaving space for executive discretion that can be abused.

In addition, some ambiguity occurs when there are overlapping provisions between the constitution and the enabling laws, as to the authority to appoint, discipline or remove certain public officers. One clear example of this is in *Lakanmi v Attorney-General (Western Region)* where the Supreme

Court said that no power can be delegated to the executive or the legislature that is not expressly authorised by the Constitution or that conflicts with the Constitutionally entrenched protections. The Court's reasoning demonstrates the potential for institutional conflict and judicial activism arising from uncertainties within constitutional and statutory structures.

Likewise, in *Attorney-General of the Federation v Abubakar*, the Supreme Court reiterated that the discretionary executive powers must always be exercised in accordance with the constitution and that the exercise of the power must be clear to ensure that it is not misapplied. However, the lack of specific constitutional rules on, for instance, how succession is to be handled in the event of a vacancy, the rules on merit-based appointments and sanctions for non-compliance with federal character requirements still allow wide and sometimes unchecked levels of discretion for the president.

The gaps in the constitution underline the pressing need for more precise statutes for appointments. Governance stability and democratic accountability can be undermined by varying perceptions and political manipulation if the procedures, limits, and safeguards are not detailed.

4.6 Comparative Analysis: Appointing Powers of Presidents

The analysis of the presidential appointing powers in Nigeria, the United States and Kenya is instructive of the manner in which presidential powers are conceived and regulated in distinct constitutional frameworks. All three have presidential systems with the participation of the legislatures in certain appointments, but differ in the extent of oversight, procedural formality, and enforcement. The comparative analysis puts Nigeria's system in a constitutional perspective and underscores other models of executive power and its accountability and democratic regulation.

4.6.1 The United States

While structurally similar to Nigeria's in its presidential nature, it also demonstrates both parallels and lessons to learn from the appointive power of the President of the United States. The power is based on Article II, Section 2 of the U.S. Constitution, where the Senate has to confirm the principal officers, as is the case in Nigeria.

One of the big differences is the strength of the Senate confirmation process. The U.S. Senate Committee system, especially the standing committees, tend to hold detailed, investigative hearings of the nominees' qualifications, past experience and policy positions, which are more thorough than are usually witnessed in Nigeria before a hearing. In addition, the Senate's "senatorial courtesy," which allows for a senator from the nominee's home state to veto confirmation, adds an informal political hurdle.

Confirmable appointments are also more expansive in the U.S. as Congress has the authority to oversee a wider swath of "inferior officers" of the executive branch than it does in the UK.

4.6.2 Kenya

The Constitution of Kenya 2010 also gives the President broad appointment powers, albeit subject to a more structured legislative oversight, a structure that shares many similarities with that of the Nigerian Constitution. The President is vested with powers to nominate, with the approval of the National Assembly, and appoint principal state officers, that is Cabinet Secretaries, the Attorney General, Secretary to the Cabinet, Principal Secretaries and diplomatic representatives under Article 132 (2) of the Constitution of Kenya. The need for legislative confirmation puts a

constitutional limitation on the president's discretion and helps ensure that he will not exercise it without oversight.

Moreover, Article 166(1) explicitly provides for the appointment of the Chief Justice, Deputy Chief Justice and other Judges of Superior Courts. The President shall make these appointments of judges in accordance with the recommendations of the Judicial Service Commission with the approval of the National Assembly. This suggested combination of recommendation and approval process helps to minimise politicisation because the judicial appointments in Kenya are based on professional qualification and democratic legitimacy. Moreover, Article 250 prescribes that commissions' members and independent offices be designated and recommended by the National Assembly, approved by it and appointed by the President, thus ensuring accountability and reinforcing the role of the legislature in the process of appointing key personnel to the state.

As a whole, the Kenyan constitution strike a balance between executive power and parliamentary oversight and commission-based input, and are an attempt to limit presidential appointing power in a system of checks and balances similar to others in modern constitutionalism..

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The current research critically analyzed the appointment powers of the President in the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The research was used to establish the foundation of the study, it explained the meaning and nature of appointing powers, classifications of the presidential appointments, the constitutional checks and balances, the Federal Character Principle, and the legal theories that support limitation on executive discretion. Judicial decisions and comparative constitutional practices relevant to the issue of presidential appointments were also analysed.

The study identified the following constitutional powers that the President has to appoint a person to a high office in the public service: Section 5, 147, 150, 153, 154, 171 and 231 of the Constitution. These powers extend to ministers, judicial officers, ambassadors, heads of commissions and senior administrative officers. The study noted that power appointment is still a vital mechanism which the President uses to establish government, execute policies and provide continuity in government.

The study also found that there are no "absolute powers to the presidency. The Constitution has subjected many appointments to the following: Senate Confirmation, Institutional Recommendation, Judicial Review and the Federal Character Principle. These restrictions have been put in place to encourage accountability, transparency, competency, and national representation in the appointment process.

It was also discovered that the de-facto implementation of these constitutional protections has been weak. The Senate confirmation process has been marred at times by partisan politics, delays, and

political maneuvering. In some cases, nominees are selected without serious evaluation and in other cases, they are rejected for reasons that have nothing to do with merit. This undermines the quality of legislatures' oversight. The study also found that long acting terms are a common way to circumvent Senate nomination. Lack of official turnover over long periods leads to weakening of constitutional checks, loss of institutional independence and uncertainty in public institutions.

The other, key, discovery was that the Federal Character Principle has yielded mixed results. The principle of representation and national unity is good, but sometimes it appears to have been more about balancing geographies than performance and merit. This puts a strain on inclusiveness and administrative convenience. The investigation also revealed that Nigerian courts have been very instrumental in curbing abuses of the appointing power. It has been judicially established that executive appointments must be made in accordance with constitution and statutory requirements. But, if intervention by court takes place after appointments have been made, it does not have a strong immediate corrective effect.

Finally, the study identified gaps in the constitutional system that allow too much executive discretion, such as ambiguities about appointments to the office, deadlines, appointments based on meritorious qualifications, and the lack of penalties for failure to comply with the constitution.

5.2 Recommendations

Based on the results of this study, the following recommendations are made:

(i) There is a need for constitutional amendment or comprehensive legislation explicitly to regulate the appointments of the President, particularly acting appointments, the time for confirmation, qualifications for appointees, and the sanctions for failure to confirm.

(iii) Senate confirmation hearings should be strengthened by adopting transparency and screening of candidates based on public interest, competence and integrity and not partisanship.

(iii) The length of time for which acting shall be allowed should be limited by statute. If confirmation is required, the period of acting should be limited to such time as is expressly provided by statute.

(iv) The Federal Character Principle must not be linked to merit-based considerations to the detriment of national inclusion and good governance.

(v) Institutions like the National Judicial Council, Federal Character Commission and others that make recommendations should be strengthened to carry out their oversight duties independently.

The courts should remain vigilant in ensuring that appointments are in accordance with the constitution and appointment-related cases involving matters of public interest should be heard in a speedy manner.

(vii) There is a need to encourage greater public scrutiny to enhance transparency and trust through civil society, media oversight, and publication of appointment criteria.

5.3 Conclusion

The power of the President to make appointments is one of the strongest powers he possesses under the Nigeria constitution. It sets the standard for ministries, agencies, commissions and strategic institutions of state's leadership. It is good when used wisely, in order to foster good governance, democratic accountability, and national development. But when appointments are made on the basis of personal favouritism, confirmation based on politics, appointments serve as acting bastions, or merit and constitutional protections are ignored, institutions and governance

suffer. The study, therefore, draws the conclusion that the powers of appointment of the President under the 1999 Constitution need to be better legislated, monitored and institutionalised in the spirit of constitutionalism. Nigeria needs a balanced governance structure that is based on accountability, merit, inclusion and rule of law, in which executive discretion is not unlimited.

BIBLIOGRAPHY

Books

Afe, B, Presidentialism in Nigeria (Malthouse Press 2018).

Dicey, AV, Introduction to the Study of the Law of the Constitution (10th edition, Macmillan 1959).

Garner, BA (ed), Black's Law Dictionary (11th edition, Thomson Reuters 2019).

Nwabueze, BO, Constitutional Democracy in Africa, Volume 1 (Spectrum Books 2003).

Nwabueze, BO, The Presidential Constitution of Nigeria (C Hurst & Company 1982).

Obilade, AO, The Nigerian Legal System (Sweet & Maxwell 1979).

Ojo, EO, Constitutional Law and Military Rule in Nigeria (Evans Brothers 1987).

Sagay, IE, Nigerian Law and Practice of Constitutional Democracy (2nd edition, Learn Africa Plc 2010).

Wade, E C S and Phillips, G, Constitutional Law (Longman 8th edition 1970).

Journal Articles

Aiyede, ER, 'Executive-Legislature Relations and the Challenges of Democratic Governance in Nigeria' (2005) 6 Journal of Legislative Studies 45.

Ezejiofor, G, 'Federal Character and National Integration in Nigeria' (2012) 4 Nigerian Journal of Public Law 77.

Nwauche, ES, 'Judicial Control of Executive Discretion in Nigeria' (2007) 1 Nigerian Bar Journal 112.

Okeke, GN, 'Constitutional Limits to Presidential Appointments in Nigeria' (2019) 7 University of Nigeria Law Journal 63.

Oluyede, PA, 'The Doctrine of Separation of Powers under the Nigerian Constitution' (1992) 3 Journal of Constitutional Development 21.

Conference Papers/Lecture Notes

Eze, OC, 'Constitutional Law II, Executive Powers under the 1999 Constitution' (Lecture Note, Faculty of Law, University of Nigeria 2023).

Nwafor, I, 'Law of Presidential Powers and Constitutional Control' (Lecture Note prepared for undergraduate students, Faculty of Law, Godfrey Okoye University 2024).

Theses/Dissertations

Ibrahim, AU, 'An Examination of Presidential Appointing Powers under the 1999 Constitution of Nigeria' (LLM Dissertation, Ahmadu Bello University, 2020).

Okafor, CN, 'Executive Discretion and Constitutionalism in Nigeria' (PhD Thesis, University of Nigeria, 2021).

Online Sources

Britannica, 'Presidency' <https://www.britannica.com> accessed 3 February 2026.

CFI Team, 'Agency Theory and Governance Structures' <https://corporatefinanceinstitute.com> accessed 5 March 2026.

National Assembly of Nigeria, 'Senate Confirmation Proceedings' <https://nass.gov.ng> accessed 6 January 2026.

Policy and Legal Advocacy Centre, 'Governance and Public Appointments in Nigeria' <https://placng.org> accessed 2 April 2026.

Presidency Nigeria, 'Official Statements on Appointments' <https://statehouse.gov.ng> accessed 8 March 2026.

The Guardian Nigeria, 'Debates on Federal Character and Merit' <https://guardian.ng> accessed 28 February 2026.