

Impeachment Procedures in Nigeria and the United States of America: A Comparative Analysis



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ABSTRACT: Under a presidential system of government, executive powers are vested on the President at the federal level and the Governor at the state or sub-national level. Given the wide powers constitutionally conferred on the executive arm of government along with immunity from civil or criminal proceedings, the instrument of impeachment is incorporated into the Constitution to act as a check and balance against authoritarianism or misuse of official power. The foremost objective of this article is to comparatively scrutinise the modus operandi for impeachment of the President or Governor in Nigeria and the United States of America (USA); the USA impeachment mechanism would be limited to the federal impeachment process of the President and the Vice President. The article employed desk-based or doctrinal and comparative research methods by placing reliance on both primary and secondary sources of information. The sources of information were analysed and inferences obtained were presented descriptively. The article revealed inter alia, that though Nigeria and USA practice presidential system of government as well as operate a federal system, yet, there are some procedural parallels and dissimilarities in their respective impeachment procedures. A case in point is that in the USA, an impeached official cannot subsequently be granted pardon by the President whereas in Nigeria, there is no constitutional clause barring the President or the Governor from granting pardon to a convicted elected executive office holder. The authors therefore, recommended inter alia, that a constitutional amendment should be introduced to sections 175 and 212 of the 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN) with the goal of outlawing the President or Governor from granting pardon to an impeached official, as obtainable in the USA.

KEYWORDS: Impeachment, Nigeria, Presidential System of Government, United States of America

I. INTRODUCTION

From the time that mankind began to form stratified or hierarchical societies they have had to contend with the challenges of how to remove despotic and tyrannical rulers who misbehaved¹ and had violated the regulations connected with their position as rulers.² Prior to the emergence of colonial administration in Nigeria, a mechanism was put in place to check the excesses of traditional rulers and where necessary, to remove them. For instance, in the old Oyo Empire, southwest of Nigeria, the “Oyomesi” were saddled with the dual authority of enthroning and dethroning the king (*Alaafin*).³ Where an empty calabash or parrot’s eggs was presented by *Bashorun* to the king, it was an indication that his subjects had lost confidence in his administration and he was bound to be dethroned.⁴ Since a dethroned ruler could constitute the “focus of agitation and disaffection” and thus create a potential security risk to the survival of the society, a deposed ruler was required to commit “ritual suicide” so as to avert opposition to the new king and thereby allow peace to reign in the community.⁵

¹ Frank O. Bowman III, “British Impeachment (1376-1787) and the Preservation of the America Constitutional Order,” (2019) 46(4) *Hastings Constitutional Law Quarterly*, 745-792 at p.750.

² Oluwasegun Oladosu & Ajayi Adetokunbo Olaiya, “Kingship and Integrity in Yoruba Traditional Society,” (2021) 4(2) *Nigerian Journal of Christian Studies*, 168-188 at p. 179.

³ The Oyomesi, which was led by “Bashorun” (i.e. the hereditary “Prime Minister”), primarily served the kingdom and *Alaafin* in a variety of ways, including exercising advisory roles and discharging administrative and legislative powers, among others- See, Oyetunde, “Political Strength of Oyo Mesi and Fall of the Old Oyo Empire,” (23 November 2012) *Nigerian Tribune*; retrieved from <<https://tribuneonline.ng/political-strength-of-oyo-mesi-and-fall-of-old-oyo-empire/>>(accessed on 19 March 2023).

⁴ Oluwasegun Oladosu & Ajayi Adetokunbo Olaiya, “Kingship and Integrity in Yoruba Traditional Society,” (2021) 4(2) *Nigerian Journal of Christian Studies*, 168-188 at p. 179).

⁵ Tunde Oduwobi, “Deposed Rulers under the Colonial Regime in Nigeria,” (2003) 171(3) *Cahiers d’Etudes africaines*, 553-571 at p. 553; DOI: <<https://doi.org/10.4000/etudesafriques.215>> (accessed on 19 March 2023). The idea that a deposed king should die was however abandoned by the British government as the practice was deemed obnoxious. Rather, a deposed king was banished from his community and sent to a far distant location where he no longer had influence to destabilise his community, a practice that subsist till now.

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However, the contemporary constitutionalised idea of impeachment mechanism is traceable to Britain where it was developed and utilised by parliament as far back as in 1376 to oppose the common proclivity of the monarchy to totalitarianism and to “counter particularly obnoxious royal policies by removing the ministers who implemented them.”⁶ This constitutional contraption was taken along by the victorious colonists that defeated Britain in the American Revolutionary War, leading to the creation of an independent United States of America.⁷ Afterwards, during the Constitutional Convention of 1787, the Founders and framers of the American Constitution decided that the President, Vice President and other federal civil officers could be impeached for “Treason, Bribery, and other high Crimes and Misdemeanors,”⁸ a phrase the Constitution did not comprehensively define. However, by choosing to make the phrase the ground for impeachable offences, the Founders and framers of the American Constitution intentionally preferred “terms of art that referred to a general category of offences, the specific contents of which would have to be worked out over time on a case-by-case basis.”⁹

Considering Nigeria’s political connection with Britain and the USA, it is not surprising that one vital constitutional authority exercised by the legislature in Nigeria is the power of impeachment. Contrary to the practice in the USA, the scope of impeachable officers is restricted to the President, Vice President, Governor and Deputy Governor; the sole reason for such removal being “gross misconduct” (or serious contravention of the provisions of the Constitution) in relation to the performance of their functions.¹⁰ However, by delineating and narrowing the scope of what constitutes “gross misconduct” to the opinion of the National Assembly (NASS)¹¹ or the State House of Assembly (SHA)¹² makes the elasticity of impeachable offences a subjective issue in the hands of the legislature and to the detriment of the executive, particularly when faced with a recalcitrant legislature.¹³

The primary goal of this article is to comparatively examine the procedures for impeachment of the President or Governor in Nigeria and the USA. Impeachment mechanism in the USA would, however, be limited to the federal impeachment process of the President and the Vice President.¹⁴ Some lessons which Nigeria could learn from the impeachment process obtainable in USA would also be discussed.

II. RESEARCH METHODS

The article adopted desk-based and comparative research methods whereby we relied on both primary and secondary data generated from relevant clauses of the Nigerian and the USA constitutions, legislation, case laws, articles, textbooks, and internet materials. The comparative research method aided in exploring the similarities and differences in the impeachment processes operating in Nigeria and USA. The various sources of information were assessed and conclusions emanating from them were presented descriptively.

III. RESULTS AND DISCUSSION

1. Definition and Importance of Impeachment under Democratic Government

“Impeachment” has been variously defined by writers and dictionaries. The noun, “impeachment,” is defined by the *Chambers 21st Century Dictionary* as “the legal process of removing an undesirable person from office.” The dictionary attributes the underlying principle for such removal of a public or government official to the commission of a serious “crime against the state or treason” as well as “misconduct while in office.”¹⁵ Also, *Black’s Law Dictionary*, drawing strength from the United States of America’s background defines the term as “[t]he act (by a legislature) of calling for the removal from office of a public official, accompanied by presenting a written charge of the official’s alleged misconduct; esp., the initiation of a proceeding in the U.S. House of Representatives against a federal official, such as the President or a Judge....Articles of impeachment-which can be approved by a simple majority in the House—serve as the charging instrument for the later trial in the Senate.”¹⁶

The definition proffered by *Black’s Law Dictionary* considers impeachment as the presentation of formal charges against public officials, inclusive of federal judicial officers by the lower house of the legislature to the upper legislative house for trial.

⁶ Frank O. Bowman III, “British Impeachment (1376-1787) and the Preservation of the America Constitutional Order,” (2019) 46(4) *Hastings Constitutional Law Quarterly*, 745-792 at p.745.

⁷ The National Museum of American History, “Why did the Colonists Fight the British?” Retrieved from <<https://americanhistory.si.edu/citizenship/learn/independence/61/learn>> (accessed on 19 March 2023).

⁸ United States Constitution, Article II, section 4.

⁹ Michael J. Gerhardt, “The Lessons of Impeachment History,” (1999) 67 *George Washington Law Review*, 603-625 at p. 609.

¹⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), sections 143(1)(2)(b) and 188(1)(2)(b).

¹¹ *Ibidem*, section 143(11).

¹² *Ibidem*, section 188(11).

¹³ Kehinde M. Mowoe, *Constitutional Law in Nigeria* (Lagos: Malthouse Press Limited, 2008), 107.

¹⁴ In majority of states in the USA, the procedure for impeachment of the Governor is similar to the method applicable to the President at the federal level, though there are some exceptional cases. For illustrations, in Alaska, the upper legislative house votes to impeach the Governor, while the lower house serves as the court to try the impeachment; in Missouri, impeachment is tried by a panel of seven judges chosen by the Missouri State Senate, with a vote from five out of the seven judges securing a conviction; in Oklahoma, an impeached Governor is tried before both chambers of the state legislature sitting in a joint session; and in Nebraska, where the unicameral legislature votes in support of impeachment, the Governor is tried before the Nebraska Supreme Court. For details, including constitutional and statutory grounds for impeachment of Governors in the USA, see “Gubernatorial impeachment procedures”, retrieved from <https://ballotpedia.org/Gubernatorial_impeachment_procedures> (accessed on 19 March 2023).

¹⁵ Mairi Robinson & George Davidson (eds.), *Chambers 21st Century Dictionary*, (New Delhi, India: Allied Chambers (India) Limited, Reprinted 2006), p. 676.

¹⁶ Bryan A. Garner (ed.), *Black’s Law Dictionary*, Eighth Edition (St. Paul, MN: West Thompson Publishers, 2004), p. 768.

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While this may be true from the American milieu, in Nigeria, impeachment at the federal level may be initiated from either the House of Representatives or the Senate, though the concurrence of both legislative houses is material for a successful impeachment. In addition, the definition tends to place more emphasis on ingredients of criminality as basic cause for impeachment than on other factors. Admittedly, while some elements of crime may contribute to impeachable accusation against a President or Vice President,¹⁷ the fact remains that impeachment does not always centre solely on the criminal conduct or bad acts of a public officer sought to be impeached. To a certain extent, it may also serve as a reaction to some specific type of political crisis where public supports for a political leader have declined.¹⁸

Impeachment has also been seen as an exceptional tool in a democratic government whereby executive lawlessness is checked by parliament with due adherence to constitutional practices by the executive being entrenched and promoted.¹⁹ It is a significant institutionalised legislative process for holding the executive office holder answerable.²⁰ The legislative arm of government utilises Impeachment procedure to question the elected executive office holder for wrong doings in the discharge of the functions of his or her office. The tool of impeachment could also be used by a President or a Governor, in active connivance with his supporters in the parliament to remove his second-in-command from office.²¹ Besides, there are other instances where impeachment proceedings carried out at the state level has the backing and implicit support from the federal government or its agency.²² One of the key worries of a presidential system of government is how to curtail the abuse of the wide powers constitutionally conferred on the elected executive office holders. Impeachment procedure therefore, provides a vital avenue to mitigate the abuse of power as the parliament is given a legislative authority to remove a misbehaving President, Vice President, Governor or Deputy Governor.²³

Udombana and Okparavero, relying on Akinnsanya, have posited that impeachment safeguards the accountability of a government in power as it serves as an instrument for controlling and ensuring that individuals in public office are held accountable to the citizenry.²⁴ Anele argues further that impeachment is a “derivative of constitutionalism” which enhances the concept of separation of power and the balancing of the powers among the three arms of government.²⁵ Thus, the necessity of engendering a responsible executive plays a critical goal in providing for impeachment mechanism²⁶ because it is indispensable to create restraints concerning the exercise of executive powers, control it and hold the executive accountable for breaches of the confidence reposed on him by members of the public and the electorates.²⁷

¹⁷ For example, in 2016 the then South Korean President, Park Geun-hye, was suspended and impeached based on seven counts charges bothering *inter alia* on abuse of office; breach of the duty of confidentiality by sharing public documents with a third party; violation of the duty to serve the public interest; involvement in the death of students in the Sewol ferry disaster; and infraction of private property right. The impeachment was later affirmed by the Constitutional Court in March 2017. Subsequently, the ousted President was convicted by a criminal court for her involvement in Samsung bribery scandal, extortion, abuse of power in addition to other criminal charges and accordingly sentenced to 25 years jail term- see Gi-Wook Shin & Rennie J. Moon, “South Korea after Impeachment,” (2017) 28(4) *Journal of Democracy*, 117-131 at pp. 119-122; DOI: 10.1353/jod.2017.0072 (accessed on 16 March 2023). See also, Choe Sang-Hun, “Park Geun-hye, Ex-South Korean Leader, Gets 25 Years in Prison,” (24 August 2018) *The New York Times*; retrieved from <<https://www.nytimes.com/2018/08/24/world/asia/park-geun-hye-sentenced-south-korea.amp.html>> (accessed on 16 March 2023).

¹⁸ Aziz Huq, Tom Ginburg & David Landau, “The Comparative Constitutional Law of Presidential Impeachment,” (2021) 88 *University of Chicago Law Review*, 81- 164 at p. 88.

¹⁹ Kalu Kingsley Anele, “A Comparative Analysis of the Impeachment Procedure in Nigeria and Indonesia: A Need for a Paradigm Shift,” (2022) 9(1) *Lentera Hukum*, 33-74 at pp. 34, 41.

²⁰ Ngozi Udombana and Prudence Adula Okparavero, “Impeachment Power of the Legislature and Executive Unaccountability in Nigeria: Between Rhetoric and Practice,” (2020) 6(6) *International Journal of Law*, 252-263 at p. 254.

²¹ Some of the impeachment proceedings against Deputy Governors in Nigeria under the 1999 Constitution of the Federal Republic of Nigeria have been muted to have been executed with the tacit supports of the incumbent Governors. As an example, the impeachment of the former Taraba State Deputy Governor, Alhaji Sani Abubakar Danladi, which was later nullified by the court illustrates this point- *Alhaji Sani Abubakar Danladi v. Barr. Nasiru Audu Dangiri & 6 others* (2015) 2 NWLR (Pt. 1442) 124 at 168. The impeachment of the ex- Deputy Governor of Kogi State, Mr. Simon Achuba, also later nullified by the court had its root cause from disagreements between him and his principal, the State Governor- see “Kogi Deputy Governor Impeached” (18 October 2019) *Channels TV*; retrieved from <<https://www.channelstv.com/2019/10/18/breaking-kogi-deputy-governor-impeached/amp>>(accessed on 19 March 2023). The attempt by former President Olusegun Obasanjo to use an unconstitutional means to sack his Vice President, Atiku Abubakar, was equally set aside by the Nigerian apex court in *Attorney-General of the Federation & 2 others v. Alhaji Atiku Abubakar & 3 others* (2007) All FWLR (Pt. 375) 405 at 549-550.

²² Vivid examples were the impeachments of former Governor Joshua Dariye of Plateau State and his counterpart, the late ex-Governor Diepreye Alamieyeseigha of Bayelsa State. In fact, in both instances, anti-corruption agency of the federal government, Economic and Financial Crimes Commission (EFCC) and other federal government controlled security operatives allegedly transported the lawmakers into the States to effect the impeachments- see “Governor Joshua Dariye impeached,” (13 November 2006) *Sahara Reporters*; retrieved from <<https://saharareporters.com/2006/11/13/governor-joshua-dariye-impeached>> (accessed on 19 March 2023); “Developing Story: Plateau State legislators make “impeachment” attempt on Gov. Joshua Dariye,” (4 October 2006) *Sahara Reporters*; retrieved from <<https://saharareporters.com/2006/10/04/developing-story-plateau-state-legislators-make-%E2%80%99impeachment-%E2%80%99Attempt-govjoshua-dariye>> (accessed on 19 March 2023); “Nigeria’s Bayelsa State Governor Arrested,” (31 October 2009) *VOA News*; retrieved from <<https://www.voanews.com/amp/a-13-2005-12-09-voa15/305830.html>>(accessed on 19 March 2023).

²³ Omololu Fagbadebo & Suzanne Francis, “Impeachment as an Accountability Measure in a Presidential System? Views from Nigeria’s Fourth Republic,” (2014) 3(2) *African Journal of Governance and Development*, 16-34 at p. 20.

²⁴ Ngozi Udombana and Prudence Adula Okparavero, “Impeachment Power of the Legislature and Executive Unaccountability in Nigeria: Between Rhetoric and Practice,” (2020) 6(6) *International Journal of Law*, 252-263 at p. 254; Adeoye Akinnsanya, “Impeachment of Governor Abdulkadir Balarabe Musa of Kaduna State,” in Adeoye A. Akinnsanya & Gordon Idang (eds.) *Nigerian Government and Politics, 1979-1983* (Calabar: Wusen Publishers, 2002), 203-239 at p. 204.

²⁵ Kalu Kingsley Anele, “A Comparative Analysis of the Impeachment Procedure in Nigeria and Indonesia: A Need for a Paradigm Shift,” (2022) 9(1) *Lentera Hukum*, 33-74 at p. 40.

²⁶ Omololu Fagbadebo, *Impeachment in the Nigerian Presidential System: Challenges, Successes and the Way Forward* (Palgrave Macmillan, 2020), 1-508 at p. 79.

²⁷ Kalu Kingsley Anele, “A Comparative Analysis of the Impeachment Procedure in Nigeria and Indonesia: A Need for a Paradigm Shift,” (2022) 9(1) *Lentera Hukum*, 33-74 at p. 39.

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Under the amended Constitution of the Federal Republic of Nigeria, 1999 (1999 CFRN), the constitutional clauses that provides for impeachment of the President, Vice President, Governor and Deputy Governor on grounds of misconduct or contravention of the provisions of the Constitution does not use the word “impeachment” in its sections 143 and 188. Rather, the terminology used is the verb, “removed”, although sections 84(5) and 124(5) use the term “impeachment”.²⁸ Also, sections 146(1) & (3) and 191(1) & (3) empower the Vice President or Deputy Governor to discharge the functions of the President or Governor, as may be appropriate, in the event that either office becomes vacant by reason of certain enumerated factors, including on grounds of “impeachment.” Hence, “removal” and “impeachment” would be used interchangeably in this article.

2. Impeachment Procedures Under Nigeria’s Respective Constitutions

a) Under the Parliamentary System of Government

Nigerian gained political independence from Britain in October 1960 and became a Republic in October 1963. During this era, one vital constitutional provision concerning impeachment was section 33(10)(a) of the Constitution of Western Nigeria (CWN).²⁹ The section empowered the Governor of Western Nigeria to remove the Premier from office if it appears to the Governor that the Premier no longer enjoyed the support of a majority of the members of the House of Assembly. The interpretation of this provision became relevant in *Akintola v. Aderemi*,³⁰ following the removal of the then Premier from office by the Governor in the absence of a prior resolution by the House of Assembly. The Governor based his action on extraneous documents signed by a bloc of members of the regional legislative house indicating that the Premier no longer commanded the support of the majority of the members of the House.

On an appeal to the Nigerian Supreme Court, it was ruled that given the conventional procedure obtainable in Britain, from where Nigeria derived the parliamentary system of government, the removal of the Prime Minister was performed upon a resolution passed on the floor of the House of Commons. In applying the practice to the instant case, the court maintained that the Governor’s action must be determined by events that took place on the floor of the parliament and not elsewhere. However, in his dissenting opinion, Brett, F. J. held that section 33(10) of the CWN did not prescribe the matter to which the Governor was obliged to take into account in determining if the condition relevant for the removal of the Premier had been fulfilled. But on a further appeal in *Adegbenro v. Akintola*,³¹ the Privy Council sustained the view expressed in the dissenting judgment of Brett, F. J. The Privy Council Board held that:

The difficulty of limiting the statutory power of the Governor in this way is that the limitation is not to be found in the words in which the makers of the Constitution have decided to record their description of his power. By the words they have employed in their formula, “it appears to him”, the judgment as to the support enjoyed by a Premier is left to the Governor’s own assessment and there is no limitation as to the material on which he is to base his judgment or the contacts to which he may resort for the purpose.³²

Unfortunately in a frantic attempt to invalidate the Privy Council’s decision and to thwart its implementation, the ousted Premier formed a new cabinet drawn from a coalition with another political party and retrospectively amended the CWN; making it a requirement that the Governor can only remove the Premier from office on a vote of no confidence passed by the House of Assembly.³³ The political crisis in the then Western Region significantly contributed to the collapse of the First Republic and the emergence of successive military regimes in Nigeria from 1966-1979.³⁴

b) Under the Presidential System of Government

As earlier noted, the power of impeachment is one of the vital instruments often employed by the legislative arm of government to curtail or checkmate the wide powers of the elected executive officer from being abused. This is further necessary in view of the constitutional immunity from civil or criminal proceedings being instituted or continued against the elected executive.³⁵ The power of impeachment is apparently a political matter constitutionally vested in the hands of the legislature to check the excesses, overbearing and abrasive proclivities of the executive arm of government. In issues concerning impeachment proceedings, the parliament has been perceived as performing a judicial function.³⁶ This explains why the court often advises itself against blatantly entering into the “miasma of the political cauldron” of impeachment unless in appropriate situations and in exercise of its judicial

²⁸ The sections provide for the entitlement of the President, Vice President, Governor and Deputy Governor to grant of a pension or gratuity unless they were “removed from office as a result of impeachment.”

²⁹ As contained in the Fourth Schedule to the Nigerian (Constitution) Order in Council, 1960. The Constitution of the Federation No. 20 of 1963 also provided for the removal of the President from office. Basically the law required, *inter alia*, that notice of allegation must be signed either by at least one-quarter of all the members of the Senate or by not less than one-quarter of all the members of the House of Representatives. Also the investigative panel set up to investigate the conduct of the President was to consist of members of each house of the federal parliament. For detailed provisions concerning the removal of the President under the 1963 Constitution, see section 38 thereof.

³⁰ (1962) All NLR 422.

³¹ (1962) WNLR 205.

³² *Ibidem* at p. 211.

³³ See Constitution of Western Nigeria (Amendment) Law 1963. This was subsequently ratified by the federal parliament as prescribed under the Nigeria (Constitution) Order in Council 1960, section 5(4).

³⁴ D. O. Aihe, *Selected Essays on Nigerian Constitutional Law* (Benin City: Idodo Umeh Publishers, 1985), pp. 82-87.

³⁵ 1999 CFRN, section 308.

³⁶ *Chief Enyi Abaribe v. The Speaker, Abia State House of Assembly & Another* (2000) FWLR (Pt. 9) 1558 at 1573-1574.

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functions³⁷ by intervening to ensure that the legislative arm adheres strictly to constitutional impeachment procedures.³⁸ While the power of impeachment has been successfully implemented at the state level, as shall be seen later, it has only been used as an instrument of threat at the federal level.³⁹ The impeachment of Balarabe Musa, the former Governor of Kaduna State in the Second Republic, actually signalled the beginning of impeachment cases under Nigeria's presidential system of government.⁴⁰

Specifically, sections 143 and 188 of the 1999 CFRN make detailed provisions regarding the removal of the executive from office.⁴¹ The constitutional provisions require that the President, Vice President, Governor or Deputy Governor can only be removed from office where there is due compliance with the "provisions" of section 143 or 188. The first step is that there must be a notice of allegation in writing signed by not less than one-third of the members of the NASS, where it relates to the President or Vice President; or the members of the State House of Assembly (SHA), where it involves the impeachment of the Governor or Deputy Governor.⁴² For the purpose of ascertaining the required total number of members to sign the notice, the total number of the elected members of the relevant legislative house shall be the determining factor.⁴³ The notice of allegation must be presented to the President of the Senate⁴⁴ or the relevant Speaker of the SHA.⁴⁵ The notice of allegation must expressly declare that the pertinent office holder is guilty of gross misconduct in the discharge of the function of his office. The notice must not be vague or imprecise but must go further in providing the specific detailed particulars of the gross misconduct. The related head of the legislative house that the notice is presented to must not be a signatory to it.⁴⁶

Within a period of 7 days of receiving the notice of allegation, the Senate President or Speaker of the SHA will cause a copy of the notice to be served on the affected person. The same notice must also be served on each member of the NASS or the SHA, as the case may be. Service of the notice on the person sought to be impeached is essential to the entire process, the absence of which would nullify the impeachment. In *Dapianlong v. Dariye (No.1) case*,⁴⁷ one of the reasons that led to the nullification of the impeachment proceedings was that there was in effect nothing documentary to indicate that the Governor was served with the notice of allegation as required by law. A mere affidavit deposition alleging service of the process by the legislative house in a lawsuit challenging the constitutionality of the impeachment was held to be inadequate to cure the constitutional infraction.⁴⁸ Thus, the service of a written and duly signed notice of allegation is one of the constitutionally required pre-conditions for a successful impeachment.

After service of the notice of allegation, the Senate President or Speaker of the SHA is required to obtain a written statement from the person intended to be impeached in response to the notice of allegation. The reply statement must also be served on each member of the relevant legislature. Where the executive office holder fails or neglects to submit his response, he would be presumed as having no reaction to the allegations. Within a period of 14 days of the presentation of the notice to the Senate President or Speaker of the state legislative house, each house of the NASS or the SHA, as appropriate, must resolve by motion, without debating whether or not the allegation should be investigated. This would be done regardless whether or not the accused executive office holder responded to the notice of allegation.⁴⁹ Looking at this constitutional clause, it is apparent that the stipulated 14 days period is a directive to the pertinent legislative house as to the duration within which it must take appropriate action and consequently, the required time does not inure for the benefit of the executive office holder.⁵⁰

A motion that the NASS or SHA should investigate the matter will be deemed as having been successfully endorsed if the votes of two-thirds majority of all the members of the relevant parliament supported it. At the federal level, which is a bicameral legislature, it means that the required votes must not be below two-thirds majority of all the members of each house of the NASS.⁵¹ Within 7 days of the passing of the motion, the Chief Justice of Nigeria (CJN) or the Chief Judge of the State (as appropriate) would be requested by the Senate President or the Speaker of the SHA to set up a panel of seven persons who, in the opinion of the required

³⁷ 1999 CFRN, section 6(6)(b).

³⁸ *Chief Enyi Abaribe v. The Speaker, Abia State House of Assembly & Another* (2000) FWLR (Pt. 9) 1558 at 1571-1572.

³⁹ Rotimi Ajayi, et. al., "Nigeria: Reps Threaten to Impeach Obasanjo, Obasanjo Accuses Reps of Violating Constitution," (13 February 2002) *Vanguard*; retrieved from <<https://allafrica.com/stories/200202130633.html>> (accessed on 1 March 2023). See also, Azimazi Momoh Jimoh & John Akubo, "Senator across Parties Threaten to Impeach Buhari over Insecurity," (27 July 2022) *The Guardian*; retrieved from <<https://guardian.ng/news/senators-across-parties-threaten-to-impeach-buhari-over-insecurity/>> (accessed on 1 March 2023).

⁴⁰ See *Balarabe Musa v. Speaker, Kaduna State House of Assembly* (1982) 3 NCLR 450.

⁴¹ Under the erstwhile Constitution of the Federal Republic of Nigeria 1979, clauses relating to the impeachment of the President, Vice President, Governor and Deputy Governor were contained in sections 132 and 170, respectively.

⁴² 1999 CFRN, sections 143(2) and 188(2).

⁴³ For a detailed constitutional composition of the members of the Senate, House of Representative and House of Assembly, see 1999 CFRN, sections 48, 49 and 91. From these provisions, the Senate has 109 members; House of Representatives- 360 members; while a State House of Assembly (SHA) shall comprise of not less than 24 members but not exceeding 40 members.

⁴⁴ Where the impeachment relates to the President or Vice President- see 1999 CFRN, section 143(2)(a).

⁴⁵ Where the impeachment concerns the Governor or Deputy Governor- see 1999 CFRN, section 188(2)(a).

⁴⁶ *Dapianlong v. Dariye (No. 1)* (2007) All FWLR (Pt. 373) 1 at 54-55, 78-79.

⁴⁷ *Ibidem*.

⁴⁸ *Ibidem* at pp. 54-54. See also *Mike Balonwu v. Peter Obi* (2007) 5 NWLR (Pt. 1028) 488.

⁴⁹ 1999 CFRN, section 143(3) and 188(3).

⁵⁰ *Chief Enyi Abaribe v. The Speaker, Abia State House of Assembly & Another* (2000) FWLR (Pt. 9) 1558 at 1585.

⁵¹ CFRN 1999, section 143(4) and 188(4)

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judicial officer, are persons of impeccable integrity and must not be members of any public service, legislative house or political party, to investigate the allegation levelled against the executive office holder.⁵²

It is necessary to note that under sections 132(5) and 170(5) of the erstwhile 1979 CFRN, it was the Senate President or the Speaker of the SHA that was assigned the role of constituting the investigating panel. The nomination of the panel members by the Senate President or Speaker of the SHA also required the approval of the Senate or SHA, as may be appropriate. After investigation by the panel, the report was sent back to the Senate President or Speaker (at the state level) who in turn presented same to the legislative house that raised the allegation. Thus, the legislature made the complaint, investigated the complaint through the established panel and finally decided whether or not the impeachable charges had been established. Apparently, impeachment as a political weapon was left in the exclusive preserve of the legislature to be used as they desired.⁵³ The departure of the 1999 CFRN from the position under the previous 1979 Constitution may not be unconnected with the rule against bias, necessity to promote a fair hearing and to ensure that the legislature does not go contrary to the trite principle of natural justice that a person cannot be a judge in a case in which s/he has an interest, often epitomised in the Latin maxim, *nemo iudex in causa sua* (or *nemo iudex in sua causa*).

It is significant to note that the professional calling, gender, age or geographical locations of members of the panel are not stated under the 1999 CFRN. Since legal issues would be involved in impeachment matters, it is advisable to include a legally trained person among the panel members; allegations bothering on misappropriation of public funds would certainly require the services of an accountant in the panel. Also, given the sensitivity of gender issues in contemporary Nigerian society, it should not be out of place to have respect for gender parity when constituting the panel.⁵⁴ Because there is no restriction of geographical location, a member of the panel can be appointed from anywhere provided that s/he is a person of unquestionable character and would not have any disability in being brought into Nigeria to discharge the function.⁵⁵ Where the composition of the panel does not meet the constitutional requirement, it can be challenged in court. The court has pointed out that the appointment of an investigating panel for impeachment as well as the conduct of the constituted panel is subject to judicial enquiry.⁵⁶ The reason for this is that the setting up of the panel by the appropriate judicial officer creates a quasi-judicial ingredient to the impeachment process.⁵⁷

Being a quasi-judicial body, the panel is bound to grant the investigated office holder a fair hearing otherwise the proceedings of the panel would be rendered null and void by the court. This is because the conduct of panel is not immune from being challenged in court.⁵⁸ Also, it has been held that a judicial officer that acts either in compliance with the requirement of section 143(5) or section 188(5) of the 1999 CFRN concerning the setting up of the investigating panel can be sued by an aggrieved party since he is not acting judicially but constitutionally and so, cannot claim judicial immunity.⁵⁹ The panel's powers and functions are to be regulated by procedure stipulated by the NASS or the relevant SHA.⁶⁰ Besides, the investigating panel only has power to make a finding either that the allegation has been established or has not been proved;⁶¹ it lacks the power to pronounce the investigated executive officer guilty of committing crime as that would constitute a usurpation of the jurisdiction and authority of the court.⁶² In addition, the panel cannot try and convict a person of contravention of the provisions of the Code of Conduct as such is the function of the Code of Conduct Tribunal.⁶³

Where the report states that the allegation has not been proved, no further proceedings shall be undertaken in relation to the matter; that automatically terminates the impeachment effort of the parliament. Neither the appropriate legislative house nor the judicial officer has the constitutional power to reconstitute another panel to obtain a more favourable report. Where such is done and the executive office holder is impeached based of the proceedings of a subsequent reconstituted panel, the court will not hesitate to declare the impeachment as illegal and unconstitutional.⁶⁴ The reason for this is because the legislative house and the pertinent head of the judiciary who has the constitutional role in setting up the panel have become *functus officio* after the initial report indicates that the allegation has not been proved.⁶⁵ This however does not imply that no successive impeachment proceedings can

⁵² CFRN 1999, section 143(5) and 188(5). It is necessary to note that under sections 132(5) and 170(5) of the erstwhile 1979 Constitution of the Federal Republic of Nigeria, it was the Senate President or the Speaker of the State House of Assembly that was assigned the role of constituting the investigating panel.

⁵³ *Obong Christopher Ekpenyong v. Barrister Ime Umana & 3 Others* (2010) All FWLR (Pt. 520) 1387 at 1397.

⁵⁴ *Inakoju v. Adeleke* (2007) All FWLR (Pt. 353) 3 at 81-82.

⁵⁵ *Awolowo v. Minister for Internal Affairs* (1962) LLR 177.

⁵⁶ *Alhaji Sani Abubakar Danladi v. Barr. Nasiru Audu Dangiri & 6 others* (2015) 2 NWLR (Pt. 1442) 124 at 183; See also *Mike Balonwu v. Peter Obi* (2007) 5 NWLR (Pt. 1028) 488.

⁵⁷ Kalu Kingsley Anele, "A Comparative Analysis of the Impeachment Procedures in Nigeria and Indonesia: A Need for a Paradigm Change", (2022) 9(1) *Lentera Hukum*, 33-74 at 45; DOI: <<https://doi.org/10.19184/ejrh.v9i1.28417>> (accessed on 28 February 2023).

⁵⁸ *Sani Abubakar Danladi v. Nasiru Audu Dangiri* (2015) 2 NWLR (Pt. 1442) 124 at 176, 183.

⁵⁹ *M. P. Ogele v. Hon. Justice Oyebisi Omoleye & 10 Others* (2006) All FWLR (Pt. 296) 809 at 833-834.

⁶⁰ CFRN 1999, section 143(7)(a) and section 188(7)(a).

⁶¹ CFRN 1999, section 143(8) and section 188(8).

⁶² *Babajide Omoworare v. Iyiola Omisore & Others* (2011) All FWLR (Pt. 561) 1493 at 1544-1545; *All Progressive Congress v. Peoples Democratic Party (PDP) & 4 Others* (2015) 15 NWLR (Pt. 1481) 1 at 101.

⁶³ *Action Congress v. INEC* (2007) 12 NWLR (Pt. 1048) 220.

⁶⁴ *All Progressive Congress v. Peoples Democratic Party (PDP) & 4 Others* (2015) 15 NWLR (Pt. 1481) 1 at 101.

⁶⁵ *Inakoju v. Adeleke* (2007) All FWLR (Pt. 353) 3 at 84.

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be initiated against the “freed” elected executive for the duration of his stay in office. On the contrary, any other impeachment proceedings can be initiated against the named executive office holder if s/he commits any subsequent gross misconduct.

Another alternative recommendation which the panel can make is that the allegation against the holder of the office has been proved.⁶⁶ In such a situation, within 14 days of receiving the panel’s report, each house of the NASS or the SHA, as may be applicable, can take one of two options. It can either adopt the report of the panel or reject the report. At the national level, the report will be considered to have been adopted by a resolution of each house of the NASS if it is supported by not less than two-thirds majority of all its members. Conversely, at the state level, the resolution adopting the report must be supported by two-thirds majority of all the members of the SHA. Once the report has been adopted, the investigated office holder stands removed from office.⁶⁷ The need for members of parliament to abide by their oaths of office while discharging the crucial function of adopting a resolution removing an executive office holder was stressed by Niki Tobi, JSC in the case of *Inakoju v. Adeleke*⁶⁸ as follows:

This is the most crucial area and members should be most loyal to the oath they took on that eventful day of their swearing in ceremony. On that day, they swore or affirmed inter alia to perform “my functions honestly to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law, and the rules of the House of Assembly and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria...” It is at times the experience that some Nigerians regard the oath as another kindergarten recitation, to the extent that they do not attach any importance to it. Some forget the wordings of the oath as they finish. It should not be so. Members are at the bar of history and would not like history to judge them badly. They must therefore be at their parliamentary best. In debating the report, there should be no consideration of political party and political leanings. The exercise is much more than the party the Governor or Deputy Governor (President or Vice President) belongs and the party a member belongs. It is an exercise for the good of the State and members must remove their political hats or togas. A member who does not see anything good in what the Governor or Deputy Governor (President or Vice President) does, will definitely arrive at a bad decision. So too the one who sees nothing wrong in what the Governor or Deputy Governor (President or Vice President) does. Let the debate and the subsequent findings of the House be donated by the report of the panel and not by sentiment.⁶⁹

As earlier pointed out, the sole constitutional ground on which the executive can be removed through an impeachment procedure is that s/he is “guilty of gross misconduct in the performance of the functions” of his/her office. It is obvious that the alleged gross misconduct that can earn the office holder an impeachment must be limited to the execution of the responsibilities connected to his/her constitutional office. Hence, “gross misconduct which is unconnected with the discharge of his/her presidential or gubernatorial constitutional or statutory responsibilities may not constitute a firm ground for the removal.”⁷⁰ Under section 143(11) and 188(11), “gross misconduct” is defined as a grave infringement or breach of the provisions of the Constitution or a misconduct of such character as constitutes in the view of the NASS or the SHA to be gross misconduct. By necessary implications, this definition is clearly nebulous, fluid and subject to potential abuse by parliamentarians, thereby leaving the executive officer holder sought to be impeached at the mercy of the legislature.

Sections 143(10) and 188(10) of the 1999 CFRN contain the ouster clauses that forbid all courts from entertaining any proceedings or determination of the NASS or a SHA or its constituted panel from being contested in court.⁷¹ Obviously, the court would be right to decline jurisdiction when there is full compliance with the pre-conditions enumerated in sections 143(2) to (9) and 188(2) to (9).⁷² But where a question of non-compliance with the pre-conditions of subsections (2)-(9) becomes the crux of the matter, the court can certainly be approached by an aggrieved party to contest an impeachment. This explains why the predetermined procedures of removing an executive office holder have to be strictly construed by the court in order to discover if the legislative act is consistently executed in accordance with the provisions of the Constitution. It becomes imperative for the court to be satisfied that there was due compliance with the requirements of subsections (2)-(9) before declining jurisdiction.⁷³ A number of decided cases evidently illustrate the attitude of Nigerian courts concerning impeachment proceedings that fail to measure up to the constitutional requirements.

⁶⁶1999 CFRN, sections 143(9) and 188(9).

⁶⁷ 1999 CFRN, section 143(9) and section 188(9).

⁶⁸ (2007) All FWLR (Pt. 353) 3.

⁶⁹ *Ibidem* at 84-85 (Words in bracket added).

⁷⁰ Imo Udofa, “The Impeachment Power of the Legislature under the Nigerian and American Constitutions Compared,” (2015) 2(4) *International Journal of Law and Legal Jurisprudence Studies*, 1-22 at 5.

⁷¹ *Chief Enyi Abaribe v. The Speaker, Abia State House of Assembly & Another* (2000) FWLR (Pt. 9) 1558 at 1585; (2002) 14 NWLR (Pt. 788) 466.

⁷² In *Chief Enyi Abaribe’s* case, the court rightly dismissed the suit because it was revealed that the Abia State House of Assembly adhered strictly to the provisions of section 188(1)-(9) of the Constitution in impeaching the Deputy Governor. See also, *Alhaji Balarabe Musa v. Auta Hamza & Others* (1982) 3 NCLR 229, where the Kaduna State House of Assembly complied with section 170(1)-(9) of then 1979 CFRN before the Court of Appeal held that the court lacked jurisdiction to hear and determine the case of removal of the Governor.

⁷³ *Jimoh v. Olawoye* (2003) 10 NWLR (Pt. 823) 307, where the provision of section 26 of the Local Government Law of Kwara State 1999, which provided for impeachment of local government chairman has identical words with section 188 of the 1999 CFRN. See also *Ekpo v. Calabar Local Government Council* (1993) 3 NWLR (Pt. 281) 324 at 337-338, 437, where court considered the provisions of section 11 of the Local Government (Basic Constitutional Transitional) Decree No. 15 of 1989 which provisions are in *pari materia* with section 188 of the 1999 CFRN.

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In *Hon. Abraham Adeolu Adeleke & 2 others v. Oyo State House of Assembly*,⁷⁴ a faction of 18 out of 32 members of the Oyo State House of Assembly met at hotel premises, outside the precinct of the SHA,⁷⁵ to commence impeachment proceedings against the State Governor, Senator Rasheed Adewolu Ladoja. They issued a notice of allegation against him and subsequently passed a motion calling for investigation of the said allegations against the Governor without the requisite concurrence of two-thirds majority of the members of the legislative house; leading to the impeachment of the Governor. Aggrieved by the action of the factional group, the Speaker and Deputy Speaker of the SHA, who were not part of the group, instituted a suit challenging the purported impeachment. The High Court declined jurisdiction, predicating its action on the ouster provision of section 188(10) of the 1999 CFRN and consequently struck out the case.

But on an appeal to the Court of Appeal, the impeachment was nullified because of non-compliance with the pre-impeachment procedures which *inter alia* included the inability to achieve the mandatory two-thirds majority approval of the members of the legislative house as well as the exclusion of the Speaker of the SHA from his constitutional role as provided for in section 188 of the Constitution.⁷⁶ The court also expressed the opinion that a factional meeting of a legislative house, even if it were the majority members sitting in an unauthorised location, without the principal officers of the relevant parliament cannot constitute a constitutional meeting of the entire parliament as contemplated and required by the Constitution.⁷⁷ The decision of the appellate court was later affirmed on a further appeal to the Supreme Court.⁷⁸

Another case where the intervention of the court was sought to annul an impeachment for non-compliance with mandatory constitutional requirements was in *Hon. Michael Dapianlong & 5 others v. Chief (Dr.) Joshua Chibi Dariye & Another (No. 1)*.⁷⁹ The facts that paved the way for the institution of the case were that sometime in 2006, 14 members of the Plateau SHA, including the Speaker and Deputy Speaker, decamped to another political party. This resulted in the decampers vacating their parliamentary seats by operation of law as constitutionally required,⁸⁰ leaving merely 10 members in the legislative house. A notice of allegation signed by 8 out of the 24 members of the SHA, including the person who was appointed as the *Pro Tempore* Speaker as one of the signatories, was served on the Governor. At the request of the *Pro Tempore* Speaker, the acting Chief Judge of the state set up a panel to investigate the allegations of gross misconduct levelled against the Governor; resulting in the impeachment of the Governor by the minority legislators. The impeachment was later reversed by the court for non-compliance with constitutional requirements of section 188(2),(4),(5) and(9) of the 1999 CFRN.⁸¹

The case of *Alhaji Sani Abubakar Danladi v. Barr. Nasiru Audu Dangiri & 6 others*⁸² turned on the questions pertaining to the time frame for submission of report by panel investigating gross misconduct for purposes of impeachment and the effect of depriving the investigated officer an opportunity to defend himself/herself before the panel. The summary of the case was that some members of Taraba SHA initiated impeachment proceedings against the appellant who was the Deputy Governor of the State. Upon being served with the notice of allegation, the appellant submitted his response and a panel of 7 members was constituted to investigate the allegations. In the course of the panel's sitting, the appellant called one witness and thereafter requested on health grounds for a short adjournment to enable him testify and call additional witnesses. The panel declined the application; closed the case for the defence and proceeded to submit its report stating that the allegations had been established against the Deputy Governor. This culminated in the removal of the Deputy Governor from office. On an appeal to the Supreme Court challenging the impeachment, the apex court quashed the impeachment and questioned the rationale behind the speedy proceedings of the panel when it had a constitutional period of 3 months to carry out its investigation concerning the impeachable allegations.⁸³

It is worth reiterating that in a quasi-judicial proceeding such as the one performed by the constituted panel to investigate the impeachable accusations preferred against the Deputy Governor, the constitutionally protected right to fair hearing entails *inter alia*, the right of the Deputy Governor to adduce evidence by himself, call witnesses, if he elected to, and make oral or written submission either personally or through a legal practitioner of his own choice.⁸⁴ The way and manner that the panel executed its assignment left the court with no doubt in mind that the impeachable allegations were mere deception and a premeditated calculation to remove the Deputy Governor from office.⁸⁵ Impeachment should not be used as an instrument of settling political vendetta but as a mechanism that encourages accountability and checks excesses of the executive office holder.⁸⁶

⁷⁴ (2007) All FWLR (Pt. 345) 211.

⁷⁵ It is submitted further that although sections 143 and 188 of the 1999 CFRN are mute regarding the venue for impeachment proceedings, it would however be unimaginable to think that such serious constitutional business would be held in an hotel when the official legislative Chamber where legislative business is normally transacted is readily accessible for use.

⁷⁶ (2007) All FWLR (Pt. 345) 211 at pp. 257-258.

⁷⁷ *Ibidem* at p. 260.

⁷⁸ *Hon. Muyiwa Inakoju & 17 others v. Hon. Abraham Adeolu Adeleke & 3 others* (2007) All FWLR (Pt. 353) 3.

⁷⁹ (2007) All FWLR (Pt. 373) 1

⁸⁰ See 1999 CFRN, section 68(g).

⁸¹ *Ibidem* at pp. 78-79.

⁸² (2015) 2 NWLR (Pt.1442) 124

⁸³ *Ibidem* at pp. 170, 198-199.

⁸⁴ 1999 CFRN, section 36(1) and (6); section 143(6) and 188(6).

⁸⁵ *Alhaji Sani Abubakar Danladi case* (supra) at p. 168.

⁸⁶ Ngozi Udombana & Prudence Adula Okparavero, "Impeachment Power of the Legislature and Executive Unaccountability in Nigeria: Between Rhetoric and Practice," (2020) 6(6) *International Journal of Law*, 252-263 at p. 259.

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However, it should be accentuated that the above reviewed court rulings were decided purely on infractions to constitutionally specified procedures for removing the investigated executive office holders instead of on the merits regarding the impeachable allegations of gross misconduct levelled against the respective Governors or Deputy Governors.⁸⁷ It is also instructive to mention that albeit the 1999 CFRN does not stipulate the time of the day when impeachment proceedings should be performed, the courts have maintained that such proceedings should not be held in “unparliamentary hours” or odd hours of midnight or in the wee hours of the morning before the parliamentary time stipulated for the sitting of the legislative house by its rules.⁸⁸

3. Impeachment Procedure in the United States of America

Fundamentally, there are two key means for holding an American President accountable, namely, civil or criminal judicial proceedings against the President and the impeachment mechanism.⁸⁹ The first process pertaining to judicial proceedings is relatively restrictive.⁹⁰ For illustrations, in *United States v. Richard Nixon*,⁹¹ the court refused to uphold President Nixon’s claim of immunity and executive privilege that gave the President the right to withhold information from other arms of government in order to preserve confidential communications within executive branch or to protect the national interest; but in *Richard Nixon v. Fitzgerald*,⁹² the US Supreme Court maintained that the President has complete immunity from liability for civil damages occurring from any official action performed while in office. Again, in *Bill Clinton v. Paula Jones*,⁹³ the court held that immunity does not apply if the act complained of arose prior to the time the President came into office. Thus, impeachment remains the major formal weapon that Congress can utilise to make the President or Vice President answerable for his misdeeds.⁹⁴

However, it must be pointed out that though the parliament lacks disciplinary power over the President apart from through impeachment mechanism, it can adopt a presidential censure resolution against the President, which is a form of reprimand that could be adopted by either or both the House of Representatives or the Senate, but without further legal implications. About 12 American Presidents have been identified by the Congressional Research Service (CRS) to have encountered censure attempts as at 2020. In the cases of Presidents Nixon and Clinton, the censure resolutions also called for their resignations. The Congress also criticised and censured former President Barack Obama for his deliberate and brazen disregard of legislative authority through his executive actions “to deprive American citizens of their constitutionally mandated right to bear arms under Second Amendment.”⁹⁵ Likewise, Congress lately censured and castigated former President Donald Trump for calls made by him in an attempt to annul the November 2020 presidential results in the State of Georgia. He was also censured and condemned by the Senate through Senate Congress Resolution 39 (116th Congress) for ordering federal officers to apply gas and rubber bullets to disperse peaceful protesters in Lafayette Square, Washington DC in June 2020.⁹⁶

As previously stated, the concept of impeachment under the United States Constitution (USC) originated from Britain where the British parliament invented the mechanism as a form of resistance to the common propensity of the monarchy to autocracy and to counter largely intolerable royal policies by removing government ministers that executed such policies.⁹⁷ Impeachment therefore, was a political device utilised by parliament to check what it considered were abuses of power perpetrated by the king or his ministers.⁹⁸ But in contrast to the situation in Britain where anyone, unless a member of the royal family, could be impeached, the USC restricted impeachment only to the President, Vice President and all civil officers of the United State.⁹⁹ It is vital to state from the onset that the term “civil officers” however precludes military officials that could only be tried and removed by a court martial.¹⁰⁰ Charles Morgan *et. al.*, relying on the unfortunate precedent set by the Senate’s ruling in Senator William Blount impeachment trial, noted that a Senator was not a “civil officer” within the contemplation of Article II, section 4 of the USC and consequently was

⁸⁷ Omololu Fagbadebo, “An Analysis of the Judicial Review of the Impeachment Procedure in Anambra, Oyo, and Plateau in Nigeria’s Fourth Republic,” (2020) XXVII(48) *Transylvanian Review*, 12211-12219 at p. 12213.

⁸⁸ *Hon. Muyiwa Inakoju & 17 others v. Hon. Abraham Adeolu Adeleke & 3 others* (2007) All FWLR (Pt. 353) 3 at 96; *Mike Balonwu v. Peter Obi* (2007) 5 NWLR (Pt. 1028) 488.

⁸⁹ Erwin Chemerinsky, *Constitutional Law*, Fourth Edition (New York: Wolters Kluwer, 2013), 419.

⁹⁰ Maxim Tomoszek, “Impeachment in the U.S. Constitution and Practice- Implications for the Czech Constitution,” (2017) 17(1) *International and Comparative Law Review*, 129-146 at p. 133; DOI: <<https://doi.org/10.2478/iclr-2018-0005>> (accessed on 19 March 2023).

⁹¹ 418 U.S. 683 (1974).

⁹² 457 U.S. 731 (1982).

⁹³ 520 U.S. 681 (1997).

⁹⁴ Maxim Tomoszek, “Impeachment in the U.S. Constitution and Practice- Implications for the Czech Constitution,” (2017) 17(1) *International and Comparative Law Review*, 129-146 at p. 133; DOI: <<https://doi.org/10.2478/iclr-2018-0005>> (accessed on 19 March 2023).

⁹⁵ See House Resolution 582 (114th Congress).

⁹⁶ For more information on congress resolutions to censure the President, see Congressional Research Service, “Resolutions to Censure President: Procedure and History” (Updated February 1, 2021); retrieved from <<https://sgp.fas.org/crs/misc/R45087.pdf>> (accessed on 19 March 2023).

⁹⁷ Frank O. Bowman III, “British Impeachment (1376-1787) and the Preservation of the America Constitutional Order,” (2019) 46(4) *Hastings Constitutional Law Quarterly*, 745-792 at p.745.

⁹⁸ Raoul Berger, *Impeachment: The Constitutional Problems*, First Edition (Cambridge, Mass: Harvard University Press, 1973), pp. 67-72,

⁹⁹ United States Constitution (USC), Article II, section 4. Other elaborate provisions concerning impeachment procedure in the USA are set out in the “Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials,” *Senate Manual containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, section 100-126, 105th Congress, pp. 177-185; retrieved from <https://www.sewnate.gov/artandhistory/resources/pdf/3_1986SenatesImpeachmentRules.pdf> (accessed on 19 March 2023).

¹⁰⁰ Ronald D. Rotunda, “An Essay on the Constitutional Parameters of Federal Impeachment,” (1987-1988) 76(3) *Kentucky Law Journal*, 707-732 at p. 716. See also Ronald D. Rotunda & John E. Nowak (eds.), *Joseph Story: Commentaries on the Constitution* (Carolina Academic Press, 1987), 134, 148

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unimpeachable,¹⁰¹ though the ruling has been sharply criticised and should be overruled,¹⁰² particularly due to the historical backdrop of impeachments in Britain where members of parliament were subject to impeachment.¹⁰³ However, the Senate found a leeway by expelling Senator Blount, relying on Article I, section 5, clause 2 of the USC which permits each legislative house to expel its member by a majority vote of two-thirds majority.¹⁰⁴

The ambit of impeachable offence under the USC covers treason, bribery, or other high crimes and misdemeanors; although the term, “other high Crimes and Misdemeanors” was incorporated into the text of the USC (as a substitute for “maladministration”) by George Mason who was a delegate from Virginia at the Constitutional Convention. It was his argument that permitting impeachment solely on grounds of treason and bribery would be too restrictive and incapable of encompassing other “great and dangerous offences,”¹⁰⁵ including attempts “to subvert the Constitution.”¹⁰⁶ But while treason and bribery are clear-cut criminal offences,¹⁰⁷ what could qualify as “other high Crimes and Misdemeanors” has engaged the attention of writers and commentators. This is because the term is not defined in the USC and other constitutional mentions to impeachment are vague on the issue whether “other high Crimes and Misdemeanors” was intended to cover more than criminal offences.¹⁰⁸ Moreover, the ambiguity of the record from the Constitutional Convention which failed to provide supplementary understanding of the exact meaning of the phrase seems to have contributed to the problem.¹⁰⁹

Michael Gerhardt has argued that the phrase, “other high Crimes and Misdemeanors” are “technical terms of art that refer to so-called political crimes.”¹¹⁰ Largely, these offences were construed as grave abuses of official power or severe breaches of public trust, though not necessarily criminal offences that was punishable in the courts.¹¹¹ Other writers like Goldberg,¹¹² Bestor,¹¹³ Feerick¹¹⁴ and Fenton¹¹⁵ have agreed with this view that the phrase refers to “political crimes” and that “political crimes” were essentially not indictable but comprised of the types of abuses of power or harms caused to the republic and which could only be carried out by public officers by reason of holding public offices or privileges they held.

Perhaps, to properly understand what constitutes “political crimes” so as to necessitate impeachment, one may further explore the British impeachment practices from where the Founders and framers of the USC derived the very constitutional language of “other high Crimes and Misdemeanors”. In this regard, Gerhardt, quoting William Blackstone’s *Commentaries on the Law of England*,¹¹⁶ summarised the English impeachment experience in the following words:

*[D]ifference of degree, not a difference of kind, separat[ing] ‘high’ treason from other ‘high’ crimes and misdemeanors ... [and that] [t]he common element in [English impeachment proceedings] was...injury done to the state and its constitution, whereas among the particular offences producing such injury some might rank as treasons, some as felonies and some as misdemeanors, among which might be included various offences that in other contexts would fall short of actual criminality.*¹¹⁷

Alexander Hamilton expresses similar sentiments in *The Federalist* No. 65 when he pointed out that:

The subjects of its [the Senate’s] jurisdiction [in an impeachment trial] are those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. The prosecution of

¹⁰¹ John D. Feerick, “Impeaching Federal Judges: A Study of the Constitutional Provisions,” (1970) 39(1) *Fordham University Law Review*, 1-58 at p.26.

¹⁰² Charles Morgan, *et al.*, “Impeachment: An Historical Overview,” (1974) 5(3) *Seton Hall Law Review*, 689- 719 at pp. 696-697.

¹⁰³ Raoul Berger, *Impeachment: The Constitutional Problems*, First Edition (Cambridge, Mass: Harvard University Press, 1973), pp. 213-219.

¹⁰⁴ Maxim Tomoszek, “Impeachment in the U.S. Constitution and Practice- Implications for the Czech Constitution,” (2017) 17(1) *International and Comparative Law Review*, 129-146 at p. 137; DOI: <<https://doi.org/10.2478/iclr-2018-0005>> (accessed on 19 March 2023).

¹⁰⁵ Richard K. Neumann, “The Revival of Impeachment as a Partisan Political Weapon,” (2007) 34(2) *Hastings Constitutional Law Quarterly*, 161-327 at pp. 170-171. See also Raoul Berger, “Impeachment for “High Crimes and Misdemeanors,” (1970-1971) 44 *Southern California Law Review*, 395 at p. 416; Frank O. Bowman III, “British Impeachment (1376-1787) and the Preservation of the America Constitutional Order,” (2019) 46(4) *Hastings Constitutional Law Quarterly*, 745-792 at pp.746-748.

¹⁰⁶ Max Farrand (ed.), *The Records of the Federal Convention of 1787*, Revised Edition (New Haven, CT: Yale University Press, 1966), 2:550.

¹⁰⁷ USC, Article III, section 3 defines “Treason” against the US as “consisting only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort;” see also 18 U.S.C., section 2381, which provides that “Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or imprisoned and fined, and incapable of holding any U.S. office.” The offence attracts a minimum jail term of 5 years and a fine up to \$10,000 and a likely sentence of death. On the other hand, the USC does not define the word, “Bribery”, but statutorily, the term has become a federal crime concerning judicial officers, members of Congress and other public officials- see 18 U.S.C., section 201.

¹⁰⁸ Arthur J. Goldberg, “The Question of Impeachment,” (1974)1(1) *Hastings Constitutional Law Quarterly*, 5-12 at p. 6.

¹⁰⁹ Joseph M. Bessette & Gary J. Schmitt, *What Does “High Crimes and Misdemeanors” Mean?* (American Enterprise Institute, November 2019), 1-18 at p. 2.

¹¹⁰ Michael J. Gerhardt, “The Lessons of Impeachment History,” (1999) 67 *George Washington Law Review*, 603-625 at p. 624.

¹¹¹ *Ibidem* at pp. 603-604.

¹¹² Arthur J. Goldberg, “The Question of Impeachment,” (1974) 1(1) *Hastings Constitutional Law Quarterly*, 5-12 at pp. 6-7. See also, Nathaniel L. Nathanson, “Impeachment: The Constitutional Problems,” (1974) 2(1) *Florida State University Law Review*, 209-218 (Reviewing Raoul Berger, “Impeachment: The Constitutional Problems” (1973)).

¹¹³ Arthur Bestor, “Impeachment,” (1973) 49(1) *Washington Law Review*, 255-285 at pp. 264-267 (Reviewing Raoul Berger, “Impeachment: The Constitutional Problems” (1973)).

¹¹⁴ John D. Feerick, “Impeaching Federal Judges: A Study of the Constitutional Provisions,” (1970) 39(1) *Fordham University Law Review*, 1-58 at pp.47-58.

¹¹⁵ Paul S. Fenton, “The Scope of the Impeachment Power, (1970) 65(5) *Northwestern University Law Review*, 719-758 at pp. 726-728; Fenton contends further that for an infraction to constitute an impeachable offence, it must be a major offence and not merely a minor or technical contravention of law or ethics.

¹¹⁶ William Blackstone, *Commentaries on the Laws of England of Public Wrongs* (Boston, MA: Beacon Press, 1962).

¹¹⁷ Michael J. Gerhardt, “The Lessons of Impeachment History,” (1999) 67 *George Washington Law Review*, 603-625 at p. 611.

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them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. (Words in bracket supplied)¹¹⁸

Basically, non-indictable impeachable offences are those offences committed by public officers in violation of their public trust and obligations, which oftentimes are political in character. From historical context, the scope of impeachable behaviour in Britain encompassed a wide range of official misbehaviours such as armed rebellion against the state or commonplace criminality; corruption; allegation of incompetence, neglect of duty or maladministration of office; abuse of official power; formulation and implementation of foreign policies that were at variance with the state's primary foreign policy objectives; and subvention of constitutional order,¹¹⁹ among others. Laurence Tribe has also opined that an intentional presidential decision to undermine the national defence or to execute an individual war by circumventing constitutional clauses though may not breach a criminal statute would likely constitute a non-indictable impeachable offence.¹²⁰ So at the end of the day, the full spectrum of what would amount to a "political crime" or a non-indictable impeachable offence defies a straightforward definition. It all depends on the "circumstances under which the offences have occurred (including the actor, the forum, the scope of the officer's official duties and the nature and significance of the offensive act)" as well as the concerted political opinion of the Congress.¹²¹

Impeachment procedure therefore, in the USA exists as an apparatus by which the House of Representatives may formally charge and mandate the Senate to consider the removal of the President, Vice President or other civil officers for certain types of misconduct. The House of Representatives has the sole constitutional power of impeachment¹²² while the Senate is granted the exclusive authority to try all impeachments.¹²³ Removal and disqualification to hold and enjoy any office of honour, trust or profit under the United States are the only constitutional sanctions that the Senate can impose if it convicts the President or Vice President at the close of the senatorial impeachment trial¹²⁴ and that cannot occur without the concurrence of two-thirds of the members present,¹²⁵ as was the case during President Andrew Johnson's trial.¹²⁶ The individual convicted at the Senate's impeachment trial shall however, be liable and subject to further indictment, trial, judgment and punishment according to law.¹²⁷ The USC bars the impeached officer from enjoying any subsequent presidential pardon or reprieve.¹²⁸ This is contrary to the British practice where the monarch could grant pardon in an impeachment conviction.¹²⁹

Some instances of presidential impeachment proceedings are worth mentioning to further illustrate the flexibility of "other high crimes and misdemeanors" as impeachable ground in the USA. Indeed, the history of impeachment of a President in the USA dates back to 1868 when Andrew Johnson became the first President to be impeached by the House of Representatives. President Johnson was charged with attempting to remove the Secretary of War in a manner that was contrary to relevant statutory provisions contained in the Tenure of Office Act 1867, which limited the constitutional power of the President to remove certain public officers without senatorial approval. He narrowly secured acquittal by a margin of a single vote during the Senate trial.¹³⁰

In 1974, President Richard Nixon was confronted with three articles of impeachment by the Judiciary Committee of the House of Representatives based on what has come to be known as the "Watergate scandal"; but he resigned prior to the commencement of impeachment proceedings by the whole House. The resignation letter was tendered some days after the US Supreme Court had ruled that the President was to surrender the incriminatory tape recordings and other relevant subpoenaed materials linked to the scandal as demanded by the special prosecutor.¹³¹ It has been opined that Nixon's resignation was as a result of hints dropped by Republican leaders in the House of Representatives and the Senate who implored him to resign honourably as it was certain that that he would be impeached and likely convicted.¹³² Nixon's close-impeachment experience has been considered

¹¹⁸ Alexander Hamilton, "The Powers of the Senate Continued" in Jacob E. Cooke (ed.) *The Federalist Papers* No. 65 (Middletown, CT: Wesleyan University Press, 1961); retrieved from <<https://guides.loc.gov/federalist-papers/text-61-70#s-lg-box-wrapper-25493452>> (accessed on 19 March 2023).

¹¹⁹ Frank O. Bowman III, "British Impeachment (1376-1787) and the Preservation of the America Constitutional Order," (2019) 46(4) *Hastings Constitutional Law Quarterly*, 745-792 at pp.786-791.

¹²⁰ Laurence H. Tribe, *American Constitutional Law*, Second Edition (Mineola, New York: Foundation Press, 1988), p. 294. See also Robert F. Nagel, "American Constitutional Law," (1979) 127(4) *University of Pennsylvania Law Review*, 1174-1194 (Reviewing Laurence H. Tribe, *American Constitutional Law*; DOI: <<https://doi.org/10.2307/3311796>> (accessed on 19 March 2023); see Stanley C. Brubaker, "Book Review: American Constitutional Law (2d Ed.) by Laurence M. Tribe," (1989) 6(431) *Constitutional Commentary*, 469-494; retrieved from <<https://scholarship.law.umn.edu/concomm/1009>> (accessed on 19 March 2023).

¹²¹ Michael J. Gerhardt, "The Lessons of Impeachment History," (1999) 67 *George Washington Law Review*, 603-625 at p. 615.

¹²² USC, Article I, section 2, clause 5. The impeachment is initiated by a simple majority vote in the House of Representatives.

¹²³ USC, Article I, section 3, clause 6.

¹²⁴ USC, Article I, section 3, clause 7.

¹²⁵ USC, Article I, section 3, clause 6. While the Senate is vested with the sole authority to try all impeachments, where the trial relates to the president of the United States of America, the trial shall be presided over by the Chief Justice.

¹²⁶ It may be recalled that during this trial and notwithstanding how strongly Congress desired his impeachment and removal, the Senate could not secure conviction because of the inability to obtain a concurrence of two-thirds majority requirement; thirty-five senators voted him guilty while 19 voted not guilty- see William H. Rehnquist, "The Impeachment Clause: A Wild Card in the Constitution," (1991) 85 *Northwestern University Law Review*, 903-918 at p. 917.

¹²⁷ USC, Article I, section 3, clause 7.

¹²⁸ USC, Article II, section 2, clause 1.

¹²⁹ Richard K. Neumann, "The Revival of Impeachment as a Partisan Political Weapon," (2007) 34(2) *Hastings Constitutional Law Quarterly*, 161-327 at p. 170. See also Michael J. Gerhardt, "The Lessons of Impeachment History," (1999) 67 *George Washington Law Review*, 603-625 at p. 605.

¹³⁰ Maxim Tomoszek, "Impeachment in the U.S. Constitution and Practice- Implications for the Czech Constitution," (2017) 17(1) *International and Comparative Law Review*, 129-146 at pp. 137-138; DOI: <<https://doi.org/10.2478/iclr-2018-0005>> (accessed on 19 March 2023).

See also William H. Rehnquist, "The Impeachment Clause: A Wild Card in the Constitution," (1991) 85 *Northwestern University Law Review*, 903-918 at p. 917.

¹³¹ *United States v. Richard Nixon* 418 U.S. 683 (1974).

¹³² Richard K. Neumann, "The Revival of Impeachment as a Partisan Political Weapon," (2007) 34(2) *Hastings Constitutional Law Quarterly*, 161-327 at p. 254.

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as being non-partisan in every material sense as a considerable bloc of Republicans voted along with Democrats for impeachment at the initial House Judiciary Committee stage.¹³³ Similarly, the hurried resignation of President Nixon clearly established that the weapon of impeachment could have serious consequences even when there may be no concrete conviction.¹³⁴

Twenty-four years later, the issue of whether inappropriate sexual dalliances, perjury, abuse of office and obstruction of administration of justice were impeachable offences within the compass of “other high crimes and misdemeanors” surfaced during President Bill Clinton’s impeachment in 1998.¹³⁵ Out of the four articles of impeachment,¹³⁶ the House voted to impeach the President on grounds of perjury and obstruction of justice in the course of the investigation of his improper sexual frolicking with a subordinate government worker. The Congress reasoned that the President’s conduct had “undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.”¹³⁷ In an ensuing trial by the Senate, he was acquitted of all the charges.¹³⁸ Nevertheless, it is argued that the House’s vote to impeach President Clinton seems to answer in the affirmative that a criminal offence, like the perjury charge, that may not rise to the level of an abuse of power may still constitute an impeachable offence though the Senate’s acquittal appears to have left the matter unresolved.¹³⁹

In December 2019, Donald Trump was impeached by the House of Representatives on charges bothering on obstruction of Congress and misuse of official power in relation to his dealings with the Ukrainian government wherein the latter was pressured to conduct investigations on past US Vice-President Joe Biden in exchange for foreign support. President Trump was later acquitted of both charges levelled against him in the Senate.¹⁴⁰ Again, in January 2021, Trump was impeached by the lower house on a charge of incitement of insurrection after a violent mob of his supporters took over the US Capitol, interrupted joint congressional proceedings where electoral votes in presidential election lost by Trump was being ceremonially counted.¹⁴¹ Though he later escaped conviction following Senate’s acquittal by 10 votes short of the requisite two-thirds majority needed to convict “high crimes and misdemeanors”, he has remained the first US President to be impeached twice.¹⁴² A conviction would have authorised the Senate to vote to ban him from holding any public office in the future.¹⁴³ But in a fresh legal twist, Donald Trump has been indicted by Manhattan grand jury on over 30 counts concerning business fraud and arraigned in court, making him the first ex-leader in USA to be confronted with criminal charges; a move that Trump and some of his supporters have described as “Political Persecution and Election interference at the highest level in history” and a “weaponization of the justice system.”¹⁴⁴

4. Juxtaposing Impeachment Practices in Nigeria and the USA

When comparing impeachment processes under the USC and the 1999 CFRN, there are some systematic resemblances and disparities. Under the Nigerian situation where a bicameral legislature operates at the federal level like in the USA, impeachment mechanism involves both the Senate and the House of Representatives that constitute the NASS simultaneously;¹⁴⁵ whilst at the sub-national or state level, impeachment is initiated and concluded by the SHA. Using the Nigerian federal parliament as a model, impeachment of the President or Vice President is commenced by presentation of a duly signed written notice of allegation to the Senate President by at least one-third of the members of the National Assembly. On receiving the notice of allegation, the Senate

¹³³ Richard K. Neumann, “The Revival of Impeachment as a Partisan Political Weapon,” (2007) 34(2) *Hastings Constitutional Law Quarterly*, 161-327 at p. 256.

¹³⁴ Maxim Tomoszek, “Impeachment in the U.S. Constitution and Practice- Implications for the Czech Constitution,” (2017) 17(1) *International and Comparative Law Review*, 129-146 at p. 139; DOI: <<https://doi.org/10.2478/iclr-2018-0005>> (accessed on 19 March 2023).

¹³⁵ John King, “House impeaches Clinton,” (19 December 1998) *CNN News*; retrieved from <<https://www.cnn.com/ALLPOLITICS/stories/1998/12/19/impeachment.01/>>(accessed on 19 March 2023)

¹³⁶ Two of the articles of impeachment were in relation to perjury; one for obstruction and impeding administration of justice; and one for abuse of power/office.

¹³⁷ See, “Article of Impeachment Against William Jefferson Clinton,” House Resolution 611, 150th Congress, Second Session, Congress of the United States of America, in the House of Representatives, dated 19 December 1998; retrieved from <<https://www.congress.gov/105/bills/hres/611/BILLS-105hres611enr.pdf>>(accessed on 19 March 2023).

¹³⁸ The vote for acquittal was 55 to 45 on the grand jury perjury charge, and 50 to 50 on the obstruction of justice charge- see 145 Cong. Rec. S1458-59 (daily ed. 12 February 1999); See also, Merrill McLoughlin, *The Impeachment and Trial of President Clinton: The Official Transcripts, from the House Judiciary Committee Hearings to the Senate Trial*, First Edition (New York: Times Books, 1999); Richard K. Neumann, “The Revival of Impeachment as a Partisan Political Weapon,” (2007) 34(2) *Hastings Constitutional Law Quarterly*, 161-327 at pp.284-295. See also “How the Senators voted on impeachment,” (12 February 1999) *CNN News*; retrieved from <<https://www.cnn.com/ALLPOLITICS/stories/1999/02/12/senate.vote/>> (accessed on 19 March 2023).

¹³⁹ See Justia Law, “The Clinton Impeachment;” retrieved from <<https://law.justia.com/constitution/us/article-2/55-the-clinton-impeachment.html>> (accessed on 19 March 2023).

¹⁴⁰ The voting was done mainly along party line. For the first article of impeachment concerning abuse of power- 52 to 48; and on second allegation of obstruction of Congress- 53 to 47; the Senate failed to secure a two thirds majority of 67 Senators to convict and remove him- Tom McCarthy, “Trump Impeachment: President Acquitted on Both Articles,” (5 February 2020) *The Guardian*; retrieved from <<https://amp.theguardian.com/us-news/2020/feb/05/donald-trump-acquitted-senate-impeachment-trial>> (accessed on 19 March 2023).

¹⁴¹ Sam Levine & Lauren Gambino, “Donald Trump Acquitted in Second Impeachment Trial,” (13 February 2021) *The Guardian*; retrieved from <<https://www.theguardian.com/us-news/2021/feb/13/donald-trump-acquitted-impeachment-trial>> (accessed on 19 March 2023).

¹⁴² The Editors of Encyclopaedia Britannica, “Impeachment Law” *Britannica*; retrieved from <<https://www.britannica.com/topic/impeachment>> (accessed on 24 February 2023).

¹⁴³ Sam Levine & Lauren Gambino, “Donald Trump Acquitted in Second Impeachment Trial,” (13 February 2021) *The Guardian*; retrieved from <<https://www.theguardian.com/us-news/2021/feb/13/donald-trump-acquitted-impeachment-trial>> (accessed on 19 March 2023).

¹⁴⁴ Kara Scannell, et.al., “Donald Trump indicted by Manhattan grand jury on more than 30 counts related to business fraud”, (31 March 2023) *CNN News*; retrieved from <<https://amp.cnn.com/cnn/2023/03/30/politics/donald-trump-indictment/index.html>>(accessed on 1 April 2023). See also Maggie Haberman, “Donald Trump Is Indicted in New York” (30 March 2023) *The New York Times*; retrieved from <<https://www.nytimes.com/live/2023/03/30/nyregion/trump-indictment-news>>(accessed on 1 April 2023).

¹⁴⁵ CFRN 1999, section 47.

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President is required to cause the service of the notice on each legislator and the officer against whom such allegation is made for his reaction.

Each legislative house of the NASS is mandated to resolve by motion supported by two-thirds majority if the allegation should be investigated. Where the required constitutional concurrence is satisfied, the Senate President would request the Chief Justice of Nigeria to constitute a seven-man panel to investigate the allegation and to submit its report to each house of the NASS within a maximum period of three months. The investigated officer has a right to defend himself in person and a representation by a lawyer at the panel. Where it is the view of the panel that the allegation has not been proved, the investigated officer is free; but where from the submitted report the allegation has been established, each legislative house of the NASS is to consider the report and if it is adopted by a resolution supported by at least two-thirds majority of all the members of the House, the investigated officer stands impeached.

On the other hand, an impeachment proceeding in the USA is initiated from the House of Representatives. The House Judiciary Committee (HJC) deliberates on whether to initiate an impeachment enquiry; depending on the situations, it can carry out the investigations on its own, through public hearings or assign the investigation of the case to a sub-committee. At the close of the investigation, articles of impeachment are formulated and must be approved by a majority of the HJC members. Thereafter, the HJC would make necessary recommendations to the House of Representatives, where the latter would consider and debate on the submitted articles of impeachment; a majority vote of the whole House is obligatory to pass each article. Once an article has been approved, the investigated officer, technically speaking, stands impeached but subject to trial in the Senate.¹⁴⁶

The House of Representatives would notify the Senate that managers are appointed on their part to carry out an impeachment against the investigated officer and are directed to carry articles of impeachment to the Senate; the Senate's secretary is mandated to promptly inform the House of Representatives of the readiness of the Senate to "receive the managers for the purpose of exhibiting such articles of impeachment."¹⁴⁷ The Senate conducts the trial on the articles of impeachment approved by the House and sits as a jury while the Chief Justice of the Supreme Court presides over the trial, where it relates to the President. Initially, there is presentation of argument by parties on procedural matters; opening statements; hearing of evidence and closing statements. At the point of adducing evidence, the Senate may create a Trial Committee.¹⁴⁸

At the conclusion of the trial, the Senate votes on whether to remove the "impeached" officer from office, which constitutionally requires a two-thirds majority vote by members present in the Senate.¹⁴⁹ It is also necessary to point out that in view of the division of impeachment functions between the House of Representatives and the Senate, the latter has had the occasion of reviewing House assessments on what amounts to an impeachable offence and has concluded in some cases that impeachable offences exclude errors of judgment or policy differences; but comprise of "serious abuses of power or privilege, breaches of public trust or misconduct that is so incompatible with the office that conviction and removal by the Senate are required."¹⁵⁰

The scope of impeachable officials under the USC covers the President, Vice President and other civil officers of the USA, including judicial officers but excludes military officials, Senators and members of the House of Representatives. Conversely in Nigeria, the scope is narrowed to the President, Vice President, Governor and the Deputy Governor. Other "civil officers" like judicial officers of superior courts of record cannot be removed through the impeachment clause under section 144 or 188 of the 1999 CFRN; but in appropriate circumstances, by a removal procedure stipulated under section 292 of the Constitution.¹⁵¹ Akin to the USA, members of the legislature cannot be impeached though under Nigerian law, a lawmaker can lose his/her legislative seat if s/he is absent from legislative functions without lawful excuse¹⁵² for more than the stipulated period in a given year¹⁵³ or by reason

¹⁴⁶ Cornell Law School, "Impeachment," retrieved from <<https://www.law.cornell.edu/wex/impeachment>>(accessed on 19 March 2023).

¹⁴⁷ See, Paragraph 1 of the "Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials," *Senate Manual containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, section 100-126, 105th Congress, pp. 177-185; retrieved from <https://www.sewnate.gov/artandhistory/resources/pdf/3_1986SenatesImpeachmentRules.pdf> (accessed on 19 March 2023).

¹⁴⁸ Maxim Tomoszek, "Impeachment in the U.S. Constitution and Practice- Implications for the Czech Constitution," (2017) 17(1) *International and Comparative Law Review*, 129-146 at p. 136; DOI: <<https://doi.org/10.2478/iclr-2018-0005>> (accessed on 19 March 2023).

¹⁴⁹ This technically defers from the requirement under the Nigerian law which stipulates that the required two-thirds majority votes must be in relation to all the members of each house of the National Assembly. Thus for instance, in determining the required numerical vote at the Senate, the entire Senate membership of 109 members would be taken into consideration, while at the Nigerian House of Representatives, the entire membership of 360 members would be used in the calculation. Otherwise impeachment cases such as, *Inakoju v. Adeleke* (supra) and *Dapianlong v. Dariye (No. 2)* would not have been overturned by the various courts in Nigeria for failure to satisfy the two-thirds majority requirements if the number was to be based on the theory of "members present" as obtainable in USA.

¹⁵⁰ For examples, the impeachment cases of Associate Justice Samuel Chase and President Andrew Johnson. See Michael J. Gerhardt, "The Lessons of Impeachment History," (1999) 67 *George Washington Law Review*, 603-625 at p. 617.

¹⁵¹ The section admits that a judicial officer may be removed by the President or a Governor (as appropriate) on the recommendation of the National Judicial Council (NJC) on the ground that the judicial officer is incapable of discharging the functions of his/her office, whether by reason of infirmity of the mind or of the body, or for misconduct or in breach of the code of conduct. In the case of the Chief Justice of Nigeria, Justices of the Supreme Court, and heads of all federal courts, the President is required to act on an address supported by two-thirds majority of the Senate requiring for the removal of the judicial officer. At the state level and in relation to the heads of state created superior courts, the Governor is to similarly act based on an address supported by two-thirds majority of the members of the SHA praying for the removal of the judicial officer- see Enobong Mbang Akpambang, "Immunities and Tenure of Office in the Three Arms of Government in Nigeria: Legal Perspective," (2016) 4(4) *Global Journal of Politics and Legal Research*, 43-59 at p. 57.

¹⁵² 1999 CFRN, section 68(1)(f) & (2) and section 109(1)(f) & (2); *Oloyo v. B. A. Alegbe, Speaker of the Bendel State House of Assembly* (1983) 7 SC 85, (1985) 6 NCLR 61 at 63. See also, *Akinwumi v. Diete-Spiff* (1982) 3 NCLR 342.

¹⁵³ 1999 CFRN, sections 63 and 104 require that a federal or state legislative house should hold sittings to discharge its legislative functions for a minimum of 181 days annually.

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of recall by members of his/her constituency.¹⁵⁴ It is also significant to note that the 1999 CFRN does not provide for the removal of other principal members of the parliament, except the Senate President, Deputy Senate President, Speaker and Deputy Speaker.¹⁵⁵

As previously indicated, an impeached official in the United States can subsequently face indictment, trial, punishment and criminal conviction by the ordinary court based on similar allegations used for the impeachment. But the USC bars the President from granting reprieve or pardon to an impeached officer. Although in Nigeria, impeachable offences can later be used as basis for a criminal prosecution in the conventional courts but there is no corresponding provision which disallows a President or Governor from granting pardon or reprieve to an impeached public officer.¹⁵⁶ For example, Joshua Dariye, a former impeached Governor of Plateau State, was prosecuted and convicted of criminal misappropriation and criminal breach of trust for looting ₦2billion public fund during his tenure as Governor.¹⁵⁷ Nevertheless, the 10 years jail term imposed by the Supreme Court was cut short following a strongly condemned presidential pardon granted to him by President Muhammadu Buhari in 2022.¹⁵⁸ Earlier in March 2013, former President Goodluck Jonathan had also granted presidential pardon to an impeached ex-governor of Bayelsa State, Diepreye Alamieyeseigha, who in a later criminal court trial was convicted of money laundering and allied offences.¹⁵⁹ The import of granting a presidential pardon is that the convict has become *novus homo* as it mitigates or obliterates the punishment the law requires for the offence in addition to restoring the rights and privileges forfeited by the convict on account of the offence,¹⁶⁰ including the right to hold public office and to run for future elections.

Furthermore, the scope of an impeachable offence under the USC is “Treason, Bribery or other high Crimes and Misdemeanors” whereas under the 1999 CFRN, impeachment can only occur if the executive office holder is “guilty of gross misconduct” in the execution of the functions of the office. However in both Constitutions, the terms used are vague and imprecise because the respective Constitutions failed to definitively or broadly settle the exact meanings of those phrases. In the USA as explained previously, the term is wide enough to encompass both indictable offences and “political crimes” consisting of every type of misuse of power or harms caused to the country that could only have been committed by a public officer by reason of the public office s/he holds.

Correspondingly, “gross misconduct” in the Nigerian law has been speculated to include weighty and serious allegations like interference with constitutional roles of the legislature and judiciary by exhibition of explicit unconstitutional executive power; abuse of the fiscal clauses of the Constitution; abuse of code of conduct for public officers; brazen disregard of fundamental rights provisions; drunkenness in public glare and profanity; forgery; sexual harassment and extramarital sexual or erotic flirtations; corruption; dereliction or refusal to perform constitutional duties; stealing, embezzling, misappropriating and diverting public funds, among many others.¹⁶¹ The term is also wide enough to include a situation where an incumbent Vice President or Deputy Governor defects from the political party on whose ticket he was elected to that office and joins another political party distinct from that of his principal and proceeds overtly to criticise the very “government whose policies and administration he is part” without seeing the need to resign his office as Vice President or Deputy Governor.¹⁶² Thus, an impeachable offence, either in Nigeria or in the USA, is what members of the legislature that are constitutionally saddled with impeachment matters consider at a “given moment in history” to be “sufficiently serious to require removal of the accused from office.”¹⁶³

IV. CONCLUSION

In Nigeria and USA, impeachment has been shown to be an effective political weapon in the hands of the legislature to routinely check the excesses of members of the executive arm of government. Though both countries operate a presidential system, the procedure of impeachment in the USA is more stringent than what obtains in Nigeria. At the US federal level, contrary to what operates in Nigeria, impeachment has not been utilised as mere instrument of partisan or political threat by Congress but resulted in real impeachment of about three Presidents by the House of Representatives and trial by the Senate. It was equally an anticipated impeachment and subsequent senatorial trial that compelled President Nixon to hurriedly resign from office

¹⁵⁴ *Ibidem*, sections 69 and 110.

¹⁵⁵ *Ibidem*, sections 50(2) and 92(2).

¹⁵⁶ *Ibidem*, sections 175 and 212 respectively provide for the power of the president and state governor to grant pardon or respite to any individual convicted of any offence.

¹⁵⁷ These criminal charges formed part of the impeachment allegations made against him by the SHA- see *Dapianlong v. Dariye (No. 2)* (2007) All FWLR (Pt. 373) 81 at 101-102; Ade Adesomoju, “Supreme Court Affirms 10-year Jail for Ex-Governor who Looted N2billion,” (12 March 2021) *Premium Times*; retrieved from <<https://www.premiumtimesng.com/news/headlines/448391-supreme-court-affirms-10-year-jail-for-ex-governor-who-looted-n2billion.html?tztc=1>> (accessed 19 March 2023).

¹⁵⁸ Eniola Akinkuotu, *et. al.*, “Presidential Pardon: How EFCC Spent 11 Year, Millions to Prosecute Dariye, Nyame” (16 April 2023) *The Punch*; retrieved from <<https://punchng.com/presidential-pardon-how-efcc-spent-11-years-millions-to-prosecute-dariye-nyame/>> (accessed on 19 March 2023).

¹⁵⁹ “Nigeria pardons Goodluck Jonathan ally, Alamieyeseigha,” (13 March 2013) *BBC News*; retrieved from <<https://www.bbc.com/news/world-africa-21769047>> (accessed on 19 March 2023). See also Imo Udofa, “The Abuse of Presidential Power of Pardon and the Need for Restraints,” (2018) 9 *Beijing Law Review*, 113-131; DOI: <<https://doi.org/10.4236/blr.2018.92008>>(accessed on 19 March 2023).

¹⁶⁰ *Falae v. Obasanjo* (1999) 4 NWLR (Pt. 599) 476 at 495.

¹⁶¹ *Inakoji v. Adeleke* (2007) All FWLR (Pt. 353) 3 at 85-87, per Niki Tobi, JSC.

¹⁶² *Attorney General of the Federation & 2 others v. Alhaji Atiku Abubakar & 3 others* (2007) All FWLR (Pt. 375)405 at 503.

¹⁶³ Nathaniel L. Nathanson, “Impeachment: The Constitutional Problems,” (1974) 2(1) *Florida State University Law Review*, 209-218 at p. 210 (Reviewing Raoul Berger, “Impeachment: The Constitutional Problems” (1973)).

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Impeachment should ordinarily be an internal affair within the exclusivity of the legislature to promote check and balances among arms of government and to prevent executive office holders from subverting constitutional or statutory provisions which they have taken an oath of office to uphold. Adherence by members of parliament to impeachment procedural processes becomes a key factor here. For instance in the USA, although the USC gives the House of Representatives the singular power of impeachments and the Senate to try all impeachments, this does not provide the respective legislative houses with unlimited freedom to surpass its constitutional boundaries by failing to comply with procedural due process. Thus, it becomes nearly unthinkable that after impeachment by the House of Representatives and a conviction by the Senate, a President or Vice President would challenge an impeachment conviction in the court.

But in Nigeria, the reverse is the case since in most cases, as clearly revealed in the article, members of the legislature oftentimes fail and/or neglect to comply with laid down procedures for impeachment thereby leaving the impeached executive office holder with no option but to contest the impeachment regardless of the ouster clause that bars the court from entertaining impeachment matters. It becomes imperative therefore, that Nigerian legislative houses assigned with responsibilities of impeachment should always proceed constitutionally when exercising such powers like their counterparts in the USA, where compliance with procedural process has become a norm. This would not only encourage strong democratic governance in Nigeria but would equally prevent irreversible damages from being caused to the body politic.

Presidential or gubernatorial official pardon, as disclosed in the article, has been a subject of constant abuses by elected executive office holders in Nigeria. In order to cure or arrest the problem, we suggest that a constitutional amendment should be introduced to sections 175 and 212 of the 1999 CFRN with a clear goal of barring the President or Governor from granting pardon to an impeached public official, as obtainable in the USA. Such restriction should also extend to any subsequent court conviction that arises from criminal charges associated with previous grounds of impeachment. This is one enduring way that the legislature can employ impeachment mechanism to check the unaccountability and arbitrariness of an incumbent executive office holder and to send a strong signal that even after the expiration of office, his/her unlawful criminal actions can still be brought to question and punished. The burgeoning corruption widespread in Nigeria and the need to curb it should provide strong moral and legal justifications why presidential or gubernatorial pardon should be withheld from any convicted political office holder. Such reprieve has the tendency of encouraging others to continue in corrupt practices, money laundering, financial improprieties, fraudulent diversion of public funds to private bank accounts for personal utilisation and other crimes, knowing that they will later enjoy official pardon even after a likely criminal conviction.

CONFLICT OF INTEREST STATEMENT

The authors have no financial conflict of interest to declare in relation to this article.

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