

## A COMPARATIVE ANALYSIS OF THE IMPEACHMENT PROCEDURE UNDER AMERICAN AND NIGERIAN CONSTITUTIONS: THE NEED FOR A CONSTITUTIONAL REFORM\*

### Abstract

This paper examines the impeachment procedure as obtainable under the constitution of the United States of America and that of Nigeria and to identify the similarities and dissimilarities with a view to recommending reforms if any. This research is doctrinal as the researcher will concentrate on the primary and secondary data to reach at his conclusions. Historically, the Nigerian presidential constitution was adopted from the United States of America in 1978 after a trial of the Pro-British Parliamentary Constitution at Independence, the Presidential constitution admitted of separation of powers; the Executive, Legislature and the Judiciary. This system as advocated by the major proponents allows each branch of government to act as a watchdog over another thereby ensuring checks and balances, one notorious power domiciled with the legislature is the power of impeachment of the members of the Executive, that is, the president and his vice and the governor and his deputy. Since the practice of democracy in 1978, the Legislature has exercised this power of impeachment in several instances. This is same with the Legislature of the United States of America. It does appear that there is a remarkable difference in the impeachment procedure between the United States and Nigeria. It has been discovered, that while impeachment is a mere charge that does not affect the continuation of the impeached in office in the United States, it is a sentence in Nigeria. It is recommended that Nigerian legislature should initiate an amendment to the constitution wherein the occupant of the office may continue in office pending his conviction upon a hearing of the Senate in case of a President and the Court of Appeal in case of a governor or his deputy. This will curb political indifference in the impeachment process.

**Keywords:** Impeachment, Presidential, Constitution, Separation of Powers, Reform.

### 1. Introduction

Nigeria adopted a Presidential system of government in 1978 upon the return to civil rule. This was a fundamental shift from the Pro-British Parliamentary system bequeathed on the country after a several decades of Colonial rule. The presidential system is said to have been borrowed from America<sup>1</sup> which is the originator of the modern presidential system that has been borrowed by many other countries like Philippines, Argentina, and Brazil amongst several others<sup>2</sup>. The presidential system is founded on the ideals of separation of powers, presidential constitutions as advocated by Baron de Montesquieu in his book *De l'esprit de lois*<sup>3</sup>. The Constitution of the Federal Republic of Nigeria has copious provisions for the Executive Legislature and Judiciary<sup>4</sup>. It has been argued that the principle in practical purposes is not water tight as various organs of government overlaps, but through the principle of checks and balances every organ of government is checked to curtail excesses or abuse of power. For instance, under the constitution of the United States, the House of Representatives has the sole power of impeachment but the senate has the power to try any impeachment. Also, the president of the United States can make treaties, but the senate is reserved with the power to pass the bill before it becomes Law, the president can appoint Supreme Court judges but with the approval of senate<sup>5</sup>. The impeachment power gives the Legislature to uproot corruption and abuse of power in the United States by way of the removal from office the president or the Vice president and the Governor or his deputy<sup>6</sup>. Though the presidential constitution was copied from the United States, there appears to be some differences which is the focal point of this article.

### 2. What is Impeachment?

Impeachment is common proceeding instituted by the Legislature to address serious misconduct by a public official<sup>7</sup>. In the United States, impeachment is viewed as quasi criminal proceedings which is initiated by the House wherein an inquiry is instituted with a semblance of a jury inquest which articles are passed to the senate for a full trial the Nigerian courts in *Inakoju Orsv. AdelekeOrs*<sup>8</sup> define Impeachment as a criminal trial against a public Officer, before a quasi-political court, instituted by a written accusation of the House of Representatives of the United States to the senate of the United States against the president, vice president, or an officer of the United States, is including Federal Judges. The supreme court per Katsina Alu JSC (as he then was) noted further that then definition with a slant for the United States constitution, does not totally reflect the content of section 188 of the constitution, as it covveys so much element of criminality. Section 188 is not so worded; the section covers both civil and criminal conducts.<sup>9</sup>

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<sup>1</sup>This study is a Comparative Analysis of the Impeachment Procedure under U.S and Nigerian Constitutions.

<sup>2</sup>Annenberg Classroom: Presidential System available at [www.annenbergclassroom.com](http://www.annenbergclassroom.com) accessed 22/05/2021.

<sup>3</sup>Edition of Encyclopedia Britannica Separation of Powers available at [www.britanica.com](http://www.britanica.com) accessed 22/05/2021.

<sup>4</sup>See for example Sections 4, 5 and 7 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>5</sup>Examples of checks and Balances in the constitution available at examples, [www.yourdictionary.com](http://www.yourdictionary.com)@n accepted 22/05/2021.

<sup>6</sup>See Sections 4 of the U.S. Constitution and Section 143 and 188 of the Constitution of the Federal Republic of Nigeria 1999.

<sup>7</sup>Editors of Encyclopedia Britannica: 'Impeachment' available at [www.britanica.com](http://www.britanica.com) last accessed 23/5/2021.

<sup>8</sup>3 CLC, 546 at 672.

<sup>9</sup>*Ibid.*

### **3. Legal Provisions for Impeachment in the United States and Nigeria**

The constitution of the United States has provided for under Articles 1 and 2 of the constitution<sup>10</sup> it provides high crimes and misdemeanors:<sup>11</sup> The president, vice president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of Treason, Bribery, or other high crimes misdemeanors. It is submitted that civil officers mentioned in the section include judges and appointees of government but does not include Members of the legislature.<sup>12</sup> The House of Representatives is clothed with the sole right of impeachment. The committee on judiciary investigates the allegations against the officer in question. The allegations are assembled into what is known as articles of impeachment. The House then votes on each allegations an officer stands impeached where there is a majority votes.<sup>13</sup> Where an officer is impeached by the House, the articles are transmitted to the senate for a trial. The constitution is to the effect that

The senate shall have the sole power to try Impeachment when sitting for that purpose, and they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present<sup>14</sup>.

It is to be noted that where a person under impeachment is convicted he shall then be removed from office and may be disqualified from holding any other office of honour in the United States, the party shall nevertheless be liable and subject to indictment, trial judgment and punishment, according to law<sup>15</sup> this means that he could still be prosecuted in court on the same infractions that led to his impeachment and removal from office.

#### **Impeachment in Nigeria**

Under Nigerian constitution impeachment refers only to the president, the vice president and the Governor and his Deputy<sup>16</sup>.

1. Section 143. The President or Vice President may be removed from office in accordance with the provisions of this section.
2. Whenever notice of any allegations in writing signed by not less than one – third of the members of the National Assembly;
  - a. Is presented to the president of the Senate
  - b. Stating that the holder of the office of President or vice president is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified. The president of the Senate shall within seven days of receipt of the notice caused a copy thereof to be served on the holder of the office and on each member of National Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.
3. Within fourteen days of presentation of the notice to the president of the senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice ) each House of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.
4. A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-third majority of all the members of each House of the National Assembly.
5. Within seven days of the passing of a motion under the foregoing provisions, the chief Justice of Nigeria shall at the request of the president of the Senate appoint a panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, Legislative house or political party, to investigate the allegation as provided in this section.
6. The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the panel by legal practitioners of his own choice.
7. A panel appointed under this section shall –
  - a. Have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly
  - b. Within three months of its appointment report its findings to each House of the National Assembly
8. Where the panel report of the panel is that the allegation against the holder of the office has been proved, no further proceedings shall be taken in respect of the mater

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<sup>10</sup>The Constitution of the United States of America.

<sup>11</sup>Article 2 Section 4 of the constitution of the United States.

<sup>12</sup>Cornel University 'Impeachment available at [www.law.cornell.edu/wex/impeachment](http://www.law.cornell.edu/wex/impeachment) accessed 23/5/2020.

<sup>13</sup>Ibid: See also Article 1 Section 2, Clause 5 of the Constitution of the United States.

<sup>14</sup>Article 1, Section 3, Clause 6 of the Constitution of the United States of America.

<sup>15</sup>Article 1, Section 3, clause 7.

<sup>16</sup>Sections 143 and 188 of the Constitution of the Federal Republic of Nigeria 1999.

9. Where the report of the panel is that the allegation against the holder of the office has been approved, then within fourteen days of the receipt of the report, each House of the National Assembly shall consider the report, and if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.
10. No proceedings or determination of the panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court.
11. In this section-;

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

The Legislature is therefore clothed with the exclusive vires to impeach the president or Vice president and no more even the courts cannot be lured into declaring a seat of the president or his vice president vacant unless as according to the constitution. In *AG Federation V. Abubabakar*<sup>18</sup> the Supreme Court held that the process of removal of the president or the Vice President is provided for in the constitution. It is through the process of impeachment which is to be conducted by the national Assembly as set out in that section. Section 143(10) of the constitution specifically ousts interference of the court from the proceeding leading to the impeachment of the holders of the two offices.

As for the governor or Deputy Governor of provision of State Section 188 is *in pari materia* with Section 143 save the officers who are now Governor and his Deputy and the body of legislature is now the House of Assembly. The impeachment is a special proceeding which requires speedy trial, in *Diaplalong and Ors v. Dariye and Anor*<sup>19</sup> the supreme court of Nigeria held that impeachment proceedings are sui genesis as they belong to a class of their own and time is of essence.

#### **4. Impeachment in the United State of America**

The process of impeachment incorporated by the makers of the U.S. Constitution was borrowed from England<sup>20</sup> though the congress charges the officer in question of High crimes and misdemeanors<sup>21</sup> though the constitution has not stated what constitutes 'High crimes and Misdemeanors' it includes all statutory offences and non-statutory offences. It is to be noted that such an office must be adjudged to be serious. To determine an impeachment offence, it is said thus.

To determine whether or not an act or a house of conduct is sufficient in law to support an impeachment, resort must be had to the eternal principles of right, applied to public property and civil morality, the offence must be prejudicial to the Public interest and it must flow from a willful intent, or a reckless disregard of duty...it may constitute an international violation of positive law, or it may be an official dereliction or commission or omission, a serious breach of moral obligation, or conduct which in its natural consequences, tends to bring an office into contempt and disrepute.<sup>22</sup>

The constitution of the United States does not define what is 'High Crimes and misdemeanors' which is subject of diverse opinion and the standard of trial remains undefined. However, it has been argued that the term 'misdemeanors' is not same in meaning as to connote less serious offences. In the trial of President Andrew Johnson, the House accused him of speaking disrespectfully to congress in a loud voice<sup>23</sup>. Impeachment is usually initiated at the House of Representatives and referred to the House Committee on the Judiciary who deliberate on it and adopts a resolution whether to conduct an inquiry. The resolution is tabled before the House Committee of the whole sitting at plenary and voices to approve of the articles which must be by a majority<sup>24</sup>. The House is required to consider and debate on each of the articles. Once any of the articles is approved for trial by the Senate, the president or such officer under inquiry stands impeached<sup>25</sup>. Upon impeachment, the impeachment proceeding shifts to the Senate for trial as it is veiled with their state powers of trial<sup>26</sup> where the impeachment is in respect of the president or the vice president of the United State of America, the chief judge presides, but where the proceedings refer to the chief judge or any judge of the U.S. Court, the Senate resolves itself into a court and the president presides as a judge. Some members of the senate then serve as managers which is akin to prosecutors. The lead evidence against the officer to be tried and on closing their evidence such an officer would enter his defence in answer to the charges as contained in the articles transmitted to the Senate, the Rules of the senate permits counsel to appear in defence of the officer on trial they present motions, argue interlocutory applications

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<sup>18</sup>(SC 31/2007) (2007) 179 (20 April, 2007).

<sup>19</sup>Vol4 C.L.C 347 at 385.

<sup>20</sup>About Impeachment available at <https://www.senate.gov/about/powers-procedures-impeachment> with last accessed 28/5/2021.

<sup>21</sup>Article 2, Section 4 of the US Constitution

<sup>22</sup>Brown: impeachment of the Federal Judiciary referred to in impeachment. House practice: A guide to the Rules, Precedents and Procedure of the House at [www.govinfo.gov/content/intent](http://www.govinfo.gov/content/intent) last accessed 28/05/2021.

<sup>23</sup>Cornell University *op cit*.

<sup>24</sup>*Ibid*.

<sup>25</sup>*Ibid*.

<sup>26</sup>Impeachment House practice A Guide to the Rules Precedents and Procedures of the House from U.S. Publishing Office available at [www.govinfo.gov/pkg/intml](http://www.govinfo.gov/pkg/intml) . Accessed 31/5/2021.

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and deliver opening and closing addresses<sup>27</sup>. After deliberations, the senate requires two thirds vote to secure a conviction<sup>28</sup>. The constitution requires a removal from office and or banning the convict from subsequently holding office.<sup>29</sup>

### **Impeachment of some Presidents of the United States**

The United State has a harvest of impeachment and senate trials though apart from Nixon who resigned from office, none has been removed, for purpose of this research, Andrew Johnson, Bill Clinton and Donald J Trump will be used as a case study.

#### **Andrew Johnson**

Andrew Johnson, the 17<sup>th</sup> president of the United States of America served from 1865 to 1869 after the assassination of Abraham Lincoln the impeachment against him can rightly be explained as partisan exercise<sup>30</sup>. He had a running battle with congress after several vetoes of Legislation and the use of presidential pardons. The House committee was by House resolution authorized the judicial committee to inquire as to whether in their opinion the acts of the president are calculated to overthrow or corrupt the government of the United States or whether he has conspired with others to do acts which in the contemplation of the constitution are high crimes and misdemeanors. In a fierce debate in the floor of the congress, James Wilson who opposed the impeachment said Mr. President should be judged differently on political and legal stand points, he said: 'Political unfitness and incapacity must be tried at the Ballot box not in the High court of impeachment'. The House of representations subsequently voted and impeachment was defeated by a vote of 57-108. However, the contrary was the case when Johnson was impeached two months later by a margin of 128-47 after he had removed from office his secretary of war, Edwin M Stanton contrary to the Tenure of office Act passed by congress in 1867. In a trial at the senate presided over by Salmon Chase, the Chief Justice of the United States, heated arguments and witnesses were taken, a vote for conviction was taken and was 35 to 19 Senators, one vote short of conviction, allowing Johnson to serve out his term of office.<sup>31</sup>

#### **Bill Clinton**

Bill Clinton was the 42<sup>nd</sup> American president from 1993 to 2001. He was the second American President to be impeached. Prior to the Lewinsky Scandal, he was being investigated for financial wrong doing. However, one Paula Jones accused the president of sexual harassment and invited a former white House intern, Monica Lewinsky to testify in proof that Clinton was actually a harasser. Having told Paula Jones that he had an illegitimate relationship with the president, in a grand jury assembled by Kenneth Starr, the investigator of Clinton's case, the president denied on oath any wrong doing. He later admitted and apologised to the American people and his family.<sup>32</sup> Starr then sent the report to the House of Reps for impeachment on the grounds of lying under Oath, obstruction of the Justice, abuse of powers and other offences. The House adopted two articles of impeachment and obstruction of justice in his bid to stop Monica from testifying of the truth of the affairs<sup>33</sup>. At the trial in the senate, what called for determination was whether the offences constituted a high crime and misdemeanour or low crimes against the State which were private matters. In a vote on the first article 45 Senators voted in favour of conviction while 45 Democrats and 10 Republicans voted for acquittal. On the second article, 50 Republications voted for conviction while 45 Democrats and 5 Republications voted for acquittal.<sup>34</sup>

#### **Donald John Trump**

The 45<sup>th</sup> American president served from January of 2017 to January 2021. He is the first American president to be impeached twice<sup>35</sup> Trump was accused in 2019 of making a telephone conversation with his counterpart in Ukraine Urging on him to investigate the financial dealings of Joe Biden and his Son Hunter who worked in a Ukrainian Energy Company while the former was American Vice president. Biden was intending to contest the forthcoming elections<sup>36</sup> Trump was charged with abuse of power and obstruction of congress. On the first count the house voted 230-197 while on the second count they vote was 229-198 in favour of impeachment.<sup>37</sup> In a partisan vote dominated by the Republicans, Trump was

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<sup>27</sup>Ibid.

<sup>28</sup>Article 1 Section 3 of the U.S Constitution.

<sup>29</sup>Article 1 Section3 Clause 7 U.S Constitution.

<sup>30</sup>Impeachment Powers, a Publication of Authenticated U.S Government Information available at [www.gov.info.gov/pkg/pdf](http://www.gov.info.gov/pkg/pdf) accessed 28/5/2021.

<sup>31</sup>U.S. Senate: Impeachment of Andrew Johnson (1868) President of the United States available at [www.senate.gov](http://www.senate.gov) accessed 31/05/2021.

<sup>32</sup>Bill Rights Institutes: The Impeachment of Bill Clinton available at <https://bilofrights-Institutes.org> accessed 1/6/2021.

<sup>33</sup>UVA Miller Centre: The Clinton Impeachment and its fall out available at [www.millercentre.org-the-president](http://www.millercentre.org-the-president) accessed 1/06/2021

<sup>34</sup>Ibid.

<sup>35</sup>Amber Phillips and Peter. W. Stevenson: 'What happens next in Trump's impeachment'? Available at [www.wasingconpost.com](http://www.wasingconpost.com) accessed 01/06/2021

<sup>36</sup>Matt Brooks, 'why was Donald Trump Impeached the first time? Previous charges against the former U.S. President' available at [www.scotsmem.com/news](http://www.scotsmem.com/news) accessed 01/06/2021 accessed 01/06/2021.

<sup>37</sup>The Newyork Times: 'Trump Impeached for Abuse of Power and obstruction of Congress' available at [www.nytime.con](http://www.nytime.con) accessed 01/06/2021.

acquitted with the vote of 52-48 on the charges of abuse of power and 53-47 on obstruction of congress Trump was in the articles of impeachment alleged to have attempted to obstruct and subvert the certification of the 2019 election results. Trump had on the Sixth of January 2021 summoned a mob to Washington and in the words of impeachment managers ‘exhorted them into frenzy, and aimed them like a loaded Cannondown Pennsylvania Avenue’<sup>38</sup>, this was in breach of the Capital, leading to Vandalism, threats to members of the Government, staff of congress and the death of some law enforcement agents<sup>39</sup>. In a vote of 232-197 Trump was again impeached. The articles were transmitted to the senate for trial, after five days of hearing, the senate voted 57-43 to acquit Mr. Trump of the charges.<sup>40</sup>

### **5. Impeachment Procedure in Nigeria**

In Nigeria, the wave of impeachment is more at the state level where Governors or their Deputies have been impeached. Unlike in the United States, impeachment here connotes removal from office. the constitution provides that the president, Vice President or the Governor or the Deputy Governor can be impeached and removed from the office for ‘gross misconduct which signifies a grave violation or breach of the provisions of the constitution or a misconduct of such nature as amount in the opinion of the National Assembly or state House of Assembly, as the case may be, to gross misconduct’.<sup>41</sup> This provision with the greatest respect is fluid and leaves the impeachment and removal from office of an elected person in the high office to the opinion of a minority few and is capable of turning such sensitive assignment into settling of political scores.

#### **Rasihid Ladoja**

Ladoja was elected Governor of Oyo State in 2003; His impeachment was said to have been masterminded by one Lamidi Adedibu, his alleged god-father whom there was a love lost due to his overbearing influence on the cabinet and state finances. In the ensuing conflict, the State House of Assembly was polarized; the faction loyal to Adedibu had 18 members in a 32 Assembly members the pro-impeachment Assembly members left the chambers and held proceedings at De Rovon Hotel, Ibadan where they passed a resolution to serve impeachment notice on the Governor which contains allegations of fraudulent conversion of public funds, conflict of interest, the notice was signed by the Deputy Speaker<sup>42</sup> the notice was served on the chief judge of the state to set up a panel, though there was a letter from the remaining 14 members of the house urging him to disregard the Notice, he went ahead set up A 7 man Panel led by Bolaji Ayorinde (SAN) who turned a guilty verdict on the Governor to the chief judge who submitted to the Deputy Speaker, Ladoja was subsequently impeached<sup>43</sup>.

#### **Peter Obi**

Peter Gregory Obi was elected Governor of Anambra State 2003, but INEC declared Dr. Chris Ngige the governor, he fought through the court and was sworn in as Governor on 6<sup>th</sup> February 2006, by 17<sup>th</sup> November 2006, he was impeached. The Governor returned to the court to challenge his impeachment done by a faction of the House of Assembly. He invited the court to determine among others

- (i). the meeting of the faction of the faction of Assembly members outside the designated chambers
- (ii). lack of quorum of the members who purportedly impeached him
- (iii). the holding of the meeting outside the working hours of the Legislative business
- (iv). Non service of the notice of impeachment on him

Both the trial and the appellate courts found for the Governor and nullified the impeachment and reinstated the Governor back to office.<sup>44</sup>

#### **Joshua Dariye**

He was Governor of Plateau State between 1999 and 2007. Between 25<sup>th</sup> and 26<sup>th</sup> July 2006, fourteen members of the Plateau House of Assembly cross carpeted to Advanced Congress of Democrat, (ACD). Eight out of the remaining 10 members served an impeachment notice on the Governor, this they said is in line with the provisions of section 188 of 1999 constitution of the Federal Republic of Nigeria. The members subsequently requested the chief judge to set up a 7man panel to investigate the allegations of gross misconduct against the Governor, the Panel was headed by John Mark Samchi, the Panel found the allegations proved and submitted its report<sup>45</sup>Dariye was subsequently impeached.

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<sup>38</sup>Meghan Kennelly and Ivan Pereira ‘Trump Impeachment: here’s how the process works’ available at <https://abcnews.go.com/politic> accessed 15/4/2021.

<sup>39</sup>Impeachment of Donald Trump 2021 available at <https://ballotopia.org> accessed 01/6/2021.

<sup>40</sup>San Levine and Lauren Gambino, ‘Donald Trump acquitted in second impeachment trial’ available at [www.theguardian.com](http://www.theguardian.com) accessed 01/6/2021.

<sup>41</sup>Sections 143 (I) and 188(II) of the Constitution of the Federal Republic of Nigeria 1999.

<sup>42</sup>Michael Abiodun Obi, ‘Judicial Review of Governor Ladoja and Obi Impeachment in Nigerians’ Fourth Republic available at <https://www.singaporeanjbem.com> accessed 21/6/2021.

<sup>43</sup>*Ibid.*

<sup>44</sup>*Ibid.*

<sup>45</sup>See the summary of facts in *Dapialong v. Dariye* Vol. 4 CLC 347-348.

### **Simon Achuba**

Achuba was elected Deputy Governor of Kogi State in 2006, soon after there was a mistrust between him and the Governor Yahaya Bello, the petition before the Assembly accused elder Achuba of matter utterances in public against the Governor and governor of Kogi state and other Key functionaries of the state Government especially allegations of crimes, financial misappropriation and nonperformance<sup>46</sup> the chief judge of Kogi state justice Nadir Ajana set up a 7 man panel that investigated and cleared him of allegations. In a challenge at the kogi state High Court, the presiding judge Olorufemi J. Held the impeachment to be a 'legislative rascality devoid of reasoning'. He held further that the chief Judge ought not to have crown Onoja the new Deputy Governor in the first place.<sup>47</sup>

### **6. Comparative Analysis of the Impeachment Procedures in the United States and Nigeria**

It is instructive to note that both constitutions have provided for impeachment of persons serving in their Governments, Although the persons that have been covered under the U.S Constitution go beyond elected executives, it includes persons appointed as members or Judges of Districts and supreme courts<sup>48</sup>. The grounds upon which civil officers may be impeached appear to be similar. Under the U.S constitution, grounds of impeachment include 'Treason, bribery, or high crimes or misdemeanours'<sup>49</sup> while the constitution of the Federal Republic of Nigeria defines impeachable offences to include 'gross misconduct which amounts to a grave violation of the constitution'<sup>50</sup>. Both constitutions provide for trials in impeachment, though the approach differs in Nigeria an officer under impeachment proceeding is tried by a panel set by the chief Justice of Nigeria in case of the president and vice president and the chief judge of a state in case of Governor or Deputy Governor, in the United States, the trial is connected in the senate after the impeachment.<sup>51</sup> Be that as it may, there are remarkable differences in the procedure of impeachment. First, the impeachment in the United States is more inclined to criminal proceedings which are devoid of politics.<sup>52</sup> However, in Nigeria impeachment is purely within the domain of politics. In *Inakoju & Ors v Adeleke & Ors*<sup>53</sup> the Apex Court held that: 'The question of what is tantamount to 'gross misconduct' and whether such 'gross misconduct' is sufficient to warrant the removal of an elected Governor or Deputy, Governor, is a political 'question....'

It is submitted that all the cases analysed above are a product of political disagreement between the persons impeached and the 'god-father' again, under the U.S Constitution, impeachment amounts only to an indictment which must be transmitted to the Senator for trial<sup>54</sup> for a subsequent conviction and removal from office and also for sentencing to other punishments like banning someone from subsequently holding and continuing and to serve his term. Conversely impeachment in Nigeria means removal from office, the National Assembly or the State House of Assembly is required only to pass a resolution in form of an indictment spelling out the allegations in a Notice of impeachment which is served on the elected person under investigation and the chief judge is empowered to set an investigative panel, the holder of that office is to appear before the panel to defend himself, the panel submits the findings to the Legislature who will vote for Impeachment<sup>55</sup>. Where 2/3 majority votes 'yes' the holder stands impeached and removed from office. The Nigeria Supreme Court in *Inakoju v Adeleke*<sup>56</sup> has established that there is a marked difference between impeachment procedure in the US and Nigeria. It is submitted that though the provisions under the Nigerian Constitution, are detailed they have been subject of abuse by the Nigerian politicians save for the Nigerian Judiciary, the 'god fathers' including president Obasanjo abused those powers, in 2006 alone more than 5 Governor were impeached apparently at the instigation of the president or his allies

### **7. Conclusion and Recommendations**

As has been noted in our earlier discourse, impeachment is *sui generis* and has to be handled with utmost care and attention so as to deny the society, the services of persons they have elected. In comparative terms, it has been discovered in the course of the research that impeachment in the United States is a quasi-criminal trial and all principles in criminal trials are adopted while in Nigeria it is a political issue and politicians have been using it as a tool of vendetta. The United States of America has so done it that there is little or no room for political manipulation that is why the judiciary too is involved. With the sought for independence of the judiciary, the judicial involvement at the time of trial will make the

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<sup>46</sup>Victoria Bamas; 'Breaking, Kogi Deputy Governor, Simon Achuba impeached' available at [www.m.guardian.ng/simon](http://www.m.guardian.ng/simon) accessed 21/06/2021.

<sup>47</sup>Boluwaji Obalupo; Simon Achuba court voids impeachment of former Kogi Deputy Governor available at [www.vanguardngr.com/simon](http://www.vanguardngr.com/simon) accessed 2/06/2021.

<sup>48</sup>Article 1 Section 4 of the U S Constitution. The clause civil Officer under that Constitution does not include a Senator.

<sup>49</sup>*Ibid.*

<sup>50</sup>Sections 143(ii) and 188(ii) thereof.

<sup>51</sup>See Article 11 section 4 of the U S constitution and sections 143(7) and 188(7) of the CFRN

<sup>52</sup>See the address of James Wilson who opposed the impeachment of Andrew Johnson 1967.

<sup>53</sup>3 CLL, 546.

<sup>54</sup>See Article 1 Section 3 clause 6 and 7 of the U.S Constitution.

<sup>55</sup>Sections 143–(ii) and Section 188(i) CFRN.

<sup>56</sup>3 CLL, 546, 56 *Diapialong v. Dariye* 1014, CLL 347@385.

process more transparent and acceptable. It is hereby recommended that the impeachment procedure in the United States be adopted in Nigeria.

Impeachments proceedings are *sui generis* as they belong to the class of their own and must be treated specially to avoid abuse of power it is hereby recommended that: -

1. Sections 143 (2) be amended to empower the House of Representatives to debate articles of impeachment and vote as to whether to impeach the holder of the office before transmitting to Senate.
2. Section 143 (7) be deleted and a new provision be made empowering Senate to hold trial. This is to avoid the CJN bringing an enemy of the President. The Chief Judge or President of the Court of Appeal should preside where the President or the Vice President is under trial.
3. Just like in the United States, even if the holder of the office leaves office, he can still be tried and convicted banning him from holding future office
4. For state Governors, the section 188(2) be amended to empower the House of Assembly committee on judiciary to draft the allegations into offences and present to the House in plenary for trial which shall be presided over by President Sharia Court of Appeal, President of Customary Court of Appeal, the Chief Judge or any judge of the State High court appointed by the Chief Judge.
5. If paragraph 4 above is considered, section 188(7) will be deleted. This will avoid bringing an enemy of the Governor as was the case in Oyo State where the Chairman of the Panel was an arch rival of Rashidi Ladoja.