

Parliamentary Censure of Ministers in Uganda: A Motion that May not Cause a Movement

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ABSTRACT

The Ugandan Constitution provides for the cabinet office of Ministers. Ministers are appointed by the President of Uganda with the approval of the Parliament. The President assigns executive portfolios to the ministers and they are answerable to him and he can remove them from office at his pleasure. However, upon a gross abuse of office, they can be censured by the parliament. The ordinary implication of that censure intended a removal from office of the affected minister. The aftermath of the censure leaves the President with powers to take appropriate action if the minister fails to resign. The appropriate action is vague. This paper brings to the fore the anomaly by providing situations where the President failed to remove the censured ministers. It argues that the President did not breach the constitution in those instances where he retained the ministers. The paper justifies a parliamentary censure and advocates for an amendment of the 'appropriate' clause to give effect to the intent of the drafters of the constitution regarding the removal of ministers in a censure procedure.

Keywords: Parliamentary Censure, Ministers, Appropriate action, Uganda.

INTRODUCTION

The Ugandan 1995 Constitution as amended¹ requires that the President inaugurates an executive cabinet which would assist him formulate and execute policies. The President who is saddled the executive authority of Uganda can run his government by exercising these powers himself or through people whom he appoints in that regard. ² The Constitution perhaps recognizing the importance of the need for a cabinet, makes it mandatory for the President to have one and prescribes its membership to include the

President himself, the Vice president, the Prime Minister and other significant number of ministers that the President may appoint,³ that are necessary for the running of his government. The President may appoint such cabinet ministers from amongst the members of parliament or from outside the parliament but such persons appointed must be persons qualified to be elected into the Parliament of Uganda⁴. The constitution requires that the Parliament approves⁵ such nominees for appointment

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¹ Article 111(1) of the 1995 Ugandan Constitution as amended which requires that There shall be a Cabinet which shall consist of the President, the Vice-President, the Prime Minister and such number of

Ministers as may appear to the President to be reasonably necessary for the efficient running of the State

² Article 99 (1) and (4) of the 1995 Ugandan Constitution as amended.

³ The Constitution in Article 113 (2) requires that the number should not be more than 21, except the President seeks and obtains the approval of the Parliament for more.

⁴ For the qualifications that are minimal for election to the Parliament of Uganda, see Article 80 of the 1995 Ugandan Constitution as amended.

⁵ Article 113 (1) of the 1995 Ugandan Constitution as amended

as ministers, and thereafter, the President can assign roles to them after the oath of allegiance and oath of minister is administered on them. This procedure underscores the very important position the ministers occupy as drivers of executive policies. The minister shall be given full responsibility for the functions of a particular unit of governance as the President may deem fit and shall individually be responsible to the President as he or she exercises the functions of this office. As a cabinet, they shall all be collectively responsible for cabinet decisions from their meetings. The requirement for parliamentary approval of ministerial nominees accords with the practice in Presidential democracies like Nigeria,⁶ even though Uganda does not practice an absolute Presidential system of governance. In Uganda, the President can appoint ministers from amongst members of

“A Minister referred to in this article shall have responsibility for such functions of the Ministry to which he or she is appointed, as the President may, from time to time, assign to him or her; and in the absence of the Cabinet Minister in his or her Ministry, shall perform the functions of the Cabinet Minister as the President directs.”⁸

From the above, when the cabinet minister is absent from the ministry, if the President directs, the other Minister may exercise the duties of such a cabinet minister. This does not mean ipso facto that the President cannot from inception assign a ministry or portfolio to him. Nothing from the above can be interpreted as prohibiting the ‘other minister’ from overseeing the affairs of a government Ministry ab-initio. Upon appointment, the Minister is under the direction and supervision of the President. The President can equally in accordance with the principle

NATURE OF UGANDA’S SYSTEM OF GOVERNANCE

Uganda operates a hybrid form of Presidential system of governance. The constitution recognises and actually operates three distinct arms of government wherein power is actually shared amongst the arms. The recognised arms of Government are the legislature, the executive and the Judiciary. The legislative power is vested in a unicameral legislature, while the executive powers are vested in the President who is the head of state, commander of the Uganda Peoples defense forces and the Head of Government¹⁰. There is a Judiciary, which interprets the law. The constitution recognises the principle of checks and balances amongst the different arms of the government. This could have passed for a Presidential system of government if not that the constitution empowers the President to form a

parliament unlike Nigeria where the President cannot, except perhaps the minister resigns from the parliament to take up such a ministerial appointment.⁷

Besides the Cabinet Ministers, the Ugandan constitution permits the appointment of other ministers that would not have cabinet positions. The constitution simply refers to them as ‘other ministers’. It would appear that these ministers play second fiddle to the cabinet ministers, but on a careful perusal of the provisions of the constitution they are not necessarily second fiddle. First they undergo parliamentary approval like the cabinet ministers and can be assigned functions by the President like the Cabinet Ministers. The apparent confusion regarding the status of ‘other ministers’ is embedded in this subsection reproduced herein;

of ‘he who appoints can remove’ remove the Minister without a need to give reasons. Other means by which the Minister can be removed from office includes if he resigns, dies or becomes disqualified from being a member of the parliament⁹, a condition that was a basic qualification that earned him an appointment in the first place. Another contentious provision regarding the removal of a Minister is a censure by the Parliament, which was ipso facto the approving authority.

cabinet which he can permissively and lawfully form, by appointing members of the parliament for this purpose. Similarly the constitution permits the appointment of a Prime Minister whose functions or personality is slightly different from the Prime Minister traditionally known to a –parliamentary system of governance¹¹. The President of Uganda can appoint his cabinet from outside the parliament and upon confirmation by the parliament they automatically become members of the parliament except that they do not have a parliamentary vote on issues requiring a vote. The President can also appoint his ministerial cabinet from amongst the parliamentarians and they need not resign from parliament; it therefore means that if they were appointed from the parliament, they retain a vote on

⁶ Section 147 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

⁷ Section 147(4) of the 1999 Constitution of Nigeria as amended.

⁸ Article 114(4) of the 1995 Ugandan Constitution as amended

⁹ Article 116 of the 1995 Ugandan Constitution as amended

¹⁰ Article 98(1)

¹¹ Eg, the well-established role of the British Prime Minister.

parliamentary issues requiring voting by parliamentarians.

Similarly, the Constitution vests the power of appointment of the Vice President and the Prime Minister on the President, the positions he can gladly appoint from amongst members of the Public or from the members of parliament.¹² Where they are appointed from amongst members of parliament, they continue to be members of parliament as well as exercise executive functions that the constitution or the President may assign to them. The Prime Minister and the Vice President are appointees of the President and so can lose their status at the discretion of the President, they are individually accountable to the President who appointed them. The Joint membership of the executive appointees in parliament

PARLIAMENTARY CENSURE OF MINISTERS

An interesting but vague and even contentious provision in the Ugandan Constitution is the power of the Parliament to take a vote of censure on a minister. Article 118 of the Constitution provides for this novel situation. It Provides; *'Parliament may, by resolution supported by more than half of all members of Parliament, pass a vote of censure against a Minister...'* the grounds upon which a vote of censure can be taken against the Minister includes; when the minister abuses the oath of his office, misconducts himself, is incompetent or when he mismanages his office or when he is physically and mentally incapable of discharging the functions of his office.¹⁴ The procedure leading to a vote of censure is akin to a disciplinary procedure, obliging the affected minister the basic rule of fair hearing in the midst of serious grounds upon which a vote of censure can be initiated. It must be noted that the grounds are considered grievous and are generally a ground upon which even an elected representative can be removed from office. The seriousness of the grounds and the process of vote of censure is even more foregrounded with the marginal notes attached to a vote of censure and the entire article 118 with the bold margin as "Cabinet removal"

In the rules of interpretation, especially of a statutory document, marginal notes are aids of interpretation and often depict the bold intention of the legislature. The interpretation of a statute is simply a process by which a court employs to ascertain the true meaning by which a legislature ascribes to a statute. While the starting point lies in applying the ordinary plain literal meaning ascribed to a statute, it can often times explore other aids in assisting the court reach its

and executive cabinet makes the Ugandan Presidential system hybrid and unique.

As is customary with the Presidential and Parliamentary systems, the Parliament exercises oversight control over the executive. The parliament can impeach the President for constitutional breaches or whatever impeachable grounds that the law deems as sufficient. This constitutional responsibility is also placed on the Parliament by the Ugandan Constitution.¹³ From findings, this power of impeachment has never been exercised to the removal of any President in Uganda. Similar to this power, is the power of parliament to confirm executive officers provided for in this constitution. This includes, the Vice President, Prime Minister and Ministers. Also part of the oversight powers, is the power of parliament to censure a minister.

intended interpretation. One of those aids, is the adoption of the marginal notes. Besides that it aids in resolving vague or ambiguous meanings of a statute; they serve as quick pointers to the subject matter of a theme of a statute. This position was emphasized in

¹² Article 108 and 108A of the 1995 Ugandan Constitution as amended

¹³ Article 107 of the 1995 Ugandan Constitution as amended

¹⁴ Article 118(1) of the 1995 Ugandan Constitution as amended

the case of *Yabugbe v COP*¹⁵ where Ephraim Akpata JSC cited with approval the dictum of Kayode Eso JSC in *Oloyo v Alegbe* thus; *‘though in modern times marginal notes do not generally afford legitimate aid to the*

EFFECT OF CENSURE OF A MINISTER

As previously noted, the marginal note on the article of the Constitution on censure of a minister titles it as ‘removal of minister’. Does the marginal note oversensationalize the process of censure? Does a censure really amount to a removal of a minister? Let us adequately appraise the provisions on this process. The effect of a censure is captured in article 118 (2) which provides; *“Upon a vote of censure being*

RESIGNATION

‘Resign’ as used in article 118(2) is a verb, and the act is ‘resignation’ which is a noun. Resignation is defined by the Blacks Law Dictionary¹⁷ as “1. *The act or an instance of surrendering or relinquishing an office, right, or claim. 2. A formal notification of relinquishing an office or position.*”

From this definition, it connotes a voluntary surrender, which is usually in writing and the cessation of officialdom in the office. It takes effect after that surrender. This is the opposite of a removal which does not depend on a surrender but a compulsory exit from office upon the completion of a certain action which is beyond the control of the person removed. This means, upon a completion of a censure on a minister, he ought to resign. Unfortunately, the act of resignation depends on the voluntary willingness of the minister to so resign

APPROPRIATE ACTION

A careful reading of article 118 (2) will reveal that the drafters of the constitution intended a compulsion after a censure. However, instead of the compulsion being directed at the minister to resign, or leave office, the compulsion is rather directed at the appointor of the minister who in this instance is the President. The compulsion is introduced by the word ‘shall’ and it is clearly directed towards the President to take action. This can be gleaned from the phrase “... *the President shall, unless the Minister resigns his or her office, take appropriate action in the matter.*” Thus, upon failure by the Minister to resign after a censure, the President must take action on the matter. The question then is, what action can the President take? The answer can be found within the phrase *‘appropriate action’*. What constitutes appropriate action has not been defined.

Adopting the ordinary dictionary definition, ‘appropriate’ connotes ‘suitable’, ‘fit’, or even ‘proper’. When joined with the word ‘action,’ it will therefore mean that the President can take a suitable or proper action. Let us bear in mind these important factors as

*construction of statutes, at least it is permissible to consider the general purpose of a section and the mischief at which it is aimed with the marginal note in mind*¹⁶

passed against a Minister, the President shall, unless the Minister resigns his or her office, take appropriate action in the matter” Two possible effects or outcomes follows a censure from that provision, thus: the Minister shall resign or the President shall take appropriate steps.

than a compulsion of the law. This is clear from the wordings of the constitution “... *unless the minister resigns his or her office...*” From the constitution there is no compulsion on the minister to surrender his office, this means he or she can choose to stay. In Africa, it has been seriously noted that public office is considered lucrative and public officials have the habit of clinging to offices even beyond their constitutional terms; often seeking unlawful amendments to term limits so that they continue in office. Resignation from office is not a common practice except when persons are forced out of office or removed. With this wide understanding of the nature of Africa’s office holders, we can fairly predict that a censured minister will not willingly surrender his office when censured.

we attempt to determine the suitable or appropriate action the President will take. Before the censure, the minister must have committed the grounds necessitating a censure; either he was incompetent, or mismanaged, or abused his office, amongst others. The President ordinarily has the power to remove the minister in all the above misconduct in his absolute discretion. Assuming but not conceding that the President is unaware of the abuse or grounds that gave rise to the censure, article 118 (3) requires that the proceeding for a censure must be begun by a petition directed to the President giving him notice about the conduct of the Minister. So, at this point the President becomes aware of the abuse of office by the minister and he can still exercise the discretion of his office by removing the minister; in fact by the Constitution, the Parliament cannot censure the minister until after thirty days of such a service of the Petition on the minister, through the President. If the President still chooses to keep the minister, then the appropriate action the President will take on the matter will not be necessarily limited to removing the

¹⁵ (1992)4NWLR Pt 234, page 152at 171

¹⁶ (1983) 2SCNLRP35at 37

¹⁷ Garner A, Brian MLA 2014(Ed) Black’s Law Dictionary. St Paul MN: Thomson Reuters.

minister. Most likely, he would take no action, or he might assign the said minister another cabinet responsibility. In all these situations or options; whether taking no action or assigning the minister another responsibility, as adumbrated above, the minister has not been removed office. Another guess to the possible 'appropriate action' of the President is to also understand the background that, the minister prior to the censure, was accountable to the President. This means whatever abuse of office, especially if it was corruption related may have been carried out to the benefit of the President who is his appointor. If

CASE STUDY OF CENSURE IN UGANDA

Through Uganda's republican political history, especially with the advent of the 1995 Republican Constitution, the Parliament has exercised censure over a number of ministers. In these instances, the investigated Ministers resigned their ministerial positions midway in the course of the censure. In some of the cases, the Ministers did not resign after censure and the President did not remove the ministers as well. We shall examine a few of these cases in depth.

Between the period of 1997 and 2012 Parliament forced some ministers to resign after a censure on them. Those who resigned after sufficient signatures for their censure were collected are Prof. Kirunda Kivejinja for the Ministry of Works, Transport and Communication (in 1997), Mathew Rukikaire, Minister for Planning (in 1999), Kabakumba Masiko for office of Presidency (in 2011), Syda Bbumba for Gender Ministry (in 2012) and Khiddu Makubuya for Office of the Prime Minister (in 2012).¹⁸ However, In 1998 Maj. Gen Jim Muhwezi was actually censured and in 1999 Sam Kutesa was also censured.¹⁹ The censure of these two ministers happened in the 6th parliament and interestingly they did not resign as ministers and the President did not remove them from office either. The President rather kept them till the very end of that tenure and later reappointed Muhwezi again as a Minister in another subsequent tenure²⁰.

A few Processes for censure in the parliament have also in the past failed to secure minimum signatures for the motion to pull through as required under

this assumption is true, one can clearly guess the 'appropriate action' a President may undertake in the circumstance. Thus while the drafters of the constitution may have intended the removal of a minister with the process of censure, they failed in commanding that effect with the poor drafting of article 118 (2). The intention of removal can be easily imputed with the serious grounds upon which a censure can commence and the ebullient procedure, which ensures a fair hearing and requires a parliamentary vote in the majority.

article 118 (3). Under this section the procedure for censure commences by the parliament after at least one third of members of parliament have signed the petition. Where less than one third of members sign the petition then the procedure for a censure fails thereof. This was the case in 2022 in the attempted censure of the Minister of Security Maj. Gen Jim Muhwezi by the opposition Law makers, over allegations of gross violations of human rights especially targeted at the opposition politicians.²¹ The process failed when the members of parliament (MPs) failed to secure the one third of the signatures required to go ahead with the motion for censure. In fact only Eighty Eight signatures of MPs were secured out of the minimum of One hundred and seventy Six required after 10 days of displaying the petition for signatures as required by the law and Rule 109 of The Rules of Procedure of the Parliament of Uganda 2021. The Rules require that upon the service of a notice for censure of a Minister by a member addressed to the Speaker, the Speaker shall notify the parliament stating the grounds and a register shall be deposited with the Sergeant-at-Arms for a period of ten days, where willing members shall append their signatures in support of the notice of censure. Where after ten days, less than one third of the members append their signatures, then the notice of censure fails and lapses, meaning the censure process comes to an end. This was the case with Maj. Gen Jim Muhwezi. A similar attempt on General Elly Tumwine in 2020 under the 10th parliament also failed to get the mandatory signatures required.²²

¹⁸ Okello D. H. 2020. CENSURE: Inside the Lengthy Process to Remove a Minister <https://chimpreports.com/censure-inside-the-lengthy-process-to-remove-a-minister/> Retrieved 10 March 2024

¹⁹ Op. cit.

²⁰ Misairi Thembo Kahungu . 2023. [Minister Namuganza censured by House over misconduct](#)

<https://parliamentwatch.ug/news-amp-updates/minister-namuganza-censured-by-house-over-misconduct> Retrieved 17 February 2024

²¹ unknown author(admin) 2022. 'Opposition Wants Security Minister Censured' <https://parliamentwatch.ug/news-amp-updates/opposition-wants-security-minister-censured/> Retrieved 10 march 2024

²² Misairi Thembo Kahungu 2023 'Minister Namuganza censured by House over misconduct'

Recently, in January 2 2023 a special parliament sitting censured the Minister of Housing Hon Persis Namuganza, for misbehavior, misconduct and contempt of Parliament. The Minister who was investigated by the Parliament for her involvement in the improper land allocations by the Uganda Land Commission, took to the public through mass media questioning the integrity and powers of parliament.

CENSURE IN UGANDA'S LOCAL GOVERNMENT SYSTEM

Uganda operates a Local Government System. Her local Government system is derived from the national objective to decentralize and devolve governmental power and functions to the people at appropriate lower levels where they can best manage and direct their own affairs. The aim of the local governance model is also to ensure active citizen participation in governance. The Constitution ensures that the Local Government system is run on democratic principles. Article 176 of the constitution actually creates local governments and recognise the district as the unit upon which the system will operate, even though Parliament can actually create lower levels of local governance under the district. With this constitutional authority on parliament to determine local governance through legislation, the Local Government Act²⁵ was enacted. The Act models the administration in the district almost similar to the system of administration in the central Government of Uganda, especially in running the legislative and executive committees of the district. Section 20 of the Local Government Act which provides for how a member of the District Executive Committee can vacate office is a reenactment of article 187 of the Constitution. A district executive committee consists of the chairperson of the district, the vice chairperson and five other members of the committee known as secretaries who are appointed by the chairperson with approval from the legislative council. One of the methods by which a member can vacate office is by the process of censure.²⁶ The process includes a

The Parliament viewed her actions as derogatory, contemptuous and an abuse of office and the oath which she took, and subsequently censured her.²³ Although, after the Censure, the Minister instituted an action in court challenging the procedure adopted by the Parliament, citing a breach of fair hearing and more²⁴, she was never removed from office by the President.

resolution supported by not less than half of all members of the council, passing a vote of censure against a member of the executive committee.²⁷ Regulation 3 of The Local Government Council Regulations made pursuant to the Act also restates the position of section 20 of the Act by stating that, censure will make a member of the executive committee (other than the Chairperson) of the committee to vacate office. The inference is drawn that the chairperson is not included in the censure because other sections have separate provisions on how a chairperson who is elected and not appointed is removed. The local government censure aftermath perhaps is unambiguous like the ministerial censure. It has one effect, the censured member vacates office. Executive Committee Members in the Local Government system are in the likes of ministers in the central government. A case illustration in this regards is the censure of the entire district executive committee members by the Rakai District Council for withholding information about Budget.²⁸ It is important that in exercising the power of censure, the censoring authority in this case the legislative arm must observe the fundamental principles of natural justice and give a right of fair hearing to the member of the executive committee. Where this right is breached, the censured party has a right of redress in court. This fact was the basis of an action in the case of *Angella Achere and 5 others v Pallisa District Local*

retrieved 23rd February 2024 from <https://parliamentwatch.ug/news-amp-updates/minister-namuganza-censured-by-house-over-misconduct/>

²³ Misairi Thembo Kahungu 2023 'Minister Namuganza censured by House over misconduct' retrieved 23rd February 2024 from <https://parliamentwatch.ug/news-amp-updates/minister-namuganza-censured-by-house-over-misconduct/>

²⁴ Ruth Anderah 2023 'Minister Namuganza runs to court to challenge censure' Retrieved 23rd February 2023 from

<https://www.monitor.co.ug/uganda/news/national/minister-namuganza-runs-to-court-to-challenge-censure-4106536>

²⁵ Cap 243

²⁶ Section 20 (d) Cap 243

²⁷ Article 187(2) of the 1995 Ugandan Constitution as amended.

²⁸ 2022. Rakai District Councilors censure entire executive committee. Retrieved 9th may 2024 from <https://www.independent.co.ug/rakai-district-councilors-censure-entire-executive-committee/>

*Government Council*²⁹ where the High Court of Uganda sitting at Mbale issued an order of certiorari quashing the censure resolution of the Pallisa Council against the applicants for breach of fair hearing

because none of them was issued the censure motion therefore disentitling them from entering their defence at the hearing.

CENSURE IN THE UNITED STATES OF AMERICA

The United States of America is a leading democracy around the world. Censure is a well-known procedure

to the Congress of the United States. Censure has been viewed in this case as;

*“The formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct.” In Congress, censures are most typically known as simple resolutions of the House or Senate formally adopted by a vote of that body, and expressing some form of disapproval or other term of rebuke or condemnation concerning a Member’s conduct which bears generally on a “breach of the rights and privileges” of the institution.*³⁰

The use of censure against the executive arm even though unknown to the United States Constitution is a conventional practice of expressing disapproval by the Congress whenever the conduct of a public officer falls below standard, requiring a reprimand but not necessarily an impeachment. Censure represents a medium approach between the extreme action of impeachment or taking no action against the official misconduct or inefficiency of a member of the executive.³¹

Congress has debated their lack of constitutional authority for censure with some preferring the exercise of their powers of impeachment as guaranteed in the constitution. Nevertheless, Congress have since adopted this practice as an inherent power of their legislative process. *“The practice of the House, Senate, or Congress to express facts or opinion in simple or concurrent resolutions has been recognized since its earliest days as an inherent authority of the Congress and of democratic legislative institutions generally, and the adoption of “sense of” the House or Senate resolution is practiced with some frequency in every Congress.*³²

As previously stated, even though censure has no constitutional authority, it has no constitutional limitation either. This is in sharp contrast with the Ugandan Constitution that has an express authority for congressional action. Despite its absence from the constitution, the United States Congress has adopted the procedure as a means of expressing displeasure with executive action in the past. ³² Historically,

Quite recently in 1974, the Congress received a congressional motion regarding the censure of President Richard Nixon but it received no congressional support.³⁴ Since it lacks constitutional

²⁹ HCT-04-CV-MC-004 of 2004. Decided by Hon.

Justice Rugadya Atwoki

³⁰ Deschler’s Precedents of the U.S. House of Representatives, Volume 3, Ch. 12, § 16;2 Riddick & Fruman, Riddick’s Senate Procedure, 270-273 (1992)

³¹ Jack Maskell 1998. Censure of the President by the Congress, Congressional Research Service: The Library of Congress retrieved 8 February 2024 from <https://crsreports.congress.gov>

³² Censure undertaken regarding President Jackson in 1834, and by the House in 1860 with regard to President Buchanan.” The Senate adopted a resolution in 1834 stating that certain conduct of President Andrew Jackson, involving a policy dispute concerning the removal of the Secretary of the Treasury and the question of the availability of certain documents, was “in derogation” of the Constitution or the laws of the nation.” In 1860, the House of Representatives adopted a resolution stating that the President’s conduct was deserving of its “reproof,” in a matter concerning the conduct of

President Buchanan and his Secretary of the Navy in allowing political considerations and alleged campaign contribution “kickbacks” to influence the letting of Government contracts to political supporters, rather than the lowest bidder”

³³ Jack Maskell Op cit

³⁴ Ibid. The resolution stated:

Whereas the people have the right to expect from the President of the United States high moral standards and personal example, as well as great diligence in the exercise of official responsibilities and obligations; And whereas, Richard M. Nixon, in his conduct of the office of President - despite great achievements in foreign policy which are highly beneficial to every citizen and indeed to all people of the world - (1) has shown insensitivity to the moral demands, lofty purpose and ideals of the high office he holds in trust, and (2) has, through negligence and maladministration, failed to prevent his close subordinates and agents from committing acts of grave misconduct obstruction and impairment of

basis therefore, a censure would not amount to a removal from office nor serve as a subsequent bar for future elections but may however damage the reputation of a politician and may affect chances in future elections. This is as much as seeking popular votes may be required in subsequent elections. In our opinions, we query the exercise of power of censure by congress as practiced in the United States as an unnecessary intervention on the powers of the Executive and runs contrary to the principle of separation of powers. By that principle, the three arms have their basic roles and are to traditionally stick with such roles, granted that there is checks and balances, the checks and balances are exceptions to the traditional principle of separation of powers and therefore ought to be specifically donated by the constitution. As in this case, where there is no such donation, the power of censure negates the doctrine of separation of powers. The only power constitutionally donated to the congress is the power of impeachment³⁵ and congress ought to stick with this express donation only.

CENSURE IN NIGERIA

Nigeria operates a federal structure of governance³⁸ as well as a Presidential system of government³⁹, power is shared between the three distinct arms of government⁴⁰ with some interjections in roles in allowable instances. The president who is the head of the executive arm must appoint ministers who have to be mandatorily confirmed by the National Assembly. It is essential that a minister is confirmed by the National Assembly before he qualifies to take oath as a minister of the federal republic but that is as far as the power of the National Assembly goes. For instance, the National Assembly of Nigeria recently failed to clear and confirm Nasir El Rufai a former Governor of Kaduna State of Nigeria who was appointed to be a minister by the President of Nigeria. Upon this failure of confirmation he was not sworn in as minister despite his nomination by the President.

Censure may also be undertaken in respect of congressional members. When undertaken in congress a “censure” is a formal, majority vote in the House on a resolution disapproving a Member’s conduct. While a censure of a member of the Executive may not have constitutional recognition, censure of a congressional member is a disciplinary measure that is sanctioned by the Constitution.³⁶ Like the Executive censure, there is no formal consequence for congressional censure of its member as well. The effect just lies in the public expression of disapproval with the member’s conduct, which have in the past forced such members to voluntarily resign from the congress. It is recorded that since 1800, Members of the House and Senate have introduced resolutions of censure against at least 12 sitting Presidents.³⁷ The last presidential censure resolution to receive congressional floor consideration occurred in the Senate in 1912 (William Howard Taft). Other censureship attempts were referred to the committees of the congress and later received no further actions.

In Nigeria, the National Assembly which jointly comprises of a bicameral legislature does not have the constitutional role of censure for ministers. The National Assembly can impeach the President, but does not have the power to remove the minister. The suspension or removal of the minister becomes the absolute discretion of the President. A similar provision as a censure as found in the Ugandan Constitution is lacking either in the Nigerian Constitution or any Act of parliament. The National Assembly exercises oversight duties over the activities of ministers, the aim is to ensure budgetary compliance and check corruption. They could indict a Minister for financial recklessness but the effect of indictment is not tantamount to a removal of the minister.

justice, abuse and undue concentration of power, and contravention of the laws

governing agencies of the Executive Branch; Now, therefore, be it resolved by the House of

Representatives that Richard M. Nixon should be and he is hereby censured for said moral

insensitivity, negligence and Maladministration’
³⁵ United States Constitution, Article I, Section 2,

clause 5; Article I, Section 3, clauses 6 and 3
7; Article II, Section 4.

³⁶ Article 1, Section 5.

³⁷ Congressional Research Service Report 2018
Resolutions to Censure the President: Procedure and
History. A CRS Report prepared for members and

Committee of Congress. Retrieved February 8 from
<https://crsreports.congress.gov>

³⁸ Akpanke Richard Akwagiobe, Okpoko M. and
Otudor L. (2024). Appraisal of Challenges
Confronting Recognition and Enforcement of Arbitral
Awards in Nigeria. *NEWPORT INTERNATIONAL
JOURNAL OF CURRENT ISSUES IN ARTS AND
MANAGEMENT*, 4(2): 35 44@36.

³⁹ Hamed H.A., Wahab A.S. 2012 Ensuring Good
Governance Through Parliamentary Control of
Administrative Agencies: A Critique NAUJILJ 69-82

⁴⁰ Section 456 of the constitutions sharing legislative,
executive and judicial [powers amongst the arms of
government

JUSTIFICATION OF PARLIAMENTARY CENSURE IN UGANDA

The question may be asked where lies the justification for the removal of a minister by the parliament through a censure (conceding that a censure means removal) where the minister is not directly responsible to the Parliament. Extending the argument, there also exists the provision for a collective responsibility of the ministers, but in all the individual or collective responsibility, none of it lies to the parliament. Article 117 vests Ministers responsibility and loyalty to the President. This is understandable because the President is the appointor and the authority responsible for assigning responsibilities. It is only logical that since they assign executive powers, their individual and collective responsibility should be to the President. The conclusion is that the President should naturally possess the power to remove a minister after all he who appoints can naturally fire.

On the Justification of the power of Parliament to censure, it can be argued that, parliament has the power to confirm a nominee for the position of minister. Their non-confirmation *ab-initio* would not

The inclusion of the power of parliamentary censure of a Minister in the Ugandan constitution is a welcome development. Its intention was no doubt to ensure good governance especially from the executive. The ministers being the chief implementers of the powers of the executive, the parliament could exercise oversight functions over their functions and can therefore remove such a minister in the case of gross abuse of office. However, the intentment of the drafters of the constitution is not well conveyed leaving a lacuna or at best a discretion on the part of the President from actually removing the minister upon a censure by the

have qualified the nominee to take the ministerial oath, a censure in this case would amount to a withdrawal of the confirmation of the earlier approval and as such it should disentitle the Minister from continuing to hold that office. On a second but peculiar justification is the reason that in Uganda, the Minister is also a member of parliament. Possessing a vote where he or she was hitherto a member of the Parliament. If he or she was not appointed by Parliament, the minister nevertheless becomes an *ex officio* member of parliament but not possessing a vote in the parliament in this instance.⁴¹ Being members of Parliament, they can ordinarily debate the affairs of their members especially when one of the functions of the parliament includes protecting the constitution and safeguarding democratic governance in Uganda.⁴² It is ordinarily also argued that it is in the exercise of this function of safeguarding democracy that the Parliament can exercise impeachment powers over the office of the President of the Republic of Uganda.

CONCLUSION

parliament. This has led to instances where a minister continues in office even after a rigorous process of censure on such minister. The resultant effect is that the President has not breached any aspects of the constitution when he fails to remove a minister that has been censured. In order to forestall this discretion and actually activate the real intent of the parliament when a minister is censured, it is advocated that article 118 (2) be amended to compel the President to remove a minister and not leaving the President with a discretion to 'take appropriate action in the matter'.

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⁴¹ Article 78 (1) (d) of the 1995 Constitution as amended.

⁴² Article 79 (3) (d) the 1995 Constitution as amended.