



Does the Nigerian Federal Legislature Have Constitutional Powers to Summon the President of the Republic Over Matters of National Importance?

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Abstract. Following worsening insecurity in Nigeria, the lower arm of Nigeria's Parliament, the House of Representatives, had on December 01, 2020, issued a summons to the President of the Republic, to appear before the House on December 10, 2020, to address it on the true state of the (in)security in the country. The summons and Mr. President's refusal to honour it, had sparked off a national debate/controversy, especially bothering on the propriety and constitutionality of such summons against the President and the extent of obligation (if any) of Mr. President to answer to it. This forms the main focus of the present paper which begins with a prognostic determination of extent of constitutional powers (if any) of the Nigerian Federal Legislature or any arm of it, to issue a summons on Mr. President, the extent of Mr. President's duty or right to honour or dishonour such invitation, and possible implications of compliance or non-compliance thereof. The paper examines relevant case law and provisions of the Nigerian Constitution, and then proceeds to consider options open to the President in the circumstances, especially in view of the constitutional provisions relating to Presidential immunity. Then, drawing an analogy from extant law and practice in jurisdictions, such as the USA, with a somewhat similar

constitutional or legal framework, the authors in their conclusion proffer recommendations believed to accord with the demands of rule of law and constitutionalism, and geared especially towards advancement of constitutional democratic ideals, governance transparency and accountability. The authors believe that legal scholars and researchers owe it as a duty to society, to constantly offer legal opinions to serve as additional guides to leaders, institutions, policy makers and their advisors in the discharge of their responsibilities and towards promotion and sustenance of responsible and responsive governance.

Keywords: Constitution, Democracy, President, National Assembly, Legislature, Summons, Senate, House of Representatives, Law.

1. Background

Nigeria's Federal Legislature is bicameral and the two houses of parliament are jointly known as the National Assembly. The National Assembly as established by the Nigerian Constitution,¹ is made up of the Senate which is the upper legislative arm² and the House of Representatives which is the lower arm.³ Apart from the constitutional power to make law for

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¹Constitution of the Federal republic of Nigeria (CFRN), 1999, s. 47

²*Op Cit*, s. 48.

³*Op Cit*, s. 49.

the order and good governance of Nigeria or any part thereof⁴ with respect to matters contained in the Exclusive⁵ and Concurrent⁶ Legislative lists, the National Assembly possesses oversight powers for the purpose and in exercise of which the National Assembly or any arm of it may institute or cause to be instituted an investigation into any matter or thing⁷ or into the conduct of the affairs of any person, authority, Ministry, department,⁸ or to invite or summon any person in Nigeria to appear before it in pursuance of the any of the purposes aforesaid,⁹ and in the event of any such summons being dishonoured, to be entitled to issue a warrant against any person so defaulting.¹⁰ It was perhaps in pursuance of these constitutional powers, and while adopting a motion under matters of urgent national importance sponsored by Hon. Satomi Ahmed¹¹ at the plenary, Nigeria's House of representatives had on December 01, 2020 resolved to invite the Nigerian president, Mr. Muhammadu Buhari, to appear before the House on December 10, 2020, to brief the legislators on the true state of the security of the Nation,¹² an invitation which the President immediately indicated his readiness to honour¹³ but later failed (to honour).¹⁴ However, in a statement¹⁵ personally signed by himself, to explain the President's backtrack-decision to not honour the House summons, the Attorney-General and Minister of Justice of the Federal Republic of Nigeria, Mr. Abubakar Malami, SAN, stated that the right of the President to engage the National Assembly and appear before it "is inherently discretionary." The Honourable Attorney-General further argued

that the National Assembly "has no constitutional powers" to envisage or contemplate a situation where the President would be summoned to explain operational use of the Armed Forces. The authors of this research paper consider the present analysis necessary because the authors, being themselves legal scholars and learned researchers, believe they owe society some duty to constantly offer legal opinions on issues of law to guide leaders and institutions in the discharge of leadership responsibilities".¹⁶

2. National Assembly's Power of Investigation and Summons

2.1 Relevant Provisions of the Constitution

Section 88 (1) & (2) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 provides:

(1) Subject to the provisions of this Constitution, each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed investigation into - (a) any matter or thing with respect to which it has power to make laws, and (b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for - (i) executing or administering laws enacted by National Assembly, and (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly. (2) The

⁴ *Op Cit*, s. 4(1) and (2).

⁵ *Op Cit*, s. 4(1) and (3); see also Part 1, Second Schedule, Constitution of the Federal Republic of Nigeria (CFRN), 1999.

⁶ *Op Cit*, s. 4(4)(a); see also Part 2, Second Schedule, CFRN, 1999.

⁷ *Op Cit*, s. 88(1)(a).

⁸ *Op Cit*, s. 88(1)(b)

⁹ *Op Cit*, s. 89(1)(c).

¹⁰ *Op Cit*, s. 89(1)(d)

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¹² The Guardian, "Insecurity: Reps Summon Buhari over Borno Massacre" (The Guardian Nigeria News - Nigeria and World News December 1, 2020) <<https://guardian.ng/news/insecurity-reps-summon-buhari-over-borno-massacre/>> accessed May 6, 2021

¹³ The Guardian, "Buhari to Address National Assembly on Thursday" (The Guardian Nigeria News - Nigeria and World News December 7, 2020) <[https://guardian.ng/news/buhari-to-](https://guardian.ng/news/buhari-to-address-national-assembly-on-thursday/)

[address-national-assembly-on-thursday/](https://guardian.ng/news/buhari-to-address-national-assembly-on-thursday/)> accessed May 6, 2021

¹⁴ The Nation, "Insecurity: President Buhari Fails to Honour Reps Invitation" (Latest Nigeria News, Nigerian Newspapers, Politics December 10, 2020) <<https://thenationonline.ng/news/insecurity-president-buhari-fails-to-honour-reps-invitation/>> accessed May 7, 2021

¹⁵ Vanguard Newspapers, "Why Buhari Can't Honour Reps' Summons - AGF, Malami" (Vanguard News, December 10, 2020) <<https://www.vanguardngr.com/2020/12/why-buhari-cant-honour-reps-summons-agf-malami/>> accessed May 7, 2021

¹⁶ Udemezue, Sylvester, "The Place For "Kick-Backs" & "Bribes" In Our Efforts To Kick Back Corruption & Kick-Start Responsible Governance In Nigeria (A Legal Opinion)" (The Nigeria Lawyer, 23 October 2018) <<https://thenigerialawyer.com/the-place-for-kick-backs-bribes-in-our-efforts-to-kick-back-corruption-kick-start-responsible-governance-in-nigeria-a-legal-opinion-by-sylvester-udemuzue/>> accessed May 6, 2021.

powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to – (a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and (b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

Section 89 (1) and (2) provide:

For the purposes of any investigation under Section 88 of this Constitution and subject to the provisions thereof, the Senate or the House of Representatives or a committee appointed in accordance with Section 62 of this Constitution shall have power to - (a) procure all such evidence, written or oral, direct or circumstantial, as it may think necessary or desirable, and examine all persons as witnesses whose evidence may be material or relevant to the subject matter; (b) require such evidence to be given on oath; (c) summon any person in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control, and examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all just exceptions; and (d) issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House or the committee in question, and order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his failure, refusal or neglect to obey the summons, and also to impose such fine as may be prescribed for any such failure, refused or neglect; and any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law. (2) A summons or warrant issued under this section may be served or executed by any member of the Nigeria Police Force or by any person authorised in that behalf by the President of the Senate or the Speaker of the House of Representatives, as the case may require.

Section 308:

(1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section - (a) no civil or criminal

proceedings shall be instituted or continued against a person to whom this section applies during his period of office; (b) a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and (c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued: Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office. (2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party. (3) This section applies to a person holding the office of President or Vice-President, Governor or Deputy Governor; and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office.

2.2 The Discussion

As seen above, section 88 empowers the National Assembly or any arm of it,¹⁷ to conduct investigations into any matter or thing with respect to which it has power to make laws, and or into the conduct of affairs of any person, authority, ministry or government department in Nigeria. It is submitted that “any person”¹⁸ includes all persons and authorities in Government and all members of the executive arm, including the President of the Federal Republic of Nigeria. This is because the President is the leader among the persons or authorities in Nigeria, “charged, with the duty of or responsibility for executing or administering laws enacted by National Assembly, and of disbursing or administering moneys appropriated or to be appropriated by the National Assembly”, as envisaged by the Constitution.¹⁹ Section 89(1)(c) empowers the National Assembly to issue “a summons” to any person in Nigeria for purposes of appearing before the National Assembly to give evidence or to produce any document for purposes of such investigations. However, some lawyers have argued that it is an abuse of constitutional powers for the National Assembly to summon the President. According to this school of thought, “the provisions of sections 88 and 89

¹⁷ as part of its oversight functions.

¹⁸ as used in section 88(1)(b) (supra)

¹⁹ section 88 (1)(b)(i)&(ii) of the Constitution

of the Constitution do not apply to the President”²⁰ of the Federal Republic of Nigeria because the immunity granted to Mr. President under the Constitution²¹ forbids the National Assembly from issuing any form of summons against Mr. President. They argue that a “*summons is a legal process of compulsion and compellability, disobedience to which can be enforced by the Police and can lead to detention and imprisonment*”,²² from which the President is exempt as a result of the immunity provisions in section 308 of the Constitution. The position of this school of thought may be summed as follows:

The summons issued against the President by the House of Representatives is in the nature of a court process, from which the President of the Federal Republic is exempt by virtue of section 308; and

A summons is a legal process disobedience to which may lead to arrest and possible detention of the person so summoned and so disobeying, and since, by virtue of section 308 of the Constitution, it is legally forbidden to arrest or detain Mr. President, while he is still in office, it follows that the National Assembly is legally incapable of summoning the President, especially as there is no means of enforcing Mr. President's compliance with any summons so issued.

The Authors agree that Mr. President cannot be arrested or detained while in office and is not liable to answer to any court summons during the subsistence of the tenure of his office; more so in the present instance, and especially because section 89 of the Constitution applies “*subject to the provisions of the Constitution*” while Section 308 applies “*notwithstanding anything to the contrary in this constitution*”.²³ However, with due respect, the proponents of this idea appear to not have adverted their minds to the fact that there are other ways of killing a rat beside setting a trap for it, and that the present situation may not be as clear-cut or as simple as they have made it to appear, especially because the oversight powers of the National Assembly²⁴ are awesomely enormous and that in a proper democratic setting, disobedience to summons issued in exercise of the powers of the National Assembly under

such circumstances is a serious constitutional breach. In the present instance, as an example, the summons by the House of Reps is said to be specifically to get the President to appear before the House “to brief them on the true state of the security of the Nation”.²⁵ Is it not a serious matter if the President decides to shun such a summons by the Federal Legislature at such a critical time over such a major national issue, especially in view of the constitutional injunction that “the security and welfare of the people shall be the primary purpose of government”?²⁶

2.3 Are Summons Issued Pursuant to Section 89 In the nature of Court Summons?

For the following reasons, in addition to the aforesaid, the Authors respectfully disagree with the view that the summons issued by the House of Representatives pursuant to Section 88 and 89 of the CFRN, 1999, is in the nature of a court/judicial summons.

The National Assembly is not a Court of law. The Constitution creates courts of law which fall within the judicial arm of the government; the National Assembly represents the legislature, not the judiciary and their powers are not judicial powers.

The makers of the Constitution had deliberately inserted section 89(1)(c) CFRN to empower the National Assembly to summon any person; “any person” excludes no one and includes everyone.

Section 308(1)(c) CFRN which exempts Mr. President from “processes” specifically and strictly covers only processes of “*any court requiring or compelling the appearance of*” Mr. President; it doesn't extend to a process (say, a summons) issued by the National Assembly.

Further, in *A.G Federation V. Abubakar*,²⁷ the Court of Appeal took time to explain the scope and limits of the immunity afforded to the President of the Federal Republic under the Constitution. It is obvious from the court's pronouncement that summons issued by the National Assembly pursuant to its investigative powers and oversight functions under sections 88 and 89 of the Constitution are excluded. The words of sections 308(1)(c) leave no one in

²⁰ See for example, Ojukwu, Ernest Prof., ‘House of Reps has no powers to summon President Buhari under sections 88 and 89 of the Constitution- Prof. Ojukwu’ (BaristerNG, 10 December 2020) <<https://www.baristerng.com/house-of-reps-has-no-powers-to-summon-president-buhari-under-sections-88-and-89-of-the-constitution-prof-ujukwu/>> accessed May 6, 2021

²¹ S.308

²² Ojukwu, *Op. Cit.*

²³ See section 308(1) and section 88(1)

²⁴ as a watchdog of the executive arm, headed by Mr. President

²⁵ The Guardian, *Op Cit (n ii)*

²⁶Section 14(2)(b) CFRN, 1999.

²⁷ (2007) LPELR-8995(CA)

doubt that Section 308 does not extend beyond summons from courts and other judicial bodies. The court said, in that case:²⁸

The immunity under Section 308 of the Constitution prohibits every civil and criminal proceeding against the President, Vice-President, Governor and Deputy Governor notwithstanding and/or regardless of the Court where the prosecution takes place, whether it is before a Court of Law established by Section 6(5) of the Constitution or a Tribunal established by Paragraph 15(1) of the Fifth Schedule to the Constitution, with the features of a Court and performing the duties of a Court.

Moreover, it appears, the “*Expressio unius est exclusio alterius*” Rule of Statutory Interpretation is relevant here; the rule states that the express mention of one thing in a statute excludes all other things not mentioned therein. This is illustrated in the case of *R v Inhabitants of Sedgely*.²⁹ The “*Noscitur a sociis*” Rule appears also relevant; it postulates that “words (used in a statute) have no meaning except in the context they are used”.³⁰ The meaning of an enactment must be ascertained from its text, in light of its purpose and in its context. The legislature must be taken in a statute to have said exactly what it means, and also to mean exactly what it has said therein. It therefore goes without saying that interpretation of a word or expression must depend on the text and the context. In *People v. Jefferson*,³¹ the California Court of Appeals, 4th District, USA, observed that the role of the courts in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. Also, according to the Court of Appeal of the US state of Indiana,³² “the first and often last step in interpreting a statute is to examine the language of the statute”. Indeed, the statutory test should be both the ending point as well as the starting point of statutory interpretation.³³ This is because words are the skin of the language, while language is the medium of expressing the

object that a particular provision or the Act seeks to achieve. Accordingly, to find the real intentions of the drafters of a statute, regard must be had to the context, subject-matter and object of the statutory provision in question. Courts and jurists achieve this by carefully analyzing the whole scope and provisions of the statute or section relating to the word or phrase under consideration.³⁴ All in all, all approaches to statutory interpretation start (if not necessarily end) with the language and structure of the statute itself.³⁵ This is because the language and provisions of a statute are the most reliable indicator of the intent of the makers of the statute.³⁶ This is why **Thomas Jefferson** gave the following counsel:

On every question of construction [of the Constitution] let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or intended against it, conform to the probable one in which it was passed.”³⁷

2.4 The President is not above the laws of the land

In *Military Governor of Lagos State v. Odumegwu-Ojukwu, Oputa*, JSC declared that,³⁸ “*here in Nigeria, even under a Military Government, the law is no respecter of person, principalities, government or powers...*” The rule of law requires that every person is subject to the ordinary law within the jurisdiction.³⁹ Rule of law is the predominance that is absolute of an ordinary law over every citizen and institution regardless of status, position, power; the people (including the President of the Federal Republic) are subject to, ruled by, and must obey and be accountable to, the ordinary laws of the land.⁴⁰ Explaining the nature and application of the rule of law in an article,⁴¹ Sylvester Udemezue wrote thus:

Barnhart v. Sigmon Coal Co., 534 U.S. 438, 450 (2002)). See also: Udemezue, Sylvester, ‘Role of Internal & External Aids In Statutory Interpretation: A Disquisition On Legitimateness Of “Jurisdictional Discretion”’

³⁷ Finkelman, Paul, ‘Encyclopedia of American Civil Liberties’ (Routledge, 2006) <https://books.google.com.ng/books?id> accessed May 6, 2021.

³⁸(1986) LPELR-3186(SC)

³⁹Garner, B, In: *Black’s Law Dictionary* (9th ed., Thomson Reuters, 2009) 1148

⁴⁰Geoffrey de Q. Walker, *The rule of law: foundation of constitutional democracy*, (1st Ed., 1988

⁴¹ Udemezue S.C., “Conventionalism or Constitutionalism: Gombe State Governor Is

²⁸*Ibid*, Per ABOKI, J.C.A (pp. 22-44, paras. B-D)

²⁹(1831) 2 B & Ad 65 (UK)

³⁰See *Inland Revenue v Frere* [1964] 3 All ER 796

³¹(1999) 21 Cal.4th 86, 94 [86 Cal.Rptr.2d 893, 980 P.2d 44

³² In *Ashley v. State*, 757 N.E.2d 1037, 1039 , 1040 (2001)

³³See

<see:<https://www.everycrsreport.com/reports/97-589.html>> accessed May 6, 2021.

³⁴Rao, S., “External Aids to Interpretation of Statutes: A Critical Appraisal,” published on www.ssrn.com, accessed May 6, 2021.

³⁵everycrsreport, Op Cit

³⁶see: *People v. Lawrence* (2000) (US) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d 570, 6 P.3d 228]; See also

The Black's Law Dictionary defines rule of law as the doctrine that every person is subject to the ordinary law within the jurisdiction. Rule of law is the predominance that is absolute of an ordinary law over every citizen and institution regardless of status, position, power. Much of the content of the rule of law can be summed up in two points, one of which is "that the people (including, one should add, the government) should be ruled by the law and obey it. Rule of law requires that all persons and organizations including governments and government officials (such as Governors and the most senior judges) are subject, and accountable to, ordinary laws of the land. On its part, the Supreme Court of Nigeria has repeatedly emphasized that "the Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. Nigeria, being one of the countries in the world which profess loudly to follow the rule of law, there is no room for the rule of self-help by force to operate." Also, as has been said, "the rule of law bakes no bread, it is unable to distribute loaves or fishes (it has none), and it cannot protect itself against external assault, but it remains the most civilized and least burdensome conception of a state yet to be devised."

2.5 Power of National Assembly to Penalize Disobedience of its Summons to the President

During the subsistence of the tenure of his office, the President is not liable to be arrested, detained, prosecuted or proceeded against in any court of law, under any circumstances whatsoever.⁴² This notwithstanding, the President ignoring or shunning a summons issued by the National Assembly under the present circumstances⁴³ may have some alternative serious lawful consequences, some of which are:

Impeachment (removal from office):⁴⁴

Right; Office of the Chief Judge of a State Is Not the Exclusive Birthright of the Most Senior Judge" (LawAndJustice, November 23, 2020) <<https://www.lawandjustice.ng/2020/11/conventionalism-or-constitutionalism.html>> accessed May 9, 2021

⁴² CFRN, 1999, s. 308.

⁴³ *Ibid* (n 8).

⁴⁴The word "impeachment" is assigned its meaning under Nigerian Law. See: Udemezue S.C., "Role of Internal and External Aids in Statutory Interpretation: A Disquisition on Legitimateness of Jurisdictional Discretion" (2021) Vol. 16 COMPARATIVE & NON-U.S.

The process of impeachment is one major (alternative) weapon the National Assembly could deploy towards punishing a President who disobeys such summons. The Constitution has set out how the process of removing the President from office (impeachment) is commenced:⁴⁵

Whenever a notice of any allegation 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... is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified.

The exact scope of the nature of the "gross misconduct"⁴⁶ for which Mr. President may be removed from office, has not been precisely delineated by the Constitution or by the courts. Such has been left entirely to be determined by the "opinion" of the National Assembly. Hence, "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".⁴⁷ This definition was affirmed by the Supreme Court of Nigeria in the celebrated case of Inakoju v. Adeleke.⁴⁸

Withholding Proposals for Approval of Funds Submitted by the President

Beside commencing a process of impeachment against Mr. President, the National Assembly may, in reaction to any disobedience by the President to its summons, withhold its approval to any subsequent fiscal proposals presented to the National Assembly by Mr. President. This is similar to what obtains in the United States of America. In answer to the question, "How strong is Congress' power to oversee the executive branch", Barrington Wolff of the University of Pennsylvania Law School observed as follows:⁴⁹:

CONSTITUTIONAL LAW eJOURNAL <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3744740&dgcid=ejournal_html_email_comparative:nonu.s.:constitutional:law:ejournal_abstractlink.> accessed May 6, 2021

⁴⁵Section 143(1) (a)&(b) of the CFRN, 1999

⁴⁶ CFRN, 1999, s.143(2)(b).

⁴⁷ *Op Cit*, s. 143(11)

⁴⁸(2007) LPELR-1510(SC), per Musdapher, J.S.C (p. 176, paras. C-E

⁴⁹U.S. president vs. congressional investigators: How the battle of the branches could play out' (University of Pennsylvania) <<https://link.springer.com/article/10.1057/s41284-020-00234-6>> accessed May 7, 2021,

Congress can issue subpoenas to demand information from executive branch officials about their actions and seek the assistance of the federal courts in enforcing those subpoenas. Congress can, in extraordinary cases, withhold funding from an office of the executive branch that it believes is abusing the public trust. The appropriations power—the power to raise and allocate money—lies with Congress, and that is a powerful tool if Congress chooses to use it. And, in the most extraordinary cases, Congress can open impeachment inquiries. Even when impeachment does not result in removal of an executive or judicial officer—and, of course, a sitting president has never been removed by conviction following impeachment—the impeachment process raises the question of abuse of the public trust in a way that focuses the attention of the nation.

3. Questions of Accountability and Transparency

So much resources and funds have been approved⁵⁰ by the National Assembly for Mr. President over the past six years⁵¹ or thereabouts for purposes of fighting and containing rising/worsening insecurity in the country. Security sector budget rose from about US\$1.44 billion in 2009 to US\$2.81 billion in 2018.⁵² Is the National Assembly not morally and legally entitled, in exercise of its oversight functions, to decide to conduct an inquiry/investigation into how these funds, appropriated by it, have been disbursed or utilized, especially as there appears to be no sign that insecurity is abating in the country, despite the huge funds appropriated for or deployed to fighting same? Besides, it is not a secret that the military-led counter-insurgency operation in Nigeria faces some notable challenges, in respect of which the National Assembly may need some explanation from Mr. President during the interface; hence the summons. Further, Nigerian people⁵³ want to know why their country is no longer safe and why citizens and resident are no longer able to sleep with their two eyes closed. What other matters matter could be more pressing or urgently deserving of Mr President's attention

⁵⁰ See for example Buhari 'Withdraws \$462 Million From Excess Crude Account Without National Assembly Approval' (<https://www.premiumtimesng.com/news/top-news/265969-buhari-withdraws-462-million-from-excess-crude-account-without-national-assembly-approval.html> accessed May 7, 2021)

⁵¹ Since 2015. The administration of President Muhammadu Buhari came into power on May 29, 2015.

than a summons from the National Assembly on issues of security?

3.1 Effect of Section 308 on Powers of the National Assembly Under Sections 88 and 89

Section 88(1) of the Constitution does not mince words; it provides:

...each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed investigation into -any matter or thing with respect to which it has power to make laws, and (b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for - (i) executing or administering laws enacted by National Assembly, and (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

Section 88(2) CFRN specifies the purposes for which the National Assembly may embark upon such investigations thus:

...for the purpose of enabling it to (a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and (b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

For the purpose of exercising its powers under Section 88 CFRN, each house of the National Assembly has powers to summon "any person" in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control, and examine him as a witness and require him to produce any document or other thing in his possession or under his control.⁵⁴ It is respectfully submitted that "any person" as used in section 89, includes Mr. President. Although, one may be right to suggest that the President is generally not compellable, and may thus be shielded by section 308 from the powers of the National

⁵²Onuoha, F.C. *et al.*, 'Counterinsurgency operations of the Nigerian military and Boko Haram insurgency: expounding the viscid manacle' (Springer Nature Switzerland, 17 February 2020) <<https://link.springer.com/article/10.1057/s41284-020-00234-6>> accessed May 7, 2021

⁵³ Through their elected representatives in the national Assembly

⁵⁴ CFRN, 1999, s 89(1)(c)

Assembly under sections 89(1)(d) & 89(2) CFRN relating to warrant of arrest, fine, etc., yet the awareness that section 308 cannot and does not protect Mr. President against invocation or exercise of the powers of the National Assembly under section 143 CFRN, should be sufficient warning to Mr. President that he cannot toy with any invitation or summons of the National Assembly given pursuant to sections 88 and 89 of the Constitution. It is respectfully submitted that the provisions of section 308(1)(c) of the Constitution exempting Mr. President from any "process" (including summons) requiring or compelling Mr. President's appearance, does not apply to a summons issued by the National Assembly or an arm of it, pursuant to sections 88 and 89. Section 308(1)(c) relates to only a "process of any court requiring or compelling" Mr. President's appearance.

4. The National Assembly is not a court of law

The National Assembly is not a court of law. And the conduct of an investigation⁵⁵ by the National Assembly could hardly be said to be synonymous with exercise of the judicial powers of a Court of Law under section 6,⁵⁶ etc., of the Constitution. By virtue of Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, the Judicial Powers vested in Courts shall extend to all matters between persons in Nigeria, and to all actions and proceedings between government or authority and to any person in Nigeria for the determination of any question as to the civil rights and obligations of that person.⁵⁷ By virtue of section 129 of the Constitution, a legislative house may sometimes exercise judicial powers, this is not the case herein.⁵⁸ Accordingly, in *Attorney-General of the Federation v. the Guardian Newspapers Ltd, Karibi-Whyte JSC* stated as follows:⁵⁹

⁵⁵pursuant to section 88 CFRN

⁵⁶ Section 6 (1) and (2) provides that "*The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation. (2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State*".

⁵⁷ *Ogunmokun v. Mil. Admin Ogun State* (1999) 5 NWLR (594) 251 and *P.P.M.C. Ltd V. Delphi Pet* (2005) 8 NWLR (Pt 928) at 458.

⁵⁸*Ibid*

⁵⁹ (1999) 9 NWLR (Pt.618) at 187 particularly at 237 para. H

⁶⁰ See also *Chevron (Nig) Ltd V. Imo State House of Assembly* (2016) LPELR-41563(CA)

the Legislature had no business to veer into the sphere of influence exclusive to the Court as Constitutionally guaranteed without breaching the concept of separation of powers as equally guaranteed by the Constitution.⁶⁰

Beyond the aforesaid, the authority of the National Assembly is limited to law-making and to exercising oversight functions of investigating or inquiring into any matter within the legislative powers of the National Assembly, which powers may only be exercised for purposes of making or amending a law or of correcting some mistakes in an existing law or of exposing corruption, inefficiency or waste in the execution or administration of laws enacted within its legislative competence and in the disbursement of funds appropriated or to be appropriated.⁶¹ In the case of *House of Representatives v. SPDC (Nigeria)*,⁶² the Nigerian Court of Appeal observed as follows:

In *McGvain v. Daugherty* 273 U.S. (1927) the United State Supreme Court settled the question of the right of the U.S. Congress to conduct investigations when it said that: "The power of Congressional inquiry with the process to enforce it is an essential and appropriate ancillary to the legislative function." Also in *Walkins v. United States*, (1957) U.S. 17, the United States Supreme Court said that: "The power of the Congress to conduct investigations is inherent in the legislative process." See also *Anderson v. Dunn* 19 U.S. 204 (1821). Under the 1999 Constitution of the Federal Republic of Nigeria, Section 88(1)(a) & (b) confer on the National Assembly the power to conduct investigation into any matter or thing with respect to which it has power to make laws as well as into the conduct or affairs of any person, authority, ministry or government department charged or intended to be charged with the execution or administering such laws made by the National Assembly as well as disbursement

⁶¹*Ibid*. See also *Olafisoye V. Federal Republic of Nigeria* (2004) 4 NWLR (Pt. 864) 580 at 597; *Ogunmokun V. Mil. Admin Osun State* (supra), *P.P.M.C. Ltd V. Delphi Pet.* (supra); *SPDC V. Isaiah* (2001) 11 NWLR (Pt.723) 179 paras, E- H and 180 - 181 paras, A- E Per Mohammed, Belgore and Wali, JSC (as they were); who held on the authorities of *Barry & 2 Ors. v. Obi A. Eric & 3 Ors.* (1998) 8 NWLR (Pt. 562) 404 at 416; *The SPDCN Ltd. V. Otelemaba Maxon & Ors.* (2001) 9 NWLR (Pt. 719) 541, *Uwaifo v. A-G. Bendel State* (1982) 7 S.C. 124; (1983) NCLR 1; *Din V. A-G. Federation* (1986) 4 NWLR (pt. 87) 147 and *A-G. Lagos State V. Dosunmu* (1989) ALL NLR 504 (1989) 3 NWLR (Pt. 111) 352

⁶²(2010) LPELR-5016(CA)

or administering moneys appropriated or to be appropriated by the National Assembly.

Finally, on this, it appears the makers of the Constitution had, in drafting the provisions of section 308, wisely refrained from extending the coverage of such processes to summons issued by the National Assembly so as to not frustrate the oversight functions of the National Assembly⁶³ aimed partly at checking the conduct by Mr. President, of the affairs of the nation.

5. Precautions and Options Open to Mr President

5.1 Maintaining Reciprocal Respect Among the Various Arms of Government

There must be some mutual respect among the various arms of Government. Although the present authors hold the respectful view that the President is obliged to honour a summons properly issued by the National Assembly pursuant to Sections 88 and 89, nevertheless, where the President or his advisers think that the National Assembly has acted *ultra vires* in issuing any such summons, the proper course of action open to the President is not to shun the National Assembly or to disregard the invitation/summons. The proper course under such circumstances is to approach a court of law with a request that such actions of the National Assembly or an arm of it, be struck down for being an abuse of the powers of the National Assembly under the Constitution. This would show that Mr. President treats the National Assembly with the respect the latter deserves, as well as portrays the President as law-abiding. In *INEC v. Musa*,⁶⁴ the Supreme Court counseled thus:

The supremacy of the National Assembly is subject to the overall supremacy of the Constitution. Accordingly, the National Assembly which the Constitution vests powers cannot go outside or beyond the Constitution. Where such a situation arises, the courts will, in an action by an aggrieved party, pronounce the Act unconstitutional, null and void. See *A.-G., Abia State v. A.-G Federation* (2002) 6 NWLR (Pt. 763) 264.

5.2 Precautions Relating to Fear of Public Exposure of Classified National Security Information

While justifying Mr. President's refusal to honour the summons by the House of Representatives, the Hon Attorney-General had argued further as follows:

The confidentiality of strategies employed by the President as Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria is not open for public exposure, in view of security implications and not to undermine the war against terror.⁶⁵

In the present authors' respectful view, there appears to be no reasons for anyone to preemptively conclude that the President's honouring a summons issued by the House of Representatives, might involve Mr. President in exposing any classified information relating to public security, public defense, public safety or of any matter in respect of which it would not be in the interest of the public to publicly disclose.

From publicly available information since December 01, 2020,⁶⁶ it appears that the sole purpose of the House Summons was to get Mr. President to address the House of Representatives on the worsening security situation in Nigeria. The present authors are unable to see how such a situation would involve Mr. President in publicly disclosing any classified public information. Besides, the House of Representatives had only asked Mr. President to come and address it, and not to come and take questions from it. Accordingly, and with due respect, it may be interpreted as speculative, preemptive or premature for anyone to conclude that the purpose of the summons was to get the President to publicly disclose classified security/public information. And, from the President's response on December 07, 2020,⁶⁷ it appears that Mr. President perfectly understood why he was being summoned, and also that it had little or nothing to do with public disclosure of classified security matters; hence, in his said acceptance speech, he had gladly offered to address a joint session of the two Houses of the National Assembly, instead of only the House of Representative.⁶⁸ Besides, if the President had honoured the summons/invitation, and after

⁶³ under to Sections 88 and 89 of the Constitution

⁶⁴ (2003) LPELR-24927(SC), per Tobi, J.S.C (p. 100, paras. A-C)

⁶⁵ *Ibid* (n 15)

⁶⁶ *Ibid* (nos. 12 and 13)

⁶⁷ *Ibid* (n 13)

⁶⁸ See endnote iii (supra)

delivering his address to the National Assembly, it is doubtful whether Mr. President would have been under any obligation to answer any questions from any Senator or Honourable Member of the House of Representatives, especially where the President thought that answering or responding to such question(s) might lead to disclosure of any classified security information.

Further, assuming, but not conceding, that honouring the summons would lead to public disclosure of classified security information, one may choose to borrow a leaf from the provisions of section 36 (4) (b) of the Constitution relating to how to deal with such a scenario in a court proceeding:

... if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

The Nigerian National Assembly is not, and does not have the status of, a court of law. Nevertheless, there is hardly any harm in borrowing a leaf under such circumstances to exclude members of the public from its proceeding if there is need to take any document or information from Mr. President that may involve public disclosure of such sensitive matters. And just as a court of law reserves powers to exclude members of the public from its own proceeding in deserving circumstances,⁶⁹ the National Assembly, at the request of the President of the Federal Republic, may just borrow a leaf and do the needful to secure, protect and preserve any such sensitive material or information.

6. Conclusion and Recommendations

It is respectfully submitted that the National Assembly comprising elected representatives of the Nigerian people from the 360 Federal Constituencies that make up the Federal House of Representatives and the 109 Senatorial Districts that make up the Senate of the National Assembly, are entitled, at their request, to be addressed by Mr. President, and to have detailed/comprehensive updates from the

horse's mouth on any deserving national issue in the country. Such a briefing/an address helps to place the National Assembly in a better stead to offer explanations to the constituencies and senatorial districts they represent, and, in deserving circumstances, to make better-informed and better-considered decisions on issues of national importance, especially in view of the constitutional roles and responsibilities of the National Assembly, ranging from granting relevant approvals and confirmations; amending extant laws or making new ones to take care of prevailing circumstances; appropriating revenue or more revenue to ensure adequate funding of relevant institutions; creating more institutions or increasing the powers of existing ones; to covering up perceived loopholes (if any). It is further submitted that neither the provisions of section 308 of the Constitution nor the fear that classified security information may be publicly disclosed, nor anything else in the Constitution or extant law in Nigeria, authorizes or entitles Mr. President to ignore or otherwise disobey a summons validly issued by the National Assembly under sections 88 and 89, CFRN. Where such summons is issued, the Constitution has armed the National Assembly with sufficient coercive mechanism to secure compliance or to punish noncompliance thereof. It is instructive to draw from the explanation given in the United States' case of *McGrain v. Daugherty* by Justice Van Devanter to justify the essential and inherent nature of the legislature's coercive power of summons. Justice Van Devanter said:⁷⁰

...the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function... A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was

⁶⁹ See the CFRN, 1999, s. 36(4)(a).

⁷⁰ *per*, 273 U.S. 135, 174–175 (1927), cited in

treated as inhering in it. Thus, there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.

Is there any need to amend the Constitution to introduce legislative power to summon the President and Governors?

Apparently following the refusal of the President of the Federal Republic of Nigeria to honour the summons issued by the House of Representatives on December 01, 2020, a bill for an Act to alter the Constitution of the Federal Republic of Nigeria, 1999, to grant power to the National Assembly and the Houses of Assembly of the various States, to respectively summon the President and the Governors, was reportedly introduced in Nigeria's National Assembly and said to have scaled second reading at the House of Representatives.⁷¹ Justifying the move, the sponsor of the Bill, Hon. Sergius Ogun,⁷² stated thus:

the doctrine of separation of power must be upheld...the basic doctrine closely related to the exercise of legislative powers in a democracy was the doctrine of separation of powers...the Bill if passed would help to invite the president and governors to answer questions...on any matter whatsoever, over which the National Assembly and States Houses of Assembly have powers to make laws. You will recall what happened [recently] ... when the House [of Representatives] summoned President Muhammadu Buhari but he failed to honour the invitation. Part of the reasons [then] adduced for the President's non-appearance was that the House had no constitutional powers to invite him. Such invitations to the President were not expressly stated in Nigerian laws...the lawmakers must give it constitutional backing to be able to summon the President and State Governors.⁷³

With the greatest respect, the present authors disagree with the statement made by the sponsor of the Bill to the effect that "Such

invitations to the president were not expressly stated in Nigerian laws". From the explanations made, argument adduced and authorities cited in this paper by the present authors, the authors respectfully reiterate their suggestion that the National Assembly of the Federal Republic of Nigeria is already sufficiently, constitutionally empowered to invite or summon the President who in turn is obliged to honour such an invitation or summons. This suggestion is both reasonable and constitutional, for purposes of maintaining orderliness and of promoting transparency and good governance in a modern-day society. Accordingly, the planned amendment of the Constitution to introduce such powers afresh, is a mere superfluity, because the amendment would amount to introducing into the *grund norm*, powers that already exist in the Constitution. It is further submitted that what is required in this respect is obedience to the Constitution, and not an amendment to it. The Constitution provides:⁷⁴This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.⁷⁵ The Federal Republic of Nigeria shall not be governed... except in accordance with the provisions of this Constitution.⁷⁶ Besides, as one author has explained,⁷⁷ "civilized existence is one which respects the extant law, both the wise, the good and the bad laws, and one whose constitutional basis is the will of the people...Rights given by fad and fashion are just as easily taken away. Let no one mess with the Constitution. The Constitution matters". Everything boils down to this famous wise saying, "a place for everything and everything in its place."⁷⁸ In the meantime, speaking generally, and borrowing from **Alan Watts**, "By replacing fear of the unknown with curiosity we open ourselves up to an infinite stream of possibility. We can let fear of the unknown rule over our lives or we can become childlike with curiosity, pushing our boundaries, leaping out of our comfort zones, and accepting what life puts before us". Following the counsel that we should learn to do the very thing we are afraid of,⁷⁹ **Lilian Russel** once declared that what one does with

⁷¹ PremiumTimes, "Bill Seeking Powers to Summon President, Governors Scales Second Reading" (Premium Times Nigeria March 16, 2021)

<<https://www.premiumtimesng.com/news/more-news/449212-bill-seeking-powers-to-summon-president-governors-scales-second-reading.html>> accessed May 9, 2021

⁷²A member of the House of Representatives, representing Esan North East/Esan South

East constituency in the 9th National Assembly, Nigeria, 2019-2023.

⁷³ Premium Times, *Op Cit*

⁷⁴ S. 1(1) and (2).

⁷⁵ CFRN, 1999, s. 1(1).

⁷⁶ *Op Cit.*, s 1(2).

⁷⁷ Udemezue (n 41)

⁷⁸ Per Benjamin Franklin

⁷⁹ Raph Waldo Emerson

that fear is what will make all the difference in the world.