

THE SENATE
FEDERAL REPUBLIC OF NIGERIA
NATIONAL ASSEMBLY

**SENATE COMMITTEE ON JUDICIARY, HUMAN
RIGHTS AND LEGAL MATTERS**

REPORT

ON

A MATTER OF PRIVILEGE RAISED BY SENATOR GEORGE T. SEKIBO,
PURSUANT TO RULE 14 OF THE SENATE STANDING ORDERS ON THE
DIFFERENCES IN THE CONTENT OF SECTIONS 18 OF THE ARMED
FORCES ACT, CAP. A20 EDITIONS OF THE LAWS OF THE FEDERATION
OF NIGERIA, 2004 AND 2010, RESPECTIVELY.

APRIL, 2016

REPORT OF THE SENATE COMMITTEE ON JUDICIARY, HUMAN RIGHTS AND LEGAL MATTERS ON A MATTER OF PRIVILEGE RAISED BY SENATOR GEORGE T. SEKIBO, PURSUANT TO RULE 14 OF THE SENATE STANDING ORDERS ON THE DIFFERENCES IN THE CONTENT OF SECTIONS 18 OF THE ARMED FORCES ACT, CAP. A20 EDITIONS OF THE LAWS OF THE FEDERATION OF NIGERIA, 2004 AND 2010, RESPECTIVELY.

1.0 BACKGROUND

The Senate at its Plenary Sitting on Tuesday 10th November, 2015 considered a matter of privilege raised by ***Senator George T. Sekibo*** (Rivers East Senatorial District), pursuant to Rule 14 of the Senate Standing Orders. The matter of privilege borders on the differences in content between Sections 18 of the Armed Forces Act, Cap. A20 editions of the 2004 and 2010, Laws of the Federation of Nigeria, respectively. These sections deal with the appointment of Service Chiefs by the President and Commander-in-Chief of the Armed Forces. He stated that as a lawmaker, his privilege has been impugned upon by the changes made to the provision without amendment by the National Assembly. For the avoidance of doubt, "Privileges are the rights enjoyed by the Senate collectively and by the Members of the Senate individually conferred by the Legislative Houses (Powers and Privileges) Act Cap. 208, Laws of the Federation of Nigeria. See Rule 14, Senate Standing Orders, 2015, as amended. He requested the Senate to investigate it. In a nutshell, whereas in the 2004 edition, appointment of Service Chiefs is subject to confirmation by the National Assembly, in the 2010 edition, such confirmation is not required.

After extensive deliberations, the matter was referred to the Senate Committee on Judiciary, Human Rights and Legal Matters,

for further legislative action and to report back with its recommendation(s).

2.3 Objective of the Referral

In the Committee's view, the legislative intent of the referral is, firstly, to investigate the differences between Sections 18 Cap. A20 editions of the Laws of the Federation of Nigeria 2004 and 2010, respectively. Secondly, to investigate whether the purported amendment to the provision of section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004 was done by the approval of the National Assembly and thirdly, whether the 2004 Edition of the Laws of the Federation of Nigeria, was actually revised in 2010 and enabled by the National Assembly.

3.0 Methodology

After the referral, the Committee held several meetings whereby it carefully scrutinised the two versions of sections 18 of the Armed Forces Act Cap. A20 editions of Laws of the Federation of Nigeria 2004 and 2010 respectively. Thereafter, the Committee resolved as follows:

1. To seek views of stakeholders, experts and other public officials; and
2. To consider any matter that would assist the Committee in the discharge of its assignment.

4.0 Committee Action

Mr. President, Distinguished Colleagues, in furtherance of this referral, the Committee wrote and received comments from the

Honourable Attorney General of the Federation and Minister of Justice, the Nigerian Law Reform Commission, Prof. C. O. Okonkwo, SAN, and Festus Keyamo Esq., on the conflict between Sections 18 of the Armed Forces Act Cap. A20 editions of the 2004 and 2010, Laws of the Federation of Nigeria, respectively. For the avoidance of doubt and for the purpose of clarity, the two sections are reproduced hereunder:

- (i) Section 18 Cap. A20 edition of the 2004, Laws of the Federation of Nigeria, provides:

"The President may after consultation with the Chief of Defence Staff and subject to confirmation by the National Assembly, appoint such officers (in this Act referred to as the service chiefs) as he thinks fit, in whom the command of the Army, Navy and Air Force, as the case may be, and their reserves shall be vested". *Emphasis ours.*

- (ii) Section 18 Cap. A20 edition of the 2010, Laws of the Federation of Nigeria, provides:

"The President, may, after consultation with the Minister of Defence, appoint such officers (in this Act referred to as "the service chiefs") as he thinks fit, in whom the command of the Army, Navy and Air Force, as the case may be, and their reserves shall be vested". *Emphasis ours.*

From the provisions of the two versions of the 2004 and 2010 editions of the Laws of the Federation cited above, it is crystal clear that whereas the former mandates the President to submit the nominations for confirmation of appointments of Service Chiefs

to the National Assembly, in the latter provision, the requirement for confirmation, was omitted.

The Committee analysed the comments it received from the stakeholders. In their submissions, the Attorney General of the Federation and Minister of Justice and the Nigerian Law Reform Commission, stated as follows: Firstly, that the omission of the requirement for confirmation of appointment of Service Chiefs of the Armed Forces of the Federal Republic of Nigeria in the 2010 Edition of the Laws of the Federation of Nigeria was enabled by the provisions of the Armed Forces Act Modification Order, s.I.17 of 2008 by the late President, Alhaji Umaru Musa Yar'adua on 4th August, 2008 in pursuance of his powers under section 315 of the Constitution. In their view, they stated that the modification was done to bring the provisions of section 18 (1) in conformity with section 218 of the Constitution and secondly, they stated that the changes in the text of the 2010 Edition of the Laws of the Federation of Nigeria by the modification order is effective and as such, confirmation of appointment of the Service Chiefs by the National Assembly, is not required.

However, Professor C.O. Okonkwo, SAN and Festus Keyamo Esq., expressed different viewpoints from the positions held by the Office of the Attorney General of the Federation and Minister of Justice and the Nigerian Law Reform Commission. They stated as follows:

Firstly, that the 2010 edition of the Laws of the Federation of Nigeria has not been brought into effect by any Act of the National Assembly and as such the 2004 edition, remains the extant Act and secondly, that the exercise of Presidential powers of modification as contained in section 315 (2) of the Constitution of the Federal Republic of Nigeria is unnecessary in this respect as

such powers are targeted mainly at legislations that were made under the military era and perhaps to other legislations that are inconsistent with the Constitution.

Apart from the above positions, Festus Keyamo Esq., instituted an action at the Federal High Court. I will come back to this later. It is apposite at this juncture to state that in the Committee's view, flowing from the submissions of the Hon. Attorney General of the Federation and the Nigerian Law Reform Commission that the change to section 18 Cap. A20 edition of the 2004, Laws of the Federation of Nigeria, was effected through a modification done by the then President of the Federal Republic of Nigeria, Late Alhaji Umaru Yar'Adua, GCFR on the 4th day of August, 2008 in exercise of the presidential power of modification of existing laws as contained in section 315 (2) of the Constitution of the Federal Republic of Nigeria 1999, as amended. It provides:

"The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution". Emphasis ours.

In subsection (4)

(a) "appropriate authority" means –

- (i) the President, in relation to the provisions of any existing Laws of the Federation; *Emphasis ours.*
- (ii) the Governor of a State in relation to the provisions of any existing law deemed to be a law made by the House of Assembly of that State; or

- (iii) any person appointed by any law to revise or rewrite the Laws of the Federation or of a State;
- (b) "existing law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date.

As a consequence of the exercise of Mr. President's powers, pursuant to section 315 (2) of the Constitution, the Armed Forces Act Modification Order, s. I. 17 of 2008 was modified to bring section 18 (1) of the Armed Forces Act Cap. A20 Laws of the Federation of Nigeria 2004 into conformity with section 218 of the Constitution of the Federal Republic of Nigeria 1999, as amended. Specifically, section 218 (1) and (2), which deal with command and power to determine the operational use of the Armed Forces, provide –

"(1) The Powers of the President as the Commander-in-Chief of the Armed Forces of the Federation shall include power to determine the operational use of the armed forces of the Federation".

"(2) The Powers conferred on the President by subsection (1) of this section shall include power to appoint the Chief of Defence Staff, the Chief of Army Staff, the Chief of Naval Staff, the Chief of Air Staff and heads of any other branches of the armed forces of the Federation as may be established by an Act of the National Assembly".

Based on the modification to section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004, vide modification order, s.I.17 of 2008 by the late President, Alhaji Umaru Musa Yar'Adua on 4th August, 2008 in pursuance of his powers under section 315 of the Constitution, the Presidency announced the appointment of Service Chiefs for the country on August 20, 2008 'with immediate effect'. The appointment 'with immediate effect', of Service Chiefs in August, 2008 therefore means that the requirement of confirmation by the National Assembly was discarded, which further amplified and give effect to the modification order, s.I.17 of 2008. It was as a result of this modification that section 18 was purportedly revised in the 2010 edition of the Laws of the Federation of Nigeria, wherein lies the difference.

After the appointment, Festus Keyamo Esq., aware of the requirement of confirmation by the National Assembly, protested to the Leadership of the National Assembly and at other fora, as well, for violation of the Constitution. Because his protestation was not heeded, he instituted an action through an originating summons, which was subsequently amended at the Federal High Court in Suit No. FHC/ABJ/CS/611/08 *Festus Keyamo v The President of the Federal Republic of Nigeria, the Attorney General of the Federation and Minister of Justice and 3 Others*, whereby he submitted two questions for determination and sought five reliefs upon the determination of the questions.

1. Whether by the combined interpretation of section 218 of the Constitution of the Federal Republic of Nigeria 1999, as amended and section 18 of the Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria 2004 that the appointment of Service Chiefs can be made without the confirmation of the National Assembly first sought and obtained; and

2. Whether section 18 (1) and (2) of the Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria is not in conformity with the provisions of the 1999 Constitution so as to fall within the category of existing laws under section 315 (2) of the Constitution of the Federal Republic of Nigeria 1999, as amended in which the President may by an order modify its text, to bring it into conformity with the provision of the Constitution.

And the reliefs sought by the plaintiff are also spelt out in the originating summons as follows:

- 1. A DECLARATION** that the appointment of Service Chiefs for the Federal Republic of Nigeria, (that is the 3rd, 4th and 5th Defendants who were purportedly appointed as such) by the 1st Defendant on Wednesday, August, 20, 2008, without the confirmation of the National Assembly is illegal, unconstitutional and void.
- 2. A DECLARATION** that section 18 (1) and (2) of armed Forces Act, Cap. A20 Laws of the Federation of Nigeria, 2004 is in conformity with the provisions of the 1999 Constitution so as to fall within the category of existing Laws under section 315 (2) of the Constitution of the Federal Republic of Nigeria, 1999 that the President, may, by order, modify its text, to bring it into conformity with the provisions of the Constitution.
- 3. AN ORDER** nullifying and/or setting aside the Armed Forces Act modification order, 2008 (No. 50) published in vol. 95 of the Federal Republic of Nigeria Official Gazette dated 29th August, 2008, and the appointment of the 3rd, 4th and 5th Defendants as

Service Chiefs of the Armed Forces of the Federal Republic of Nigeria, on Wednesday, 20th August, 2008.

- 4. AN ORDER** restraining the 1st Defendant from further appointing Service Chiefs for the Federation without first obtaining the confirmation of the National Assembly.

Accordingly, the Court held as follows:

1. That the declaration of the appointment of the Service Chiefs of the Federation by the President of the Federal Republic of Nigeria, without the confirmation of the National Assembly is illegal, unconstitutional and void;
2. That Section 18 (1) and (2) of the Armed Forces Act Cap. A20 LFN 2004 is in conformity with the provision of the 1999 Constitution, as amended and it does not fall within the existing law under section 315 (2) of the Constitution, which stipulates that the President may by order, modify its text to bring it into conformity with the provision of the Constitution; and
3. An order was made nullifying and/or setting aside the Armed Forces Modification Order, 2008 (No. 50) published in Vol. 95 of the Federal Republic of Nigeria Official Gazette dated 29th August, 2008; and
4. An order was made restraining the President from further appointing Service Chiefs for the Federation without first obtaining the confirmation of the National Assembly.

Furthermore, even though the President has duly exercised such power of modification, as contained in section 315 (2) of the Constitution, the 2010 Edition of the Laws of the Federation of

Nigeria has not been brought into effect by an Act of the National Assembly, as such the provision of section 18 Cap. A20 2004 Edition of the Laws of the Federation of Nigeria, remains the extant law. To this end, it is the concerted view of the Committee that section 18 of both the 2004 and 2010 Editions of the Laws of the Federation of Nigeria vis-à-vis the decision of the Federal High Court in *Festus Keyamo v the President and 4 ORS* (Supra) as well as the provisions of section 218 and 315 (2) of the Constitution of the Federal Republic of Nigeria 1999, as amended, there is nothing unconstitutional in having the National Assembly confirms the appointment of Service Chiefs. Similarly, section 315 (2) appears to be directed mainly at legislations, made under the Military era and perhaps to other cases of obvious inconsistencies. As such, the contemplation of that provision is not intended to undermine the legislative powers of the National Assembly or to invest the Executive with legislative powers.

This now brings us to the second issue, that is whether the purported amendment to section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004 was done by the National Assembly. The answer to this question is simply No. Available records from 2004 to date, show that the National Assembly (either in the Senate or the House of the Representatives), has never amended section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004. Therefore, it is our concerted view that the change to the text of section 18, which was purportedly revised in the 2010 Edition of the Laws of the Federation of Nigeria was as a result of the modification order, s.I.17 of the 2008 by the Late President, Alhaji Umaru Musa Yar'Adua on 4th August, 2008 in pursuance of his powers under section 315 of the 1999 Constitution, as amended. (This issue relating to modification order has been sufficiently addressed in the early part of this report and resolved as not being

one of the laws contemplated by section 315 (2) as inconsistent to have been modified).

Finally, on the issue of whether the 2004 Edition of the Laws of the Federation of Nigeria was actually revised in 2010 and enabled by the National Assembly. The answer is that, there is no such revision known to the National Assembly as the 2010 Edition has not been enacted by the National Assembly. However, we have found out as a matter of fact that there is a standard procedure for revising Laws of the Federation of Nigeria and how to bring them into effect. These standards are set out in the preface to the 2004 Edition of the Laws of the Federation of Nigeria. This edition was also actually given effect to by an Act of the National Assembly in 2007. The objective of course, is to bring together an up to date set of duly revised Laws of the Federation of Nigeria.

Firstly, the process of revision and updating Laws of the Federation is a tasking exercise, which requires concentration. Because the process is tasking, it became the objective of the Federal Ministry of Justice that the Laws of the Federation shall be revised after every decade. In the Committee's view, laws revised in 2004 could not have met the requirement of Ten Years period in 2010. And because the level of commitment and concentration required in the process was not adhered to, the 2010 edition suffers many defects of its own as errors of commission or omission, abound in that purported edition.

Secondly, because of the important nature of the exercise, a Law Revision Committee is usually constituted by the Attorney General of the Federation and Minister of Justice to among other things make the usual omissions to include omission of repealed and spent statutes, preamble unless necessary, enacting clauses, amending statutes, effecting consolidation of statutes where

necessary and making consequential alterations as are necessary to bring relevant Acts into conformity with the Constitution or circumstance of democratic structure of government. In our tacit opinion, such committee would not have been constituted without regard to the requirement of Ten Years cycle set by the Ministry. Again, the many errors of production could have been avoided if such a body was constituted.

Finally, that a Bill to enable effect to be given to the Revised Edition to the Law of the Federation of Nigeria must be sent to the National Assembly otherwise such compendium of our laws will not form part of our statute law. It is the view of this Committee, flowing from available records, that the only bill to give effect to the Laws of the Federation of Nigeria was enacted by the National Assembly in 2007.

5.0 Observation

The Committee hereby observe as follows:

1. That section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria is hardly adhered to, as very often, nominees usually assume duties before confirmation;
2. That the National Assembly is the only arm of government vested with powers to make laws for peace, order and good governance of the country pursuant to section 4 (1) of the 1999 Constitution, as amended;
3. That there are differences in content between sections 18 Cap. A20 LFN 2004 and section 18 Cap. A20 LFN 2010, deal with the requirement of confirmation of appointment of Service Chiefs by the National Assembly;

4. That there is nothing unconstitutional in having the National Assembly confirm the appointments of Service Chiefs of the Federation from the combined interpretations of sections 218 and 315 (2) of the Constitution of the Federal Republic of Nigeria 1999, as amended;
5. That the 2010 edition of the Laws of the Federation of Nigeria has not been brought into effect and currently has no position among legally recognised statutes; and
6. That there is a subsisting judicial pronouncement by a Court of competent jurisdiction in *Festus Keyamo Vs The President & 4 Others (supra)*, which declared the modification illegal, unconstitutional, void and of no effect whatsoever; and
7. That section 18 Cap. A20, Laws of the Federation of Nigeria 2004 was amended without resort to the National Assembly.

6.0 Findings

Taking into consideration the above-mentioned observation, and having regard to the views canvassed by various stakeholders, we hereby make the following findings:

1. That henceforth, nomination of Service Chiefs or any other nomination in that regard that requires the confirmation by the National Assembly or of the Senate, pursuant to the provisions of the Constitution of the Federal Republic of Nigeria 1999, as amended, should be given effect to;
2. That the provision of section 18 Cap. A20 of the Laws of the Federation of Nigeria 2004 is still effective and remains the

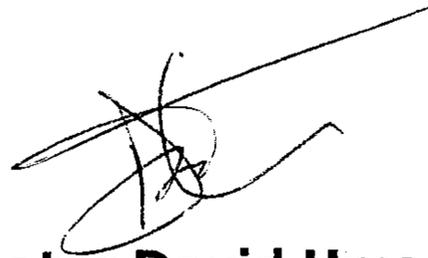
3. That the confirmation of appointments of Service Chiefs of the Federal Republic of Nigeria is mandatory in line with section 18 Cap. A20, Laws of the Federation of Nigeria 2004;
4. That the decision of the Federal High Court in *Festus Keyamo vs the President and 4 Others (supra)* still subsists and it remains the judicial precedent, as it has not been appealed against nor set aside;
5. That the Parliament must be seen to respect and take legislative notice of and uphold any law relating to national legislation, constitutional provision and judicial pronouncements, made by Court of competent jurisdiction in matters affecting the nation;
6. That section 315 (2) is not intended to undermine the legislative powers of the National Assembly or to invest the Executive with legislative powers; and
7. That the amendment to section 18 of the Armed Forces Act Cap. A20, Laws of the Federation of Nigeria 2004, impugned upon the privilege of Senator George T. Sekibo, as a Senator and collectively, privileges of other Senators of the Federal Republic of Nigeria and by extension that of Nigerians, they represent.

7.0 Recommendation

The Senate Committee on Judiciary, Human Rights and Legal Matters, to which was referred, a matter of privilege raised by Senator George T. Sekibo, pursuant to Rule 14 of the Senate Standing Orders on the provisions of sections 18 Cap. A20, Laws of the Federation of Nigeria 2004 and 2010 respectively, having carefully and critically examined the matter, hereby recommends as follows:

- 1. That the Senate do disregard the provision of section 18 Cap. A20, Laws of the Federation of Nigeria 2010 and the National Assembly shall continue to confirm the appointments of Service Chiefs of the Federal Republic of Nigeria in line with the provisions of section 18 Cap. A20, Laws of the Federation of Nigeria 2004 as it still remains the extant law;*
- 2. The Hon. Attorney General of the Federation and Minister of Justice in whose purview resides the power to initiate revision of the Laws of the Federation of Nigeria, should take necessary steps to withdraw from circulation 2010 Edition of Laws of the Federation of Nigeria, having not been properly revised and enabled by the National Assembly in view of the decision of the Court in the case of Festus Keyamo v the President and 4 Others (supra); and*
- 3. That the Executive should submit to the National Assembly all nominations that require the confirmation of the National Assembly or of the Senate, pursuant to the Constitution of the Federal Republic of Nigeria 1999,*

We wish to thank the President of the Senate and indeed our Distinguished colleagues, for the opportunity to offer clarification on this matter. It is our hope that we shall continue to serve you and the country whenever we are called upon to do so.

A handwritten signature in black ink, appearing to be 'David Umaru', written over a horizontal line.

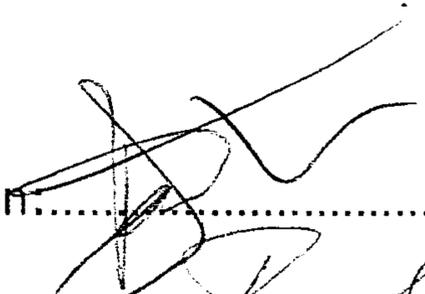
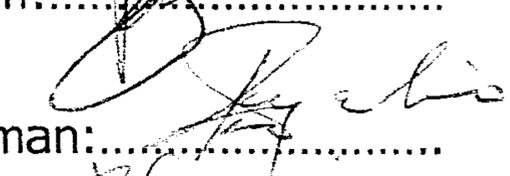
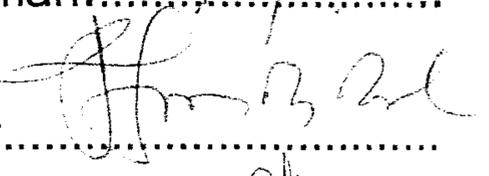
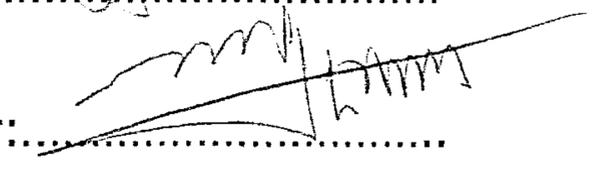
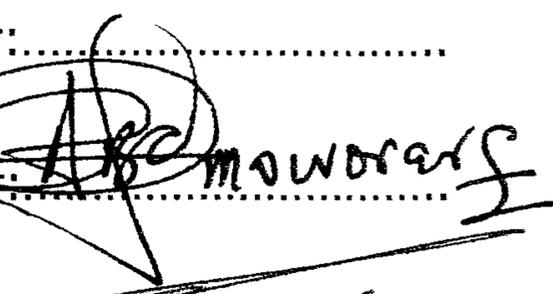
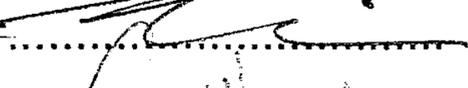
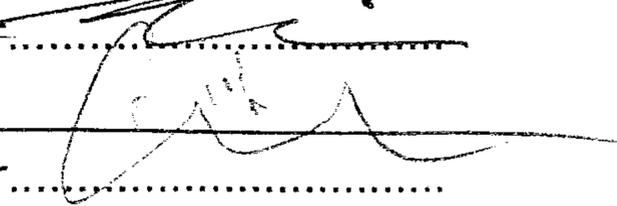
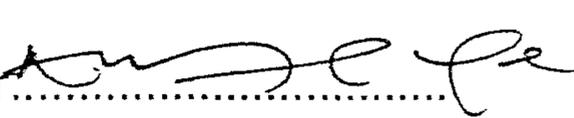
Senator David Umaru

Chairman

ENDORSEMENT PAGE

Senate Committee on Judiciary, Human Rights and Legal Matters

Members

1. Senator David Umaru - Chairman: 
2. Senator Godswill Akpabio - V/Chairman: 
3. Senator Joshua M. Lidani - Member: 
4. Senator James E. Manager, CON - Member: 
5. Senator Bala Ibn Na'Allah - Member: 
6. Senator Babajide C. Omoworare - Member: 
7. Senator Abdullahi Adamu - Member: 
8. Senator Chukwuka Godfrey Utazi - Member: 
9. Senator Ovie Omo-Agege - Member: 
- Charles Luri Bala Esq. - Committee Clerk: 