

**APPRAISAL OF IMPEACHMENT PROCESS UNDER
THE 1999 CONSTITUTION OF NIGERIA**

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DEPARTMENT OF PUBLIC LAW

**AHMADU BELLO UNIVERSITY,
ZARIA NIGERIA**

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AN APPRAISAL OF IMPEACHMENT PROCESS UNDER THE 1999 CONSTITUTION OF
NIGERIA

BY

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Declaration

I declare that the work in this project Report entitled An Appraisal of Impeachment Process Under The 1999 Constitution of Nigeria has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this project report was previously presented for another degree or diploma at this or any other Institution.

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18/3/2016

Name of Student

Signature

Date

Certification

This project report entitled AN APPRAISAL OF IMPEACHMENT PROCESS UNDER THE 1999 CONSTITUTION OF NIGERIA by Simon Iheanyichukwu NNADI, meets the regulations governing the award of the degree of M.A. Law of the Ahmadu Bello University, and is approved for its contribution for knowledge and literary presentation.

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Dedication

This work is dedicated to my wife Grace and my children Brenda, Tracy and Anita.

To God be the Glory.

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My profound gratitude goes to my brother, Pastor Collins Nnadi and family, my sisters, Teresa, Chinyere, Chikodi and their families; Tumi Aluko-Olokun Esq. and his family; the staff of B. Aluko-Olokun & Co. as well as Liberty Publishers (& Printers) Ltd., especially Mrs. Funke Jimba who alone did the typesetting of this work; I will not forget all my dedicated lecturers in the Faculty of Law A.B.U., Zaria, especially, my untiring supervisor Dr. K.M. Danladi who sacrificed so much in order to put me through despite his busy schedules. I cannot thank you all enough.

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Abstract

This project report centres on Appraisal of impeachment process under the 1999 Constitution of Nigeria. It x-rays basically the Legislatures excessive and negative use of impeachment process provided in the 1999 Constitution against the Executive arm of government, particularly, State Governors and their Deputies. This anomaly forms the foundation upon which the statement of the research problem of this work is anchored.

This research highlights in details the procedure for impeachment, the historical development of impeachment, the meaning of gross misconduct which is the main ground for carrying out impeachment proceedings. The roles of courts and other institutions are also discussed.

The research reveals through case laws how our legislators abused the impeachment process in order to achieve their selfish interests while relying on the erroneous impression that their actions cannot be questioned in court. The courts however rose to the occasion and checkmated their excesses leading to upturning almost all the cases filed by the impeached persons. The courts defined the true import and intent of Sections 143(10) and 188(10) of the 1999 Constitution of Nigeria which oust the jurisdiction of court from entertaining cases emanating from impeachment proceedings.

In this appraisal the researcher relies on doctrinal and empirical research methods. To this extent, questionnaires and oral interviews were employed, analysed and arrived at mind-blowing results.

In conclusion, it is revealed among other things that the impeachment process has done more harm than good in the political development of Nigeria and that the Constitution requires an amendment to correct the anomalies inherent therein. It is recommended inter alia that constitutional courts should be established to try impeachment cases with dispatch.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

The gale of impeachments and threats of impeachment of political office holders in Nigeria today are not only worrisome and alarming, but pose a great danger to the survival of our nascent democracy which we all longed and laboured for after many years of military hegemony.

The 4th Republic (the focus of this research) which started from 29th May 1999 to present day has recorded so many impeachments of political office holders ranging from speakers of Houses of Assembly and their Deputies Governors and their Deputies as well as Senate Presidents. At a point, members of the National Assembly threatened to impeach former President Olusegun Obasanjo as well as Goodluck Jonathan.

The impeachment of Murtala Nyako of Adamawa State and the botched attempt to impeach the Governor of Nasarawa State, Al-Makura, are factors that motivated, inspired and provoked the researcher to embark on this research. There is no doubt that this research will help to enrich the existing jurisprudence on the law and practice of impeachment process under the Constitution of the Federal Republic of Nigeria 1999 (as amended)

1.2 Statement of research problem

The gale of impeachments in Nigeria has done more harm than good. Politicians have thrown caution to the wind in their efforts to fulfil their political goals and ambitions without following due process laid down in the Constitution. It is on record that many impeachments took place outside the hallowed chambers of parliament like in the hotel or even the residence of one of the conspirators¹.

Most times, the quorum will not be formed and yet the honourable members will go ahead with the impeachment proceedings. We have seen instances where a willing member will be appointed as Speaker *pro tempore* to carry out the duties of a substantive Speaker who is not willing to join the conspiracy to impeach a Governor².

All these amount to breaches of the Constitution which the politicians swore to protect. Where the Constitution is breached with impunity, the consequences are jungle justice, anarchy and chaos which are evil winds that blow nobody any good. Those anomalies are some of the reasons behind Military intervention in our politics. We are witnesses to the wanton

1. The impeachment of Rashidi Ladoja was done in D’Rovans Hotel, Ibadan, Oyo State.

2. Dapianlong v. Dariye [2007] 8 NWLR (pt. 1036) p. 332

destruction of lives and properties in Nasarawa State when the people rose up against the legislators who were bent on impeaching Governor Al-Makura of Nasarawa State by hook or crook.

1.3 Justification of the Research

There is no doubt that this research is worth embarking upon. It will be of immense help to students of Political Science, Political Scientists, Politicians, Law Students, Lawyers, Judges, Legislators, Legal Academics, Teachers of Political Science and the general public. This research will surely help to enrich our jurisprudence especially in the area of impeachment proceedings. Nigerians, particularly politicians will benefit from this research which aims to x-ray the procedure for impeachment proceedings as well as the dos and don'ts of impeachment process, thereby stabilizing the political system.

1.4 Objectives

The main objective of this research is to examine the behaviours of Politicians, especially the legislators who are in the habit of breaching the Constitution³ unashamedly for their selfish political interests and personal aggrandizement, and proffer solutions.

3. The Constitution of the Federal Republic of Nigeria 1999 (as amended)

In other words, the aim of this project is to appraise and expose the abuse of impeachment process by politicians who are supposed to be custodians of the Constitution.

The main objective of this project is therefore to sensitize Nigerians on the anomalies being perpetrated by our politicians, particularly our Legislatures, in the area of impeachment of political office holders, and to acquaint them of their right to curtail these anomalies in appropriate situations through peaceful protests and constitutional power of recall against the legislators.

Although the Supreme Court in the case of *Inakoju v. Adeleke and Others*⁴ has cleared the hurdle on the issue of jurisdiction of courts to entertain issues relating to impeachment of political office holders holding that courts have jurisdiction to inquire whether the procedure for impeachment was religiously followed, there still remains the issue of the meaning of gross misconduct which is still being abused with impunity as our case laws have shown⁵.

4. [2007] 1 SCNJ 1

5. *Inakoju v. Adeleke & Ors.* (supra), *Dapianlong v. Dariye* [2007] 7 NWLR (pt. 1036) 332

1.5 Scope of the Research

As the title implies this research covers impeachment proceedings in Nigeria between 29th May 1999 to the present day, particularly as they relate to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) in other words, this project focuses basically on impeachment proceedings in Nigeria between 29th May 1999 to the present day.

1.6 Methodology

In this research I used and relied on the following research methods.

Empirical Research: This involved the collection of facts and data through interviews and questionnaires from target groups. The facts and data were later analysed and experimented upon from which results were patiently obtained. To this effect interviews were conducted and questionnaires administered on respondents from whom facts and data were collected. Our respondents include Politicians, Lawyers, Journalist, Students and the electorate from target areas. This was followed with analysis of the data in our Law chambers as well as libraries in order to obtain the desired result.

Doctrinal Research Methodology was also employed extensively in carrying out this research. This involved the use of text books, Journals, Judicial decisions particularly the decisions of the Supreme Court and the Court of Appeal. The Constitution of the Federal Republic of Nigeria 1999 (as amended) is also relied upon extensively.

1.7 Literature Review

It is apparent that there is a dearth of literatures in this area of our jurisprudence. This opinion is hinged on the fact that there is hardly any book that is fully written on impeachment process apart from some articles that are fully devoted to the subject. Despite the shortcoming, the works of eight scholars are hereby reviewed.

Impeachment: This is a sub topic in the book what is constitutional Law⁶. Dalhatu introduced the topic and traced the origin of impeachment process to England from where the United States adopted same. He then discussed impeachment procedure under the 1999 Constitution of Nigeria. He discussed legislative reverse on impeachment proceedings and cited examples of United State and British Constitutions on one hand and the Nigerian Constitution on the other hand. The learned author concluded the discussion with Judicial Intervention in The Impeachment Proceedings. He cited the popular case of Abdulkadir Balarabe Musa v. Auta Hamza and

6. Dalhatu M.B., *What Is Constitutional Law?* ABU Press Ltd. Zaria [2008] pp. 44-49

Others⁷ wherein the High Court declined jurisdiction by holding inter alia as follows: “My jurisdiction has been taken away by the combined effect of

section 170(10), my hands are tied by it as I hold that the exercise in question was purely a legislative constitutional affair quite outside the jurisdiction of this honourable court.”

The book, *What Is Constitutional Law?* (which contains the topic impeachment) was published in 2008. It however and surprisingly failed to examine the earlier Supreme Court decision in *Inakoju and Others v. Adeleke and Others*⁸ which gave the courts the jurisdiction to inquire whether the impeachment process was duly carried out as provided by the Constitution of the Federal Republic of Nigeria 1999 (as amended) it should be noted that *Balarebe Musa* case was decided pursuant to section 170(10) of the 1979 Constitution of Nigeria which is in pari materia with section 188(10) of the 1999 Constitution of Nigeria (as amended). There is therefore a lacuna that needs to be filled and which this research has taken care of.

7. [1982] 3 NCLR 439

8. [2007] 4 NWLR (pt. 1025) 423, [2007] 1 SCNJ 1

Madaki, in his article “An Examination of the Jurisdiction of Courts to Determine Impeachment Proceedings under the 1999 Constitution of

Nigeria”⁹, introduced the subject matter and analysed the constitutional provisions on impeachment. He highlighted the provisions of section 143 of the 1999 Constitution which empowers the National Assembly to remove the President or Vice President from office in accordance with laid down procedures. The author referred to section 188 of the Constitution¹⁰ which provides for removal of the Governor or Deputy Governor of a State in accordance with the provisions of the section.

The learned author then discussed how legislators circumvented and flouted the provisions of the Constitution relating to procedure for impeachment while hiding under the ouster clause in section 188(10) of the same Constitution. That was the situation until the decision of the Supreme Court in *Inakoju v. Adeleke*¹¹ wherein the Supreme Court held that courts have jurisdiction to enquire whether the procedures for impeachment were duly followed.

9. Madaki A.M. “An Examination of the Jurisdiction of Courts to Determine Impeachment Proceedings under the 1999 Constitution of Nigeria” In: Agom A. et al (eds) *Ogebe & The Law*, Tamaza Publishing Co. Ltd., Zaria [2010] pp. 143-160

10. Ibid

11. Ibid

The learned author discussed several cases that highlighted the anomalies committed by the legislators while purportedly impeaching their targets. He concluded by commending the role of courts in helping to sustain the

Nigerian democratic project through their bold interpretation of the Constitution.

There is no doubt that the article is a masterpiece on the issue of impeachment, particularly as regards the jurisdiction of courts to determine impeachment cases.

There is a need to improve on the work of the learned author, particularly in view of the latest cases on impeachment proceedings. There was an impeachment process in Adamawa State which sacked former Governor Murtala Nyako, the botched attempt to impeach the Governor of Nasarawa State by the State House of Assembly and the impeachment of the Deputy Governor of Taraba State which was later reversed by the Supreme Court. These are some of the cases that are treated in the research and which the above article could not treat having been written before the occurrence of the impeachment proceedings.

Secondly, the article hinged on the jurisdiction of courts to entertain impeachment litigations accruing from impeachment matters and failed to take care of issues like origin of impeachment process and the controversial phrase 'gross misconduct' which the legislators often rely upon to achieve their aim of impeachment.

Mowoe, in his book “Constitutional Law in Nigeria”¹², treated the issue of impeachment as one of the constitutional powers and functions given the legislature to checkmate the executive arm of government whether at the Federal level or at the State level. The author observed that the power of impeachment has been wielded at the State level of government in Nigeria whereas at the Federal level, its use has been threatened only. The learned author goes on to discuss the procedure for impeachment of President and Vice President as provided under section 143 of the 1999 Constitution beginning with notice in writing of any allegation against the President and Vice President, with specified detailed particulars, supported by one-third of the members of the National Assembly and presented to the President of the Senate who must within seven days serve a copy of such on the person being indicted as well as on all the members of the National Assembly. The next is the examination of the meaning of gross misconduct as defined by the Constitution as regards impeachment proceedings. He opined that the

12. Mowoe K., *Constitutional Law In Nigeria*, Malthouse Press Ltd. Lagos [2008] pp. 170 - 174

phrase ‘gross misconduct’ as defined is a subjective matter in the hands of National Assembly which may sometimes be to the detriment of the President or Vice President when faced with a recalcitrant legislature.

The author further discusses the role of the two Houses of the National Assembly and the Chief Justice of the Federation. The latter must at the request of the President of the Senate set up a panel of seven members who in the opinion of the Chief Justice are of unquestionable integrity and who are not members of the public service any legislative house or political party, to investigate the allegation.

The learned author then x-rays the outing of the jurisdiction of courts to determine any question arising from the panel of seven or the National Assembly as regards the impeachment of the President or the Vice President. The learned author makes a comparison with impeachment proceedings in the United States where the House of Representatives has the power of impeachment whilst the Senate has the sole power to try impeachment.

The learned author concluded by saying the obvious that in the history of Nigeria, it is only at the State level that chief executives have ever been successfully impeached starting with the locus classicus case of Alhaji

Balarabe Musa v. Kaduna State House of Assembly¹³.

In as much as the learned author did a good work in the analysis of the issues relating to impeachment process in Nigeria, there is still much room

for improvement considering the period the book was written, it did not take into account some of the impeachment cases such as the impeachment of former Governor Murtala Nyako of Adamawa State as well as the failed impeachment proceeding against Governor Al Makura of Nasarawa State. It did not discuss the origin of impeachment process which this research will fully treat. Finally only few pages are devoted to the issue of impeachment process.

Umar in his book, *Politics and Law Making In Nigeria*¹⁴, devoted the entire chapter five of this book to some Legal Aspects of the Impeachment Questions. This book centres more on the impeachment of Balarabe Musa, the first impeachment casualty in the history of impeachment of political office holders in Nigeria. The learned author noted under introduction that the power conferred upon the House of Assembly of a State to remove a Governor for gross misconduct under section 170 of the 1979 Constitution¹⁵

13. (1982) 3 NCLR 450

14. Umaru A. *Politics and Law Making In Nigeria* A.B.U. Press, Zaria (1994) pp. 133-138

15. In pari materia with section 188 of the 1999 Constitution (as amended)

through the impeachment process is not a law making power.

The learned author then viewed critically the procedure taken by the Kaduna State Legislature in impeaching the then Governor of Kaduna State,

Balarabe Musa after the impeachment committee found the Governor guilty of eight out of the ten charges preferred against him by the State House of Assembly. The author regretted that the “no jurisdiction” stance taken by the High Court and the Court of Appeal was prevented from being tested at the Supreme Court due to technicalities and delays inherent in the Nigeria Legal System.

The learned author then examined section 170(11)¹⁶ of the 1979 Constitution which defines gross misconduct as a grave violation or breach of the provisions of the Constitution or misconduct of such nature as amounts in the opinion of House of Assembly to gross misconduct. He opined that there are two types of gross misconduct – the type that touches on violation or breach of the provisions of the Constitution and the other type which is left at the discretion of the State legislature to determine. The learned author posed a question as to who is competent under the Constitution to decide whether the provisions of the Constitution or of any law have been violated

16. Now section 188(1) of the 1999 Constitution of Nigeria

by a person or authority. He opined that such powers are vested in the courts under section 6(1)(a)&(b) of the Constitution being a judicial question. He finally ended the chapter by examining the ten Articles of

Impeachment preferred against the then Governor of Kaduna State and argued that none of the grounds was weighty enough to attract impeachment proceedings against him.

The book covers only the impeachment process that took place in Kaduna State in the second Republic and under the 1979 Constitution of Nigeria. The latest principles of law relating to impeachment proceeding were not captured for obvious reasons. The author's opinion that only a court of competent jurisdiction should adjudicate over the issue as to whether a Governor or Deputy Governor is guilty of gross misconduct, clearly missed the mark. If the argument is accepted, the possibility of impeaching any political office holder will be very remote judging from the length of time cases usually last in courts in Nigeria, starting from High Court to the Supreme Court except of course if the High Court's decision is final and not appealable.

The author's opinion is also punctured by the fact that the American Presidential Constitution which Nigeria extensively borrowed, allows the Senate to sit as a court over the impeachment of the President.

Nwabueze, in his book *Nigeria's Presidential Constitution*¹⁷ treated the subject under two issues – violation of the limitation on power of impeachment and Abuse of impeachment procedure.

On violation of the limitation on power of impeachment, the author begins by saying that the National Assembly or a State House of Assembly is empowered in accordance with prescribed procedure to remove the President or Governor by impeachment for gross misconduct in the performance of the functions of his office.

The definition of gross misconduct under sections 132(11) and 170(11) of the 1979 Constitution should not be misconstrued to have given the legislature the discretion in deciding what constitutes a misconduct.

Next is the examination of the provision that “on proceedings or determination of the committee or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court” as provided under sections 132(10) & 179(10)¹⁸. The author opined that the provisions must be taken to refer to a determination which the Assembly has power to make and that any such determination is amenable to judicial control.

On abuse of impeachment procedure the learned author dwelt on the

17. Nwabueze B.O., *Nigeria's Presidential Constitution*, Longman Inc., New York (1985) pp. 320 - 326

18. In pari materia with sections 143(11) & 188(11) of the 1999 Constitution

impeachment of the first Executive Governor of Kaduna State, Alhaji Balarabe Musa and its concomitant effect on the political landscape of the country during the defunct 2nd Republic of Nigeria. According to the author,

the impeachment created an impeachment fever all over the country thereby awakening in the legislative Houses the realization of their power over the seemingly almighty chief executives, and a desire to demonstrate it.

The author reasoned that threats of impeachment in 11 out of 19 States of Nigeria¹⁹ within a period of one year would seem to suggest a motive and a purpose other than that which it is designed. He advised that the impeachment power is not intended to serve such purely partisan or selfish purposes.

The book written in 1985 does not contain the latest principles of law relating to impeachment proceedings. It fails to treat or discuss the origin of impeachment process as well as the role of the judiciary in impeachment proceedings. It is the aim of this research to fill this vacuum.

Nwaeze, in his book “Constitutional Democracy In Africa”²⁰ discussed the issue of impeachment as part of checks and balances particularly in

19. As Nigeria was then constituted

20. Nwaeze B., *Constitutional Democracy In Africa*, Vol. 4 Spectrum Books Ltd, Ibadan, (2004) pp. 120 - 130

American presidential system of government. According to him, under the American Constitution, the President’s power in regard to appointments and the making of treaties is “checked” by the requirement of the Senate’s

approval and that the President, Vice President and other civil officers are liable to impeachment before congress for treason, bribery or other high crimes and misdemeanor and upon conviction to automatic dismissal from office.

The learned author opined that the power of impeachment is not meant to give congress a control over the President's tenure otherwise such will destroy the independence of the executive, replacing it with the principle of executive responsibility to the legislature which characterizes the parliamentary executive of the Westminster type. The learned author appraises the impeachment of President Johnson of America in 1968, the first of its kind and described it as disreputable perversion of power for purely partisan motive as the ground of impeachment (removal of secretary of State without Senate's approval) does not fall into the generis of treason, bribery or other high crimes or misdemeanor.

Comparatively, the learned author observed that the power of impeachment under the 1979/99 Constitutions of Nigeria is indeed wider than in the American Constitution since it is available in respect of any violation of the Constitution or any gross misconduct by the President, though as a safeguard against abuse of power for partisan purposes, there is interposed between the President and the legislature, a judicial tribunal which must find against the

President before the legislature can then convict him by motion supported by the appropriate majority.

The learned author finally discussed the confrontation between the Legislative Assembly and the Executive particularly as it happened in Kaduna State during the 2nd Republic, the major confrontation being the impeachment of Balarabe Musa, the first Executive Governor of Kaduna State by the Kaduna State House of Assembly.

The book written in 2004, no doubt does not contain the latest principles relating to impeachment proceedings as decided by the superior courts of record. For instance it was only in 2007 that the Supreme Court held in the case of *Inakoju & Ors. v. Adeleke & Ors.*²¹ that the courts have jurisdiction to inquire whether the procedure for impeachment outlined in the Constitution²² was duly followed without which the impeachment would be

21. (2007) 1 SCNJ 1

22. Section 188 thereof

declared invalid, null and void and unconstitutional. The present research takes care of this lacuna.

Bhaswan, et al, the authors of *World Constitutions – A Comparative Study*²³, while writing on world Constitutions including that of the United States, discussed inter alia the removal of the President of the United States through impeachment, and this could be done before the expiry of the normal term. They discussed the procedure for impeachment. According to the authors, it is the House of Representatives that kicks off the impeachment process by adopting a resolution of articles of impeachment, charging the President with certain high crimes and chooses leaders to direct the prosecution before the Senate which acts as a judicial tribunal for impeachment. The meeting of the Senate is then presided over by the Chief Justice of the Supreme Court. The Senate may convict the President by two-third majority of its members present and voting.

The authors observed that the method of impeachment is not an easy one and thus during the long constitutional history of the United States, only once in 1868, President Johnson was subjected to the process of impeachment but

23. Bhagwan V. et al, *World Constitutions – A Comparative Study*, Sterling Publishers Ltd. New Delhi, Tenth Edn, (2013) pp. 139 - 175

could not be carried out for want of a required majority in the Senate. They opined that President Nixon would have been impeached in case he had not tendered resignation. In the same vein, Clinton was impeached by the House of Representatives on the charges of perjury and obstruction of justice but Senate

declared him not guilty by 55 to 45 votes on perjury and by 50 votes each on obstruction of justice, thereby escaping impeachment.

The authors traced the origin of impeachment to England dating back to the medieval times and that impeachment afforded the only means whereby an adviser of the crown could be brought to account by the House of Commons who usually heard the charges and gave its verdict accordingly. The authors observed that American constitution makers were very much impressed by the impeachment procedure in England and so provided for it in the American Constitution as well.

The learned authors finally advised that impeachment procedure ought not be utilized except as a last resort.

The book though relevant to the present research particularly as regards the origin of impeachment process, it fails to take care of the basic principles of impeachment process as it affects Nigeria. Though it treats the procedure for impeachment in United States, it has no answer to the process and procedure for impeachment in Nigeria which the present research has taken care of.

Oguche's article Challenges of use of State of Emergency In Democratic Governance: Plateau and Ekiti Experiences²⁴ centres on challenges of state of emergency in democratic governance, it however discussed extensively, the impeachment process that took place in Ekiti State and which ousted the regime of Ayodele Fayose of Ekiti State in 2006 during the presidency of Olusegun

Obasanjo, and which sparked of the declaration of state of emergency in Ekiti State.

The author²⁵ narrated a vivid account of how on 26th of September, 2006, the 26 – man Ekiti State House of Assembly passed a motion to serve notice of impeachment on the Ekiti State Governor, Peter Ayodele Fayose and his Deputy Mrs. Abiodun Christine Olujimi alleging gross misconduct against the duo. Five charges were raised against Governor Fayose as against two for his Deputy. In all 24 out of the 26 man Assembly were in support of the motion for impeachment. The notice of impeachment was delivered by express mail to the accused duo and they were expected to respond within 14 days. According to the learned author, on receipt of the notice, Fayose filed an *ex parte* motion in the State High Court to stop

24. Oguche S. “Challenges of use of State of Emergency In Democratic Governance: Plateau and Ekiti Experiences”
In: Azinge (ed) *State of Emergency In Nigeria: Law and Politics* NIALS, Lagos (2013) pp. 308 at 351-358

25. Quoting Mobolaji Aluko – “The State of Emergency In Ekiti State And The Nebuchadnezzar Non-option”
available at <http://www.dawodu.com/aluko149.htm>, Accessed on 8/8/2012

the impeachment process, but two judges declined to take the *ex parte* application one after the other. The third judge who eventually agreed to take the application, promptly dismissed Fayose’s application as being alien in law.

After the expiration of the notice of impeachment, the State House of Assembly went ahead to instruct the Chief Judge of Ekiti State to form a seven – man panel to conduct the formal impeachment investigation of the Governor and his deputy and which the Chief Judge did and actually announced a seven-man panel

allegedly made up of Fayose's family relations and cronies and which the State House of Assembly objected to unsuccessfully as the Chief Judge went ahead to inaugurate, giving the excuse that as a Judge with limited contacts with ordinary folks, he was not expected to know everybody's backgrounds. He dismissed the allegations as jokers.

The Chief Judge was suspended by the House of Assembly after his refusal to change the panel of seven as well as refusal to appear before the House to answer to a charge of official misconduct. An Acting Chief Judge was appointed after the first appointee declined. Meanwhile the panel of seven headed by Remi Bangboye still went ahead to meet on the impeachment process. The panel discharged the Governor and his Deputy from all allegations without taking oral evidence. Meanwhile the newly appointed Acting Chief Judge announced a new panel of seven headed by Bamidele Omotosho who after taking evidence from witnesses sent their report to the House who in turn called on members to vote accordingly. The speaker's gavel fell in the House formalizing the impeachment of Ayodele Fayose and his Deputy Abiodun Olujimi.

The learned author finally analysed how this purported impeachment led to break down of law and order as Fayose from his hide out was still claiming to be the Governor whereas the Acting Governor, (the Speaker) was also claiming to be in

charge necessitating the then President Olusegun Obasanjo to step in and declared a state of emergency in Ekiti State.

The author merely discussed the impeachment process that took place in Ekiti State and which led to the eventual declaration of State of emergency in that State. Although the article is relevant to this research in some ways, however, it does not cover the main rudiments of impeachment proceedings which the present research/project has improved upon.

1.8 Organisational Structure

Chapter One introduces the research and titled General Introduction. It highlights the background of the study, statement of the research problem, justification and objectives of research as well as scope and methodology applied in writing the project. Eight literatures are reviewed as well.

Chapter Two discusses the historical development and conceptual clarifications of some key terms involved in the research. It commences with introduction and historical development of impeachment process as well as meanings of impeachment and gross misconduct. The chapter ends with conclusion.

Chapter Three treats the grounds and procedure for impeachment. Political and constitutional grounds are examined extensively. The chapter highlights the procedure for impeachment and discusses the issues bordering on notice of

impeachment and service of same, quorum requirement, panel of seven-man investigation committee as well as the venue of impeachment process. The chapter finally ends with a conclusion of the topic

Chapter Four focuses on Data analysis and commences with an introduction of the subject. It discusses and shows the methodology of data analysis employed and result of same. The chapter finally ends with a conclusion.

Chapter Five focuses on the roles of courts and other institutions during impeachment proceedings. The Institutions discussed include the security agencies, the media and the electorate. The chapter winds up with a conclusion.

Chapter Six deals with the summary and conclusion of the subject. It highlights the findings and the recommendation made by the researcher.

CHAPTER TWO

HISTORICAL DEVELOPMENT AND CONCEPTUAL CLARIFICATION OF SOME KEY TERMS

2.1. Introduction

For the first time in the history of Nigeria, a Governor was impeached in the person of Alhaji Balarabe Musa, and his removal caused a sort of impeachment fever throughout the country. It awakened in the legislative

houses a realization of their power over the seemingly almighty executives and a desire to demonstrate it¹. As a result of this dichotomy often seen between the legislature and the executive leading to abuse of impeachment proceedings, this chapter focuses on the historical development of impeachment process and also clarifies some basic terms associated with impeachment process.

The researcher takes a look at the origin and meaning of impeachment as defined by the court and scholars. The word ‘gross misconduct’ is equally defined in details.

1. Nwabueze B. *Nigeria's Presidential Constitution*, Longman Inc. New York (1985) p. 323

2.2 Historical Development Of Impeachment Process

The concept of impeachment process originated from England, dating to the medieval times and afforded the only means whereby an adviser of the crown could be brought to account by the House of Commons. The House of Lords heard the charges and gave its verdict².

The American Constitution Makers were impressed by the impeachment procedure in England and therefore provided for it in the United State's Constitution as well³. Similarly, the framers of the Nigerian Constitution 1979, were also impressed by the provisions of impeachment process in the United State's Constitution and

decided to provide for same in our Constitution and this they did with some modifications to suit Nigeria's peculiar purposes. In the same vein, the framers of both the 1979 Nigerian Constitution as well as the present 1999 Constitution of Nigeria, provided for impeachment process as a check against any gross misconduct against the President and Vice President⁴ or against the Governor and his Deputy⁵.

2. Bhagwan V, et al World Constitution – A Comparative Study Sterling Publishers Ltd New Delhi (2013) p. 175

3. Ibid.

4. Section 143 of the Constitution of the Federal Republic of Nigeria, 1999

5. Section 188

It should be noted that in spite of the early historical development of impeachment process in England and United States spanning over several centuries ago, the process has been sparingly invoked. Impeachment of Presidents had been attempted thrice in the history of United States. In 1868, impeachment proceedings were commenced against President Andrew Johnson but his impeachment was not upheld by a single vote and he remained in office⁶.

In 1974, articles of impeachment were commenced against President Richard Nixon who was inter alia accused of impeaching the administration of justice, abuse of power and contempt of congress. The evidence against Nixon was so overwhelming that he tendered his resignation from office and

thus avoided what could have been a successful impeachment process against him⁷.

Bill Clinton escaped impeachment process in 1999 because the two-third majority required for his removal from office was not achieved thereby prompting his acquittal. Back home in Nigeria Balarabe Musa of Kaduna State became the first casualty of impeachment process in

6. Dalhatu, M.B. *What Is Constitutional Law* ABU Press Ltd Zaria (2008) p. 45

7. *Ibid* at p. 446

Nigeria during the 2nd Republic. This was followed by the impeachment of the Deputy Governor of Kano State in 1981 in the person of Alhaji Farouk. With the return of democracy in 1999, politicians increased their momentum as regards the use of impeachment process as tools to remove Governors and their Deputy. The Governors of Bayelsa, Oyo, Ekiti, Anambra and Plateau States were at one point or the other removed from office⁸. The former Governor of Adamawa State, Murtala Nyako was the last Nigerian Governor to be removed from office by way of impeachment. The attempt by the Nasarawa State House of Assembly to impeach the Governor, Al-Makura, was unsuccessful after the panel of seven constituted by the State Chief Judge found him not guilty of all the allegations leveled against him by the House of Assembly.

2.3 Meaning of Impeachment

The Constitution of the Federal Republic of Nigeria 1999 (as amended) did not define impeachment in both sections 143 and 188 respectively. There is no mention of the word ‘impeachment’ in the above sections. Section 143(1) provides as follows:

8. Madaki A.M. “*An Examination of the Jurisdiction of Courts to Determine Impeachment Proceedings under the 1999 Constitution of Nigeria*” In: Agom A et al (eds) Ogebe and The Law Tamaza Publishing Co. Ltd Zaria (2010) p. 143

Section 143(1): The President or Vice President may be removed from office in accordance with the provisions of this section.

Similarly, section 188(1) which deals with removal of Governors and their Deputies provides as follows: “188(1): The Governor or Deputy Governor of a State may be removed from office in accordance with the provisions of this section”.

The word impeachment is merely mentioned in sections 84(5), 124(5), 146(1)&(3) and 191(1)&(3) of the 1999 Constitution of Nigeria. Surprisingly, it is not defined in part IV of the Constitution which deals with Interpretation and Commencement.

Section 84(5) provides as follows: “Any person who has held office as President or Vice President shall be entitled to pension for life...

Provided that such a person was not removed from office by the process of impeachment or for a breach of any provisions of this Constitution”.

Section 124(5): equally provides for pension or gratuity of Governors and Deputy Governors provided they were not removed from office as a result of impeachment.

Similarly, section 146(1) of the 1999 Constitution provides inter alia that the Vice President shall hold office of President if the office of President becomes vacant by reason of death, resignation, impeachment etc while section 146(3) takes care of the vacancy created by the impeachment of the Vice President.

In the same vein, section 191(1) provides inter alia that the Deputy Governor shall hold the office of Governor if the office of Governor becomes vacant by reason of death, resignation, impeachment etc. Section 191(3) takes care of the vacancy created by the impeachment of the Deputy Governor.

In the absence of a statutory definition of the word impeachment, reliance is placed on judicial and scholarly or academic definitions.

In the case of *Inakoju v. Adeleke*⁹ the Supreme Court per Niki Tobi, JSC observed as follows:

What is the meaning of impeachment?

The Black's Law Dictionary defines the word as "A criminal proceeding against a public officer before a quasi political court,

instituted by a written accusation of the House of Representatives of the United States of the Senate of the United States against the President,, Vice President or an officer of the United States including federal judges”

To impeach literally means to challenge the credibility of or to accuse¹⁰.

Following the above definitions, it means that impeachment is not synonymous with removal as used by the Constitution under sections 143((1) and 188(1) of the Constitution of Nigeria 1999 (as amended). It also means that a person may be impeached without necessarily being removed from office. This could explain why the framers of the 1999 Constitution of Nigeria preferred the word ‘removed’ to ‘impeached’. In the words of Niki Tobi, JSC in the case of *Inakoju v. Adeleke*¹¹.

It is my view that the word (impeachment)¹² should not be used as a substantive to the removal provisions of section 188. We should call a spade its correct name of spade and not a machete because it is not

10. Popoola, A.O. *Politics of The Nigerian Judiciary, Proceedings of 32 NALT Conference NILAS*, p. 70, cited by Dalhatu M.B.; *What Is Constitutional Law*, op cit. at p. 46

11. Ibid p. 488

12. Words in bracket supplied

one. The analogy here is that we should call the section 188 procedure one for the removal of Governor or Deputy Governor not of impeachment.

Impeachment, it has been aptly said:

Is not an ‘inquest of office’, a political process for turning out a President whom a majority of the House and two-thirds of the Senate simply cannot abide. It is certainly not, nor was it ever intended to be, an extraordinary device for registering a vote of no confidence¹³.

2.4 Meaning of Gross Misconduct

By sections 143(11) and 188(11) of the Constitution of Nigeria 1999 (as amended) the term gross misconduct is defined as a grave violation or breach of the provisions of this Constitution or a misconduct of such a nature as amounts in the opinion of the National Assembly or the House of Assembly to gross misconduct¹⁴.

In the unreported case of *Anya v. A-G. of Borno State*¹⁵, the Federal Court of Appeal adopted a definition of gross misconduct in Black’s Law Dictionary as an unlawful behaviour by a public officer in relation to the

13. Nwabueze, B. *Constitutional Democracy In Africa*. Vol. 4 Spectrum Books Ltd, Ibadan (2004) p. 104

14. Sections 143(11) & 188(11) of The Constitution respectively.

15. Suit No. FCH/141/82 cited by Nwabueze B., Nigeria’s Presidential Constitution op cit. at p. 280

duties of his office, willful in character... or acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act.

Gross misconduct suggests a misconduct that is so revolting or outrageous to the moral sense of the community as to undermine the integrity or credibility of the office and public faith in it – for example a

criminal act which outrages or profanes some important moral or societal value of the community¹⁶.

In *Inakoju v. Adeleke*¹⁷ the learned justice of the Supreme Court Niki Tobi, not only defined the phrase gross misconduct, but went ahead to enumerate acts that could constitute gross misconduct as well as certain acts that could not translate to gross misconduct. According to the Law Lord in the above case:

“Gross misconduct is defined as

- (a) a grave violation or breach of the provision of the Constitution
- and

16. Nwabueze B., *Nigeria's Presidential Constitution* op cit. at p. 324

17. *Supra*

- (b) a misconduct of such nature as amounts in the opinion of the House of Assembly to gross misconduct¹⁸.

According to the Jurist:

By the definition, it is not every violation or breach of the Constitution that can lead to the removal of a Governor or Deputy Governor. Only a grave violation or breach of the Constitution can lead to the removal of a Governor or Deputy Governor. Grave in the context does not mean an

excavation in earth in which a dead body is buried, rather it means in my view serious, substantial and weighty¹⁹.

The learned justice of the Supreme Court enumerated acts that could constitute grave violation or breach of the Constitution to include:

- (a) Interference with the constitutional functions of the legislature and the judiciary by exhibition of overt unconstitutional executive power.
- (b) Abuse of the fiscal provision of the Constitution.
- (c) Abuse of the code of conduct for public officers.
- (d) Disregard and breach of chapter IV of the Constitution on fundamental rights.

18. Ibid at pp. 54 – 55

19. *Inakoju v. Adeleke* (2007) 1 S.C.N.J. 1 at p. 55

- (e) Interference with Local Government funds and staling from the funds or pilfering of the funds including monthly subventions for personal gains or for the comfort and advantage of the State Government
- (f) Instigation of military rule and military Government.
- (g) Any other subversive conduct which is directly or indirectly inimical to the implementation of some other major sectors of the Constitution. In the opinion of this researcher ‘carpet crossing’ should be included²⁰.

The learned Jurist further enumerated certain acts which in his lordship's view could constitute grave misconduct in the opinion of the House of Assembly. Such acts are as follows:

Refusal to perform constitutional functions.

(a) Corruption.

(b) Abuse of office or power.

(c) Sexual harassment which according to his Lordship could arise from a male or female Governor or Deputy Governor.

20. See sections 688(1)(g) and 109(1)(g) of the 1999 Constitution. Though applicable to only legislators can also apply to Governors and their Deputies as well as the President and Vice President.

(d) A drunkard whose drinking conduct is exposed to the glare and consumption of the public and to public opprobrium and disgrace unbecoming of the holder of the office of Governor or Deputy Governor.

(e) Using, diverting, converting or siphoning State and Local Government funds for electioneering campaigns of the Governor, Deputy Governor or any other person.

(f) Certificate forgery and racketeering.

The learned Jurist concluded by saying:

Where this is directly connected, related or traceable to the procurement of the office of the Governor or Deputy

Governor, it will not matter whether the misconduct was before the person was sworn in. Once the misconduct flows into the office, it qualifies as gross misconduct because he could not have held the office but for the misconduct. Such a person... is not a fit and proper person to hold the office of a Governor or Deputy Governor. It is merely saying the obvious that a Governor or Deputy Governor who involves in certificate forgery and racketeering during his tenure has committed gross misconduct²¹.

21. Inakoju V. Adeleke Supra at pp. 55 – 56

From the above analysis rendered by Tobi, JSC, it is very clear that there are two types of gross misconduct. The type which touches on violation or breach of the provisions of the Constitution and the other type which is left at the discretion of the State Legislature to determine²².

It should be noted that the term ‘gross misconduct’ is not only a constitutional law term. In other words, it not only used in impeachment proceedings alone. In the law of employment, the term gross misconduct is often an issue between employers and employees. Thus in the case of *British – American Insurance Company (Nigeria) Limited v. Omolaya*²³ the Court of Appeal held inter alia that absence from work constituted an act of gross misconduct which entitled an employer to dismiss his employee summarily.

Similarly, in the case of *New Nigeria Bank Limited v. Obevudiri*²⁴, an accountant who verified forged signatures on forged bank drafts and certified them as genuine was held by the Court of Appeal to have committed “misconduct gross enough” to justify a summary dismissal²⁵.

22. Umaru A. *Politics And Law Making In Nigeria* A.B.U. Press, Zaria (1994) p. 133

23. (1991) 2 NWLR 721

24. (1986) 3 NWLR 387

25. See Generally Uvieghara E.E. *Labour Law In Nigeria*, Malthouse Press Ltd. Lagos (2001) p. 66

In *Oyedele v. Ife University Teaching Hospital Complex Management Board*²⁶ the Court of Appeal held inter alia as follows: “under our law there is no definition of what is misconduct anywhere. A misconduct is what the employer considers to be misconduct”²⁷

From the judicial interpretation of the term ‘gross misconduct’, it is very apparent that the term is not only misleading but very much ambiguous and liable to be abused by the legislators. The admonition of Musdapher, JSC (as he then was) in the case of *Inakoju v. Adeleke and Others*²⁸ is very relevant and apt. According to his Lordship;

The meaning of “gross misconduct” as contained in the Constitution in relation to impeachment proceedings is whatever the legislature deems “gross misconduct”. This clearly is very nebulous, fluid and subject to potential gross abuse and is also potentially dangerous at this point of our

natural or political life. That is why the legislature should strictly comply with all the other provisions as contained under section 188.

26. (1990) 6 NWLR 196 cited by Uvieghara E.E. Labour Law In Nigeria op. cit. at p. 65

27. at p. 199 of the report.

28. Supra at 129

2.5 Conclusion

One clear feature of impeachment process in Nigeria is that it has never been successfully implemented at the Federal level. All the attempts made to impeach the President or the Vice President ended in futility. It is only at the State level that some Governors and Deputy Governors were successfully removed from office via the process of impeachment²⁹.

Another notorious fact featuring in our impeachment process is that the constitutional provisions under sections 43(1) and 188(1) of the 1999 Constitution does not contain the word ‘impeach’ or ‘impeachment’ as is the case in United States.

Another feature worthy of note is that whereas impeachment process was borrowed by the framers of the 1979 and 1999 Constitutions of Nigeria from the American Constitution, more political office holders have been removed from office by way of impeachment than their American counterparts. That calls for caution among Nigerian politicians to the

effect that impeachment or removal of political office holders such as President, Vice President, Governors and Deputy Governors should be

29. Balarabe Musa, Ayodele Fayose, Murtala Nyako, Enyinnaya Abaribe etc were some of the Governors and Deputy Governors removed from office so far in Nigeria.

embarked upon sparingly when it is very apparent and verifiably obvious that the officers in question have committed impeachable offences. The exercise should not be carried out peremptorily or for the fun of it.

Finally, although the definition of the phrase gross misconduct as contained in both sections 43(11) and 188(11) appears to have given the legislature the sole power to determine what amounts to gross misconduct, the admonition of Niki Tobi, JSC³⁰ should always operate in the minds of the legislators who want to embark on the task of removing a political office holder by way of impeachment. According to the Learned retired Justice of our apex court:

By the definition (of gross misconduct) it is not every violation or breach of the Constitution can lead to the removal of a Governor, or Deputy Governor. Only a grave violation or breach of the Constitution can lead to the removal of a Governor or Deputy Governor. Grave in the context does not mean an excavation in earth in which a dead body is buried, rather it means, in my view, serious, substantial and weighty³¹.

This should be a food for thought for all legislators in Nigeria whether in the National Assembly or State House of Assembly.

30. Inakoju v. Adeleke (2007) 1 SCNJ 1 at p. 55

31. Words in bracket supplied.

CHAPTER THREE

GROUND AND PROCEDURE FOR IMPEACHMENT

3.1 Introduction

The framers of the 1979 as well as the 1999 Constitutions of Nigeria provided for the grounds and procedure for carrying out any impeachment proceedings by the National Assembly and the State House of Assembly of every State. As we shall see in some decided cases, Nigerian legislators in their bids to take a pound of flesh from their targets, have thrown caution to the wind and ignored all these clear cut provisions of the Nigerian Constitution. Apart from the constitutional grounds for carrying out impeachment process, the Nigerian legislators appear to have most often than not created their own grounds for impeaching a Chief Executive or his Deputy. This is herein summarized as a political ground for carrying out impeachment proceeding. This chapter therefore takes a look at the constitutional and political grounds for impeachment process as well as the procedure for impeachment proceedings in Nigeria.

3.2 Constitutional Ground

The ground for removal of the President or the Vice President of Nigeria is clearly enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended)¹

The said section of the Constitution provides as follows:

143(1) The President or Vice President may be removed from office in accordance with the provision of this section.

(2) 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 or Vice President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified...

Section 143(11) provides for the meaning of gross misconduct.

1. Section 143(1)&(2) (9)&(b)

Similar provision is enshrined in section 188(1)&(2)(a)&(b) and section 188(11) respectively with respect to the removal of Governor or Deputy Governor of a State.

From the above provisions of the Constitution, it goes without saying that the main constitutional ground for removal of the President, Vice President, Governor or Deputy Governor by way of impeachment proceedings is commission of gross misconduct by the Chief Executive or his Deputy. In other words, committing a grave violation or breach of the provisions of the Constitution is the only constitutional ground that can be relied upon to invoke impeachment proceedings by the lawmakers.

Comparatively, the United States Constitution provides inter alia that the President, Vice President and all civil officers “shall be removed by impeachment for conviction of treason, bribery or other high crimes or misdemeanors”²

It is quite apparent that the two grounds as contained in both the United State Constitution and that of Nigeria Constitution are similar

2. Article 2(4) of the United States Constitution

particularly in their respective applications.

In the words of Nwabueze:³

...although gross misconduct in the performance of his office is the only constitutionally permitted ground for the impeachment of a Governor (or the President), whether an act or omission amounted to gross misconduct was left largely in the discretion of the Assembly. This follows from the definition of gross misconduct as a grave violation or breach of the provisions of

this Constitution or a misconduct of such nature as amounts in the opinion of the House of Assembly to gross misconduct.

3.3 Political Ground

As noted earlier under constitutional ground, gross misconduct is the only constitutionally permitted ground for the impeachment of the President, Governor and their Deputies. In practice however, the legislators, have no doubt created their own ground of impeachment different from the constitutionally recognized ground. This researcher calls it ‘Political Ground’.

3. Mowoe K., *Constitutional Law In Nigeria* Malthouse Press Ltd Lagos (2008) p. 109

Judging from all the impeachment proceedings (including the attempted or unsuccessful ones), that occurred between 1979 and 2014, it will not be wrong to say that majority of them were politically motivated rather than being constitutionally activated.

Under this political ground anything goes. What constitutes a political ground is best known to the legislators.

The impeachment of Balarabe Musa, the First Executive Governor of Kaduna State was seen by many as politically motivated because the defunct National Party of Nigeria (NPN) who was in control of the Kaduna State Legislature could not stomach the idea of working with a

Governor from another party the Peoples Redemption Party (PRP) which was in minority, although it won the governorship election in the State. The only way to take a pound of flesh from the Governor was to impeach him by hook or crook. According to Nwabueze:⁴

Once it was embarked upon, removal was pre-determined, whether the Governor was guilty of gross misconduct or not. Legality or constitutionality had to be subordinated to political interest in the impeachment process. The proceeding was political from beginning to end, though the façade of indictment, trial and

4. Nwabueze B., *Constitutional Democracy In Africa* Vol. 4 Spectrum Books Ltd Ibadan (2004) at pp. 121 – 122

conviction had to be put up just to satisfy the Constitution. In so far as a verdict of guilty was already pre-determined regardless of the merits, the impeachment may be said to have been a sham.

This gave credence to Larry Diamond's conclusion that in Kaduna State, impeachment was used merely as "a weapon of political conflict".⁵

The same scenario almost played out in Nasarawa State in 2014 where Governor Al Makura escaped impeachment plot by the Nasarawa State House of Assembly members who were mainly from the opposition party People's Democratic Party (PDP), whereas the Governor was then in Congress for Progressive Change (CPC). The impeachment plot did not see the light of the day as the electorate realised the political nature of the process and protested, coupled with the fact that the panel of seven assigned to investigate the Governor returned a verdict of not guilty.

In Enugu State for instance, where the then Governor, Chime had a running political battle with his Deputy Mr. Sunday Onyebuchi, the impeachment process was unleashed on the Deputy Governor and

5. Umaru A. *Politics and Law Making In Nigeria*, ABU Press Zaria (1994) at p. 150 wherein the author cited Larry Diamonds Book, “*The Political Economy of Nigeria*” edited by William Zartman at pp. 24-56

one of the grounds for raising an impeachment notice against him was that he kept a poultry farm in the Government House. Needless to say that the House of Assembly apparently incited by the Governor, successfully impeached and removed the Deputy Governor accordingly.

3.4 Procedure For Impeachment

The procedure for impeachment proceedings in Nigeria is provided for in the Constitution itself. Section 143 of the said Constitution gives powers to the National Assembly to remove the President or Vice President from office in line with laid down procedures. Similar provisions are laid down for the removal of the Governor or Deputy Governor by a State House of Assembly under section 188 of the Constitution.

In discussing this sub-topic, much emphasis will be laid in the provisions of section 188 of the Constitution which provides for the procedure for removal of the Governor or the Deputy Governor. The reason for this is not far-fetched. In the history of impeachment process in Nigeria the

section relating to the removal of President or Vice President has never been put to test. In other words, no President or Vice President has ever been impeached. The only attempt made in this regard was when the then President, Olusegun Obasanjo attempted to remove his Vice President Atiku Abubakar by way of “Judicial impeachment” and which the Supreme Court in agreeing with the lower courts held in favour of the Vice President that it is only the National Assembly that can carry out the act of impeachment against the Vice President and not the court or any other institution⁶.

Due to the significance of the provisions of section 188 of the Constitution, it will be very pertinent to rely extensively on the relevant portions of judgment of Tobi JSC in the case of *Inakoju & Others v. Adeleke & Ors.*⁷ wherein his Lordship xrayed the provisions of section 188(1)-(11) which deal with removal of the Governor and Deputy Governor of a State by way of impeachment. His Lordship in the course of the judgment dissected the provisions of section 188(1)-(11) of the 1999 Constitution (as amended).

6. A-G. Federation & 2 Ors. v. Alh. Atiku Abubakar & 3 Ors. [2007] 4 SCNJ p. 456

7. Supra at pp. 48-54 of SCNJ Report

Subsection(1)... A removal of a Governor or Deputy Governor must comply with subsections (2) to (9) by the subsection.

Subsection (2)(i). There must be a notice of allegations in writing signed by not less than one-third of the members of the House of Assembly...

(ii) The notice must be presented to the Speaker of the House.

(iii) The notice should state that the Governor or Deputy Governor is guilty of gross misconduct in the performance of the functions of his office.

(iv) The notice must specify detailed particulars of the gross misconduct...

(v) Within a period of 7 days from the date of receipt of the notice, the Speaker will cause a copy of the notice to be served on the Governor or the Deputy Governor as the case may be.

(vi) The same notice as in (v) must be served on each member of the House.

(vii) By subsection (2)(b) the Speaker is expected to procure a written statement from the Governor or the Deputy Governor in reply to the

notice of allegation provided for in subsection (2). The reply must also be served on each member of the House.

...If the Governor or the Deputy Governor fails or refuses to reply to the allegation, he should be presumed as having no reply.

Subsection (3)

- (i) Within a period of 14 days of the presentation of the notice to the Speaker of the House, the House must resolve by motion without any debate whether or not the allegation should be investigated.
- (ii) The action in (i) above will be taken whether or not the Governor or Deputy Governor sent any statement in reply to the notice of allegation.
- (iii) ...the motion that the allegation should be investigated or not

will not be debated... there should be no room for campaign on the floor to sway members at that early stage.

Subsection (4)

- (i) A motion that the House investigate the allegation will be declared as passed if it is supported by the votes of not less than two-thirds of all members of the House.

Subsection (5)

- (i) Within 7 days of the passing of the motion under subsection (4), the Chief Judge of the State will appoint a Panel of seven persons to investigate the allegation.
- (ii) The Chief Judge can only set up the panel at the request of the Speaker. It therefore means that ... the Chief Judge cannot do so by the request of any other member or suo motu.
- (iv) The Panel must not exceed 7 persons. It must also be not less than 7 persons...
- (v) The seven persons must not be members of any public service, legislative house or political party. The subsection disqualifies members of the public service, legislative house or political party...
- (vi) The 7 persons must in the opinion of the Chief Judge, be persons of unquestionable integrity...
- (vii) ... the Chief Judge can only invoke his constitutional powers under section 188(5) if the provisions of section 188(2), (3) and (4) are complied with ... he should bow to the 7 days rule in

section 188(5). This does not mean that the Chief Judge must wait for 7 days to set up the Panel. The requirement of the subsection is that the Panel must be set up within 7 days.

Subsection (6)

- (i) The Governor or the Deputy Governor as the case may be has the right to defend himself before the Panel.
- (ii) He also has the right to be represented before the Panel by a legal practitioner of his own choice.

Subsection (7)

- (i) The powers and functions to be exercised by the panel will be determined in accordance with the procedure as prescribed by the House. The procedure prescribed should not be adhoc but should apply to all investigations. This is one way of avoiding different standards in otherwise similar matters. Of course, the House can revise or update the procedure as and when circumstances dictate. The House should avoid changing the rules at the middle of the investigation to assist or ruin the Governor or the Deputy Governor.

- (ii) Within three months of its appointment, the Panel should report its findings to the House. The constitutional period should not or better cannot be extended... it is a constitutional provision which the Panel must comply with...
- (iii) The report of the Panel should be precise, concise and exact to the minutest details. There should be no room for doubt as to what the Panel decided. The report of the Panel should be unequivocal and not fluid or rigmarole.

Subsection (8)

- (i) The Panel can make one of two recommendations, not two. The Panel can either report that the allegation made against the Governor or Deputy Governor is proved or if not proved.
- (ii) If the report is that the allegation is not proved, the matter ends there. The House has no constitutional right to set up another Panel to receive more 'favourable' report. That will be tantamount to persecution of the Governor or Deputy Governor and the Constitution has no place for a second bite at the cherry. The House becomes Functus Officio.

- (iii) It is however not my understanding of subsection (8) that no removal proceedings will be initiated against the Governor or Deputy Governor for the rest of his tenure qua office. The House is competent to initiate another removal proceedings, if the Governor or Deputy Governor commits any other gross misconduct within the meaning of subsection (11)...

Subsection (9)

- (i) If the report of the Panel says that the allegation against the Governor or Deputy Governor is proved, the report will be considered by the House within 14 days of the receipt of the report by the House.
- (ii) ... In debating the report there should be no consideration of political party and political leanings. ...Let the debate and subsequent findings of the House be dominated by the report of the Panel and not by sentiment.
- (iii) The House can take one of two actions. It can adopt the report of the Panel. It can reject the report of the Panel. If it rejects the report of

the Panel, the matter ends there. The Governor or Deputy Governor can smile home as a victor.

- (iv) If the House adopts the report of the Panel, the Governor or Deputy Governor stands removed from office as from the date of the adoption of the report. He has to pick his personal belongings from Government House before the police arrive to force him out...

His Lordship has no doubt not only laid down the procedure for embarking on impeachment of a Governor or Deputy Governor as enshrined in the 1999 Constitution, but has also expounded the law and principles surrounding impeachment proceedings in Nigeria, despite the fact that his Lordship refused to use the word impeachment in place of removal as enshrined in sections 143 and 188 of the 1999 Constitution. Unfortunately, these laid down procedures were observed only in breach of the relevant section by our legislators in most of the impeachment proceedings carried out in Nigeria. Needless to say that most of the cases were reversed by our courts⁸ for failure to comply with the procedures laid down in section 188(2) – (9) of the Constitution of Nigeria, 1999.

3.4.1 Notice of Impeachment

Section 188(2) of the Constitution provides clearly that there must be a notice of allegations in writing signed by not less than one-third of the members of the House of Assembly stating that the Governor or

8. See for instance *Inakoju & Ors. v. Adeleke & Ors.* (Supra) *Mike Balonwu & Ors. v. Peter Obi* [2007] 5 NWLR pt. 1028 p. 488; *Dapianlong v. Dariye* [2007] 8 NWLR pt. 1036 p. 332 etc

Deputy Governor is guilty of gross misconduct in the performance of the functions of his office, specifying detailed particulars of the gross misconduct alleged. The notice of impeachment must be presented to the Speaker of the House of Assembly of the State concerned.⁹

From the provisions of the Constitution, it goes without saying that any purported notice of impeachment signed by less than one-third of the members is not valid. Similarly, vague and imprecise particulars should not receive the action of the Speaker. In the case of *Inakoju & Ors. v. Adeleke & Ors.*¹⁰ the Supreme Court held inter alia that an impeachment notice signed by less than 11 members of the House of Assembly made up of 32 members was not valid. The notice was also not presented to the Speaker as provided. In his contribution in the same case, Akintan, J.S.C. held inter alia as follows:¹¹

In the instant case, the requirement under section 188(2) is to the effect that a notice of any allegation of gross misconduct by the Governor in writing signed by not less than one-third of the members of the House of Assembly is to be presented to the Speaker (1st respondent). The averment in the affidavit is to the effect that the provision was not complied with since such was not presented to the 1st respondent. (Speaker of the House of Assembly of Oyo State)¹²

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9. This is in pari materia with section 143(2) of the Constitution relating to impeachment of the President or Vice President except that the notice is presented to the Senate President.
 10. Supra at p. 48 of SCNJ Report.
 11. Supra at p. 147
 12. Words in bracket supplied.

3.4.2 Service of Impeachment Notice

One of the issues that characterised most impeachment proceedings in Nigeria has been the absence of notice and non-service of notice of impeachment or allegations on the Governor or Deputy Governor as the case may be. This was the case in *Inakoju & Ors. v. Adeleke & Ors*¹³ In resolving this issue, the Court of Appeal relied on the provisions of section 188(2)(b) which stipulates that:

The Speaker of the House of Assembly shall within seven days of the receipt of the notice cause a copy of the notice to be served on the holder of the office and on each member of the House of 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 House of Assembly.

It was shown in affidavit evidence which was not controverted that 18 out of 32 members of the Oyo State House of Assembly who championed the impeachment proceedings against the State Governor Rasheed Ladoja (3rd respondent therein) did not serve notice of impeachment or allegation of gross misconduct on other members of

13. Supra

the House of Assembly. As a matter of fact, the notice of allegation of gross misconduct was purportedly served on the Governor through a newspaper advertisement. The Supreme Court on appeal to it affirmed the decision of the Court of Appeal, Ibadan that the provisions of section 188(2)& (3) relating to notice and service of same was not complied with and therefore the purported impeachment was invalid, null and void.

In the same vein, the Court of Appeal nullified the purported impeachment of Governor Peter Obi of Anambra State on the ground inter alia, that the notice of impeachment was not effected on the Governor as provided by the relevant section of the Constitution.¹⁴ It is submitted that the service of notice of impeachment intended by the lawmakers under section 188(2) of the Constitution is personal service. Although the Constitution did not specifically provide for personal service of notice of allegation it goes without saying that personal service will fulfil the fair hearing requirement enshrined in section 36(1) of the 1999 Constitution. This is also the practice in Nigerian

14. Balonwu & Others v. Peter Obi [2007] 5 NWLR (pt. 1028) p. 488

Courts' Rules and Practice. Moreso, the main essence of service of process in judicial and quasi-judicial proceedings is to put the affected party on

notice of the allegation or case against him. This cannot be achieved if the service of the notice is by any other means but personal service.

However, where effecting personal service becomes almost impracticable, a substituted means may be used such as publishing the notice at the notice board of the Government House as well a publication in any of the National Daily Newspapers as done in Ladoja's case.

3.4.3 Quorum Requirement

Section 188(2) (4) and (9) provides for two types of quorum to be complied with in the removal of the Governor or Deputy Governor as the case may be. Similar provisions are made under section 143(2) and (9) of the Constitution with regard to impeachment of the President or Vice President. To this effect there is the requirement of one-third of the members of the House who must sign the notice of impeachment against the Governor or Deputy Governor, the President or Vice President as the case may be.

There is equally another requirement of quorum of two-thirds majority of all the members who must determine during the debate whether the Governor, Deputy Governor, President or Vice President is liable to be impeached in line with the report of the Panel of seven members that recommended the

impeachment against the office holder¹⁵. Failure to comply with any of these quorum requirements will render the impeachment a nullity. The issue of quorum featured extensively in virtually all the impeachment cases that took place between 1999 and 2014.

In the case of *Inakoju & Ors. v. Adeleke & Ors.*,¹⁶ it was revealed through evidence on record that 18 out of the 32 members of Oyo State House of Assembly purportedly impeached Governor Ladoja. Mathematically two-thirds of 32 is approximately 21 members. That presupposes that to remove or impeach the Governor, at least 21 members ought to be present and vote in favour of the impeachment proceedings. The Supreme Court had no difficulties in holding and approving the decision of the Court of Appeal

15. Ibid

16. Supra

which nullified the impeachment of Ladoja for non-compliance with quorum requirement of the Constitution.¹⁷

Similarly in the case of *Dapialong v. Dariye*¹⁸ the Plateau State House of Assembly became depleted when 14 members including the Speaker and Deputy Speaker, decamped to another party following which Independent

National Electoral Commission (INEC) declared their seats vacant. That was the scenario when eight out of the remaining ten members commenced an impeachment process against the then Governor of Plateau State, Joshua Dariye. The ten members claimed they had impeached the Governor who consequently rushed to court and challenged the constitutionality and validity of the impeachment process. The Court of Appeal nullified the purported impeachment on the ground inter alia, that the quorum requirement of the Constitution was not complied with as two-thirds of 24 could not by any imagination be said to be 8 as the respondents at the Court of Appeal contended. The Supreme Court in affirming the decision of the Court of Appeal held inter alia as follows:

17. Section 188(4) equally requires that two-thirds majority must support a motion that the allegation of gross misconduct should be investigated before the Chief Judge will be requested by the Speaker to appoint a Panel of seven members.

18. [2007] 4 SCNJ 286

...the removal of a Governor or Deputy Governor from office is a very grave issue; it has import of criminality and little wonder that subsection (4) thereof stipulates that the motion calling for investigation of the allegation must be supported by not less than two-thirds majority of all the members of the House of Assembly...it is my view that two-thirds of a House of Assembly like Plateau whose membership is twenty-four, the minimum number of members that can grant the application to investigate the alleged gross misdeeds of the 1st respondent (Dariye) is 16 (sixteen) going by the provision of section 188(4). Eight (8) certainly is not two-thirds of 24.¹⁹

There was also the issue of whether by virtue of the provisions of section 96(1) of the 1999 Constitution, the impeachment of Joshua Dariye was valid

and constitutional. Section 96(1) of the Constitution provides as follows:

“The quorum of a House of Assembly shall be one-third of all the members of the House.”

The Supreme Court in analysing this provision had this to say:

When the above provisions of the Constitution are read, the only conclusion... is that the legislators intend that the lawful quorum of the House of Assembly shall be one-third of all the members of the House. But in section 188(4) of the Constitution which deals with impeachment of a Governor, the quorum that can lawfully pass a motion initiating the process is

19. p. 357 per Aderemi, J.S.C.

two-thirds majority of all the members of the House of Assembly.²⁰

3.4.4 Panel of Seven Members

Section 143(5) of the 1999 Constitution of Nigeria provides that 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.

Similar provisions are made under section 188(5) in respect of House of Assembly of a State in the course of carrying out impeachment proceedings against the Governor or Deputy Governor.

The subsection only talks about the integrity of the persons. It does not talk about the professional callings, age, gender and all that of the seven persons. However there has been a compelling suggestion that the panel be headed by a retired Judge or a senior lawyer preferably a Senior Advocate of Nigeria in view of the fact that the exercise of investigation under the Constitution will

20. Ibid.

invariably touch law in its large parts²¹ A member can be picked and appointed from within or outside a State. As a matter of law the search for the seven man Panel could go to the Diaspora particularly Nigerians in Diaspora by virtue of chapter 3 of the 1999 Constitution.²²

In his leading judgment in the case of *Inakoju & Ors. v. Adeleke & Ors*²³, Justice Niki Tobi while expounding the qualities of the Panel of seven members held inter alia as follows:

...The 7 persons must in the opinion of the Chief Judge, be persons of unquestionable integrity. Integrity is a matter of character of the human being and the character must be unblemished, consistent in doing wrong or bad things. The character must be transparent, honest and trustworthy... He should be a person without taint. A person who believes in vengeance or vendetta is not one of unquestionable character. An overzealous human being with superlatives or extremities or idealisms will not be a person of unquestionable integrity because some of his superlatives or extremities or idealisms may turn out to be utopian and will be a bad way of judging a Governor in a realistic way in the running of a State. So too a person with pompous and arrogant bones in his chemistry with so much egotic flare. The Chief Judge should avoid them in his Panel as if they are plagues. Pompous and arrogant people are not the best Judges.

21. Ibid.

22. *Inakoju v. Adeleke* (Supra) at p. 50 per Niki Tobi, J.S.C.

23. Ibid.

In the case of *Alamiyeseigha v. Igoniwari (2)*²⁴ where the Bayelsa State House of Assembly took up an impeachment process against Governor D.S.P. Alamiyeseigha for gross misconduct in the performance of his functions, the appellant, Alamiyeseigha, argued that the provision relating to composition of panel of seven persons was not complied with because the Chief Judge appointed two persons who were alleged to be Civil Servants and card-carrying member of a political party, the Peoples Democratic Party (PDP). The Governor had earlier written a protest letter to the Chief Judge alleging likelihood of bias against the chairman and some other members of the Panel, but all to no avail.

In nullifying the decision of the High Court which held that the action of the Chief Judge in appointing the Panel of seven persons cannot be challenged in court the Court of Appeal observed inter alia as follows:

... With due respect I do not agree with the learned trial judge the suggestion that whether the Chief Judge acts outside the provisions of section 188(5) of the 1999 Constitution his actions cannot be challenged. Section 188(10) cannot be used to oust the jurisdiction of the court if the actions of the Chief Judge contravenes the provisions of section 188(5)²⁵

24. [2007] NWLR p. 524.

25. Ibid.

The Court of Appeal cannot be more correct. By the provision of section 188(5), the legislature intended that the Chief Judge must comply with certain conditions or criteria while appointing members of the Panel.²⁶

Once the Panel is constituted, the Governor or Deputy Governor as the case may be has the right to defend himself before the Panel either by himself or through a counsel of his own choice. The powers and functions to be exercised by the Panel will be determined in accordance with procedure set up by the House. The procedure should not be ad hoc but should apply to all investigations so as to avoid different standards in otherwise similar matters.²⁷ It should be noted that in conducting its investigation the Panel is enjoined to observe the principles of fair hearing enshrined in section 36(1) of the 1999 Constitution even though not specifically mentioned in section 188 or 143 of the Constitution.

The issue of fair hearing featured extensively in the case of *Abubakar Danladi v. Nasiru Audu Dangiri & 6 Ors*²⁸ wherein the Deputy Governor of Taraba State, the appellant herein challenged his purported impeachment up

26. Madaki A.M. *“An Examination of the Jurisdiction of Courts to Determine Impeachment Proceedings under the 1999 Constitution of Nigeria”* In: Agom A. et al (eds) *Ogebe & The Law*, Tamaza Publishing Co. Zaria (2010) pp. 149-150

27. *Inakoju v. Adeleke* (Supra) per Tobi, J.S.C. p. 62.

28. [2014] 11 S.C.N.J. 155.

to the Supreme Court alleging among other issues that he was not given a fair hearing before the Panel of seven who investigated his allegation of gross misconduct in the performance of his function as Deputy Governor of Taraba State. In this case the embattled Deputy Governor sued the Panel of seven members for not according him his right to fair hearing when the Panel refused his genuine application for adjournment.

The Deputy Governor instituted his action by way of originating summons seeking to restrain the Panel from investigating him. It was the complaint of the appellant that in the course of the impeachment proceedings of the Panel, after the counsel to the House had closed their case, the appellant called a witness and later applied for a four day adjournment to enable him bring two additional witnesses before he closes his case. The Panel turned down this harmless application which was made within the first week of the sitting of the Panel which constitutionally has three months to round off its sitting. Needless to say that the Panel closed the case of the appellant and went ahead to submit its edited report to the House which wasted no time in removing the helpless Deputy Governor, who in turn challenged his purported removal in court.

In criticising the Panel for its unconstitutional acts in indicting the Deputy Governor, the Supreme Court²⁹ held inter alia as follows:

The impact of what happened in the Panel on the country's impeachment jurisprudence is too alarming to contemplate. Here is a Panel that had three whole months to investigate the serious allegations of gross misconduct against the appellant, a Deputy Governor of the State. For no apparent reason for the indecent haste, the Panel completed its sitting and prepared and submitted its report to the Taraba State House of Assembly... a period of six days inclusive of the first and last dates... one has the inevitable but disturbing impression that the Panel composed of the respondents was a mere sham and that the removal of the appellant from office was a done deal as it were. In my view, the respondents in their purported investigation of the allegation made against the appellant, merely played out a script previously prepared and handed over to the Panel.

His Lordship concluded that the Court of Appeal ought to have resolved the issue of denial of fair hearing against the respondents (the Panel of seven members) and in favour of the appellant, the Deputy Governor of Taraba State. The Supreme Court ordered that the purported impeachment was null and void.

29. Ibid at p. 199 per Ngwuta, J.S.C. who read the leading judgment of the court.

In his contributing judgment, W.S.N. Onnoghen, J.S.C. held inter alia as follows:

Here is a case where the Panel has three months within which to conduct and conclude its investigation of impeachable allegations against appellant but appellant requested for four days adjournment on health grounds and to enable two of his witnesses attend and testify on his behalf but the Panel refused the request, closed the case of appellant and prepared its report which was submitted to the Taraba State of Assembly the next day. The said House proceeded on the same day of receipt of the report to remove appellant from office. In all, the proceedings lasted a period of about six days out of the three months assigned. Why all the rush one may ask. The rush in this case has obviously resulted in a breach of the rights to fair hearing of appellant which in turn nullifies the proceedings of the Panel.³⁰

In his own supporting judgment Rhodes-Vivour, J.S.C. put it inter alia as follows:³¹

I agree with his Lordship that the proceedings of the investigating Panel is null and void because the appellant was denied fair hearing... the position of the law is long settled that once there is denial of fair hearing, that in effect is a breach of the audi alteram partem principle of the rules of natural justice that is to say please hear the other side.

30. Ibid at p. 201

31. Ibid at p. 207

It can therefore safely be said that the principle of fair hearing is very fundamental to all courts proceedings (including Panels and tribunals) and like jurisdiction, the absence of it vitiates the proceedings no matter how well conducted.³²

One issue that needs to be addressed is whether the Chief Judge can be compelled by the legislature to change members of the Panel who in their opinion are likely to show elements of bias towards the Governor or Deputy

Governor. This was the case in Ekiti State when Fayose was removed by way of impeachment together with his Deputy. It was alleged that the seven man Panel was packed with family relations and cronies of Ayodele Fayose prompting the Ekiti State House of Assembly to reject the Panel and ordered the Chief Judge to reconstitute another Panel to which the Chief Judge refused-giving the excuse that as a judge with limited contacts with ordinary folks, he was not expected to know everybody's backgrounds. The Chief Judge maintained his ground even after the Speaker of the House of Assembly bulldozed his way into the arena to object to the Panel's composition.³³

32. Ibid at p. 227

33. Oguiche S. "Challenges of Use of State of Emergency In Democratic Governance: Plateau and Ekiti Experiences" In: Azinge E. (ed.) *State of Emergency In Nigeria, Law and Politics* NIALS, Lagos (2013) p. 353

For his refusal to reconstitute the Panel, the Chief Judge was suspended and another appointed as Acting Chief Judge who later appointed another Panel that eventually sat and impeached Ayodele Fayose and his Deputy.³⁴ The confusion that followed this constitutional crisis eventually led to the declaration of State of Emergency in Ekiti State.

A similar incident happened in Nasarawa State where impeachment proceedings were initiated by the Nasarawa State House of Assembly against Governor Al-Makura. At the juncture of setting up the Panel of

seven by the Chief Judge, the House of Assembly kicked against the members who in their own belief would be biased in favour of the Governor whom the legislators wanted to impeach at all costs.

But unlike what happened in Ekiti State, the legislators did not consider it worthwhile to suspend the Chief Judge when he failed to reconstitute the Panel. The controversial Panel went ahead to sit and considered the allegations against the Governor. The House of Assembly failed to put up appearance at the hearing whereas the Governor showed up to defend himself. The Governor was present and was equally represented

34. The Supreme Court has held in the recent case of APC v. PDP & 4 Others [2015] 4 SCNJ 1 that the Constitution of the 2nd Panel was null and void and that Fayose was never impeached in the eye of the law.

by a counsel, a Senior Advocate of Nigeria, Udechukwu, SAN. In the absence of the complainants, the Nasarawa State House of Assembly, the Panel considered all the allegations and dismissed them one after the other. Thus, the impeachment plot against Tanko Al-Makura was nipped at the bud against all odds as a minority party then CPC in the midst of majority party PDP which was the ruling party in Nigeria.

3.4.5 Venue

It will be noted straightaway that the Constitution under both sections 143 and 188 did not specifically provide for venue of impeachment proceedings, it goes without saying that impeachment proceedings being a serious

business of the House must be conducted in the hallowed chamber of the House of Assembly or National Assembly as the case may be. In other words the House of Assembly will sit in the building provided for it and for that purpose. The combined effect of sections 104 and 108(1) of the Constitution of the Federal Republic of Nigeria is clear that the intention of the Constitution is to make the House of Assembly sit in the building provided for that purpose.³⁵ In

35. Madaki A.M. “An Examination of the Jurisdiction of Courts to Determine Impeachment Proceedings under the 1999 Constitution of Nigeria” In: Agom A. et al (eds) *Ogebe & The Law* op. cit. at p. 149

*Akintola v. Aderemo*³⁶ it was held that anything done outside the House of Assembly to remove the Governor of the old Western Region was a nullity. The Governor was elected by the people – the electorate. The procedure and the proceedings leading to his removal should be available to any willing eyes. And the public will be watching from the gallery. It should not be a hidden affair in a Hotel room.

In *Inakoju & Ors. v. Adeleke & Ors.*³⁷ where some factional members of the Oyo State House of Assembly sat in a Hotel and purportedly impeached the then Governor of Oyo State, Rasheed Ladoja, the Supreme Court per Niki Tobi, J.S.C. who read the leading judgment held inter alia as follows:

A legislature is not a secret organisation or a secret cult or fraternity where things are done in utmost secrecy in the recess

of a Hotel. In the contrary, a legislature is a public institution, built mostly on public property to the glare and visibility of the public... the actions and inactions of a House of Assembly are subject to public judgment and public opinion.

The learned Justice, Niki Tobi held further that the mace which is a symbol of legislative authority and validity must always be kept at the

36. (1962) All NLR 440 at 443 cited with approval by the Supreme Court in *Inakoju v. Adeleke* (Supra)

37. Supra

proper venue which is the hallowed Chamber of the House under the custody of the seargent at-arms. His Lordship wondered whether a meeting of the House held outside the House in a Hotel and without the mace, symbol of authority, will be said to be valid and constitutional.

It must be noted that one of the respondents' reliefs at the trial court which was refused was a Declaration that the purported sitting of the defendants at the D'Rovans Hotel Ring Road Ibadan where the purported notice of allegation of misconduct was issued and which was outside the designated official venue of the Oyo State House of Assembly is unconstitutional, invalid, null and void.

The Supreme Court in affirming the decision of the Court of Appeal held that the meeting held at the D'Rovans Hotel, Ring Road, Ibadan, wherein the purported notice of allegation of misconduct was issued was unconstitutional, null and void.

In the relatively recent case of *Danladi v. Taraba State House of Assembly and 6 Others*³⁸ Rhodes-Vivour, J.S.C. dissentingly observed as follows:

38. [2014] 11 S.C.N.J. 134 at 154

...Conducting legislative acts in a Guest House becomes laughable in the eyes of the public. I must say that the commencement of impeachment proceedings from a Guest House is a clear move by the legislators to achieve set goals by subterranean procedure. It is wrong. The whole world saw on television the impeachment proceedings of one time President of the U.S.A., Bill Clinton, by the House of Representatives. It was not a hidden affair. The venue was the House of Representatives and every step in the impeachment proceedings was taken/done in the House of Representatives and not in a Hotel. It is unconstitutional, null and void for the Taraba State House of Assembly to deliberate and then prepare a notice alleging misconduct against the appellant in a Guest House.

It should be noticed that both the trial High Court and the Court of Appeal were of the view that it is immaterial where members of the State House of Assembly met to prepare the notice which contained allegations of misconduct against the Deputy Governor. The majority of the Justices who sat in this case supported the view.

In other words the view of the majority is that members of the House of Assembly can meet anywhere outside the House of Assembly to prepare a notice alleging misconduct against the Deputy Governor.³⁹ There is no doubt that the minority view of Bode Rhodes-Vivour, J.S.C. is a better one in view of the earlier decision of the Supreme

39. Supra. This view was expressed in conference. See Rhodes-Vivour, J.S.C. at p. 152

Court in *Inakoju & Others v. Adeleke & Others*⁴⁰ wherein the apex court held inter alia that the purported meeting of the Oyo State House of Assembly in D’Rovans Hotel Ibadan, wherein an impeachment proceeding was carried out against the then Governor of Oyo State, Ladoja was unconstitutional, null and void.

It is regretted that majority of the Justices in this case failed to take advantage of the decision of the Supreme Court in the above case which appears to be a better view, with due respect to the Law Lords. It is hoped that the Supreme Court will have another opportunity to streamline these two divergent views since in taking this view, the court did not overrule the earlier view in *Inakoju v. Adeleke*⁴¹ nor did it distinguish same in accordance with well established practice of the court.

3.5 Conclusion

This chapter has really brought to limelight the unacceptable attitudes of our politicians in breaching the provisions of the Constitution which they swore to protect during their swearing in ceremonies. It is

40. Supra at pp. 53 & 54.

41. Supra.

apparent that most of the politicians particularly the members of the legislature do not know exactly why they are there. Many think that the

oath of office and oath of allegiance are taken for the fun of them. In the words of Niki Tobi, J.S.C. in *Inakoju v. Adeleke*⁴²

On that day they swore or affirm inter alia to perform “my functions honestly to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law, and the rules of the House of Assembly and always in the interest of the sovereignty, integrity, solidarity, wellbeing and prosperity of the Federal Republic of Nigeria”...

It is at times the experience that some Nigerians regard the oath as another kindergarten recitation to the extent that they do not attach any importance to it. Some forget the wording of the oath as they finish. It should not be so.

Our politicians should take this piece of advice to be their guiding principle.

Impeachment process is not a do or die affair or an opportunity to take a pound of flesh from a Governor who is “too frugal” in the opinion of the Honourable members who believe that the Governor or even Deputy Governor must grease the palms’ or face the music by way of taking up an impeachment process against him.

During the trial of Alhaji Abba Musa Rimi before the Kaduna Zone of

42. *Supra* at pp. 53 & 54

the Special Military Tribunal set up by the military Government to try corrupt former public office holders in Nigeria’s Second Republic, irrefutable evidence was led as to how members of the State legislature continuously threatened the then Governor Abba Musa Rimi with impeachment with the sole aim of blackmailing him into paying them from

public funds, the sum of N500,000.00⁴³ to which the Governor admitted to have given in to this blackmail by paying the sum demanded.⁴⁴

It cannot be overemphasized that Nigerian politicians should always respect the oaths taken by them to uphold and protect the Constitution of the Federal Republic of Nigeria at all times and this includes following the procedure laid down by the Constitution on how to go about the removal of the President, Vice President, Governor and Deputy Governor as the case may be. If this procedure is adhered to the gale of impeachment proceedings will be a thing of the past.

43. This was a lot of money in 1980s

44. *Umaru A Politics And Law Making in Nigeria* ABU Press, Zaria (1994) p. 149

CHAPTER FOUR

DATA ANALYSIS

4.1. Introduction

This particular chapter contains a detailed analysis and presentation of results, findings and indepth interactions and discussions that took place in the field of study. The outcome of the administered questionnaires and the interviews conducted on the selected respondents are fully considered, analysed and discussed in a such a

manner as to find solutions to all the research questions posed to the respondents particularly those who cooperated by filling and returning the documents given to them.

Most of the respondents contacted were not only responsive but cooperated fully with the researcher. Many would be respondents however disappointed the researcher by not filling and returning the questionnaires in spite of the fact that they agreed to cooperate with the researcher. In all, 125 questionnaires were duly administered whereas only 105 were filled and returned. Two people were interviewed, one lawyer and one political scientist.

The respondents cut across five geopolitical zones of Nigeria. The selected States are Kaduna in North West, Nasarawa in North-Central, Imo in South-East, Osun in South-West and Rivers in South-South. With the exception of North East, responses were received from all the other zones, no thanks to the insecurity situation in that region which discouraged and militated against having a good research work as anticipated.

4.2 Methodology of Data Analysis

This sub topic describes the methods and procedures utilized in describing the procedure, the researcher dwells on the following headings:

(a) Research design

This research is centred on appraisal of impeachment process under the 1999 Constitution of Nigeria. It is basically aimed at analyzing and appraising the activities of our legislators as regards their power of impeachment over the executive and ascertain whether this power was validly exercised in accordance with the provisions of the 1999 Constitution.

The research design utilized by the researcher include survey, analytical and descriptive research designs.

(b) Area of Study

The research covers five of the six geopolitical zones of Nigeria. They include South East, South-West, South-South, North-West and North Central. The topic dealt with is appraisal of impeachment process under the 1999 Constitution of Nigeria.

(c) Population of Study

The data for this research were obtained from 105 respondents by way of administering questionnaire. They include Lawyers, Political Scientist, Journalists and other unspecified professionals.

(d) Sample and sampling procedure

Stratified sampling technique was utilized in selecting the respondents from the five geopolitical zones of Nigeria. At least 12 respondents from each zone, participated in this research exercise.

(e) Instrument

The questionnaire played a major role in this research. The questionnaire contained seven questions.

A lawyer and a political scientist were also interviewed on issues relating to impeachment process in Nigeria.

(f) Procedure for data collection and Analysis.

The primary source was of course the use of questionnaire structured and equally administered on 125 persons although only 105 persons filled and returned their questionnaires to our designated offices.

The data obtained from the respondents are presented in tables and figures with logical analysis of same using approximated percentages.

The questionnaire is annexed at page 131 as appendix A.

4.3 Analysis of Data

Table 1 clearly shows the zonal and professional responses to the questionnaire duly administered on the respondents.

Table 1

The distribution of the 105 responses obtained are as follows:

States/ Zones	Lawyers	Political Scientists	Journalists	Others	Total	Approx.%
Imo-South East	12	8	6	2	28	26.7
Kaduna- North West	13	4	8	7	32	30.5
Nasarawa- North Central	8	3	5	1	17	16.2
Osun-	2	5	2	3	12	11.4

South						
South						
Rivers- South South	5	6	3	2	16	15.2
Total	40(39%)	26(29.8%)	24(22.9%)	15(14.3%)	105	

A total of 40 lawyers representing approximately 39% responded. Also 26 political scientists representing approximately 24.8% responded. 24 Journalists representing 22.9% approximately filled and returned their questionnaires. 15 others respondents comprising other professions filled and returned their questionnaires 14.3% of the respondents.

The table further shows that Kaduna State in the North West produced the highest number of respondents with 32 persons representing approximately 30.5%. This is followed by Imo State in South East with 28 persons representing 26.7%. Nasarawa State in North Central comes third with 17 respondents representing 16.2% approximately. Rivers State in South-South has 16 respondents representing

approximately 15.2%. The last but not the least is Osun State in South West with 12 respondents, representing 11.4% approximately.

Table 2 – Research question 1

Would you say that impeachment process has done more harm than good in Nigeria’s constitutional and political developments?

Responses	Lawyers	Political Scientists	Journalists	Others	Total	Approx.%
Yes	35	20	23	5	83	79.1
No	5	6	1	6	18	17.1
No Idea	-	-	-	4	4	3.8
Total	40	26	24	15	105	

From table 2, a total of 83 persons (79.1%) believe that impeachment process has done more harm than good in Nigeria constitutional and political developments. The table also shows that 18 persons representing 17.1% are of the opinion that it has not done more harm than good, whereas only four (4) persons (3.8%) has no idea of the subject matter.

During the interview session, the respondents were of the view that due to the number of impeachment cases upturned or nullified by the courts, it is very obvious that impeachment process has done more harm than good. They argued that Nigerian legislators are not yet mature like their American counterparts who rarely activate the impeachment clause in the United States Constitution.

Table 3 – Question 2

Would you suggest any form of amendment to the procedure relating to impeachment proceedings under the 1999 Constitution of Nigeria?

Responses	Lawyers	Political Scientists	Journalists	Others	Total	Approx.%
Yes	40	25	20	5	90	85.7
No	-	1	4	5	10	9.5
No Idea	-	-	-	5	5	4.8
Total	40	24	24	15	105	

The table shows that 90 respondents representing 85.7% approximately believe that sections 143 and 188 of the 1999 Constitution of Nigeria (as amended) require amendment. 10 respondents representing 9.5%

are of the opinion that there is no need for any amendment while only 5 persons have no idea and they represent 4.8% approximately.

All the respondents interviewed were explicit that sections 143 and 188 of the Constitution need to be amended to remove some ambiguities and uncertainties.

Table 4 – Question 3

Which of the following constitutional provisions relating to impeachment proceedings would you like to be amended?

Responses	Lawyers	Political Scientists	Journalists	Others	Total	Approx.%
Meaning of Gross misconduct	25	16	14	5	60	57.1
Quorum for impeachment	2	5	5	3	15	14.3
Service of impeachment notice	8	4	3	2	17	16.2
None of	5	1	2	5	13	12.4

the above						
Total	40	26	24	15	105	

From Table 4 above, 60 persons representing 57.1% of the whole respondents are of the opinion that the meaning of ‘gross misconduct’ should be amended. 17 respondents (16.2%) believe that the area that requires amendment is the provision relating to service of impeachment notice, while 13 persons representing 12.4% are of the opinion that none of the provisions should be amended.

The two respondents interviewed also opined that sections 143(11) and 188(11) ought to be amended in such a way that it would not be the legislature that would determine what acts amount to gross misconduct.

On quorum for impeachment, the two interviewees maintained that the quorum for impeachment should be sustained. In other words, one-third for impeachment notice and two-thirds for final removal of the Chief Executive or the Deputy.

They also believe that the provisions relating to panel of seven should be sustained as it is now in the Constitution.

Table 5 – Question 4

What would you suggest to be the quorum for impeachment proceedings under the 1999 Constitution of Nigeria?

Responses	Lawyers	Political Scientists	Journalists	Others	Total	Approx.%
Simple majority	-	6	2	5	13	12.4
2/3 majority	35	15	15	8	73	69.5
4/5 majority	5	5	7	2	19	18.1
Total	40	26	24	15	105	

Table 5 shows that 13 respondents, approximately 12.4% want a simple majority as quorum for impeachment of Governors, Deputy Governors as well as President or Vice President. 73 respondents or 69.5% would like the current provision of two-thirds majority to be

maintained while 19 respondents (18.1%) opined that four-fifths majority would be better instead of the current two-thirds majority.

One of our interviewees subscribes that the two-thirds majority provided in the Constitution should be retained while the other one pitches his tent with those proposing a new four-fifths majority.

Table 6 – Question 5

Do you think it is necessary to amend sections 143(10) and 188(10) of the 1999 Constitution of Nigeria that oust the jurisdiction of courts from entertaining issues relating to impeachments?

Responses	Lawyers	Political Scientists	Journalists	Others	Total	Approx.%
Yes	36	20	21	10	87	82.9
No	4	6	3	4	17	16.2
No Idea	-	-	-	1	1	0.95
Total	40	26	24	15	105	

Table 6 shows that 87 respondents representing 82.9% believe that sections 143(10) and 188(10) which oust the jurisdiction of courts to entertain issues relating to impeachment proceedings should be amended. 17 respondents representing 16.2% are of the opinion that the sections

should not be amended. Only one respondent (0.95%) has no idea of the subject matter.

The two interviewees are in one accord that the two sections in question (which are in *pari materia*) need to be amended as it serves no useful purpose. They saluted the courage of the courts in intervening and giving the sections, the desired interpretation which is tantamount to judicial amendment. They called on the legislature to adopt the judicial amendment as propounded in the case of *Inakoju & Others v. Adeleke & Others*¹ to amend the Constitution accordingly.

Table 7 – Question 6

Has the Judiciary done enough in checkmating the excesses of the Legislature as regards impeachment proceedings?

Responses	Lawyers	Political Scientists	Journalists	Others	Total	Approx.%
Yes	38	15	18	8	79	75.2
No	2	10	4	2	18	17.1
No Idea	-	1	2	5	8	7.6
Total	40	26	24	15	105	

1. (2007) 1 S.C.N.J. 1. That is to say the court has jurisdiction to enquire whether the procedure for impeachment was duly complied with.

79 respondents above representing 75.2% give kudos to the Judiciary for a job well done. 18 respondents representing 17.1% however believe that the judiciary has not done well to checkmate the excesses of the legislature. Only 8 respondents about 7.6% have no idea whether the judiciary has done well or not. Our interviewees were unanimous that the judiciary has played its role very well to curtail the excesses of the legislature in carrying out impeachment proceedings.

Table 8 – Question 7

What would you suggest as penalties for overzealous legislators who knowingly breach constitutional provisions relating to impeachment proceedings?

Responses	Lawyers	Political Scientists	Journalists	Others	Total	Approx.%
To be recalled	25	16	15	10	66	62.9
To be banned	15	10	9	3	37	35.2
No Idea	-	-	-	2	2	1.9
Total	40	26	24	15	105	

From the table above, 66 respondents representing 62.9% want violators of the Constitution to be recalled by the electorate while 37 respondents or 35.2% prefer that the violators of the Constitution should be banned. Only 2 respondents have no idea of the subject matter.

The two interviewees were divided on the issue. The lawyer wants violators of the constitutional provisions relating to impeachment process banned for life while the political scientists opined that such violators should face the double jeopardy of being recalled and banned for life. The two respondents however believe that meting out the punishment may turn out to be a wild goose chase. This is because Nigerian politics is still at the rudimentary stage. Many Nigerians still attach so much sentiments such as religion, tribalism and nepotism to politics and do not care whether politicians are actually doing well or not. This explains why politicians undergoing trials often mobilize their people to protest against their trials in court by whipping up tribal and religious sentiments.

4.4 Result of Data Analysis

Having carefully scrutinized and analysed the data collected or gathered from the questionnaire as well as responses from our interviewees, the following will be said to be the major results or findings of this research.

- (i) Impeachment process as enshrined in the 1999 Constitution of Nigeria has done more harm than good as the legislators (particularly state legislators) use the provision to witch-hunt the Governors and their Deputies.
- (ii) Some provisions of the 1999 Constitution relating to impeachment proceedings particularly sections 143(10) and 188(10) as well as 143(11) & 188(11) respectively put the Executive at the mercy of the legislature. In other words, sections 143(10) and 188(10) which oust the jurisdiction of courts from enquiring or entertaining any case arising from any

impeachment process, indirectly empower the legislature to oppress the Executive unnecessarily. Similarly, sections 143(11) and 188(11) which define the word gross misconduct empower the Legislators to impeach the Chief Executive Officers based on whatever the legislators consider to be gross misconduct. This, no doubt makes the Executive vulnerable in the hands of the Legislature.

- (iii) The Judiciary has played its adjudicative role very well even in the midst of attempt to rob it of this all important duty given to it under section 6(6) of the 1999 Constitution. The Judiciary has done well in checkmating the excesses of the legislature in issues relating to impeachment proceedings. The respondents are almost unanimous on this.
- (iv) The research shows that more Nigerians want legislators who breach constitutional provisions

relating to be penalized by way of recall from parliament.

- (v) More Nigerians want the constitutional provision relating to quorum for impeachment to be retained.

In other words the two-third requirement for impeachment of political office holds should be retained in the Constitution.

4.5 Conclusion

This chapter has xrayed the presentation, analysis, interpretation and results of the raw data gathered from selected respondents. These were done by utilizing tables and percentages.

In all, the responses as tabulated show that most Nigerians are not impressed with the way impeachment proceedings are conducted in Nigeria within the period under review. Majority of the respondents also picked holes in the constitutional provisions relating to impeachment and called for amendment of same. They opined that violators of these constitutional provisions should be penalized by recalling them from their parliamentary duties. They however praised the judiciary for living up to expectations in spite of all odds.

CHAPTER FIVE

THE ROLES OF COURT AND OTHER INSTITUTIONS IN IMPEACHMENT PROCESS

5.1. Introduction

This chapter examines the roles being played by the courts, the security agencies such as the Military, Police and Department of State Security as well as the media and the electorate in impeachment process under the 1999 Constitution of Nigeria.

The roles of these institutions cannot be overemphasised. The presence or absence of these institutions could make or mar any impeachment proceeding so called. The absence of these institutions or where they failed to rise to the occasion could give birth to total anarchy, chaos and unmitigated disaster leading to unprecedented breakdown of law and order.

As we shall see in this chapter, the courts, particularly, have played very important roles in curbing the excesses of our legislators who embarked on frivolous impeachment exercises to the annoyance and

amazement of all well meaning Nigerians, lovers of due process and watchers of the political process.

5.2 The Role of Courts

There is no doubt that the courts have played very significant roles in seeing to it that the constitutional provisions relating to impeachment process are complied with to the letter without fear or favour.

The landmark decision in *Inakoju & Others v. Adeleke & Others*¹ has fully liberated the courts from legislative imprisonment whereby courts were hitherto denied the jurisdiction to entertain any case arising from impeachment proceedings². All the impeachment cases that arose before Inakoju's case were all nipped in the bud based on jurisdictional deficiency occasioned by the provisions of section 188(10) of the 1999 Constitution of Nigeria. This section is in pari materia with the 1979 Constitution³ wherein Balarabe Musa was impeached and his attempt to challenge his impeachment met a brickwall created by the ouster clause under section 170(10) of the 1979 Constitution of Nigeria. In other

1. (2007) 1 S.C.N.J. 1

2. See for instance *Abaribe v. Abia State House of Assembly* [2003] 14 NWLR p. 466

3. Section 170(10) thereof.

words the court held that it lacked the jurisdiction to entertain the matter brought before it.

The decision in the case of *Inakoju & Others v. Adeleke & Others*⁴ however has changed the story. The court lived up to its responsibility and did the needful to the admiration of all lovers of democracy and

good governance. It will not be overemphasised if one should say that the Nigerian Courts have saved our democracy by checkmating the overzealousness and excesses of the legislature.

It should be noted that the Constitution of the Federal Republic of Nigeria, 1999 did not specifically provide for the role of the courts during impeachment proceedings. The only role assigned to the Chief Judge of a State or the Chief Justice of Nigeria (CJN) as the case may be, is with respect to constituting a panel of seven persons to investigate the allegation contained in the notice of impeachment. This constitutional role has been held to be a non-judicial function in the case of *Alamiyeseigha v. Igoniwari & Others*⁵. In other words, the courts have no specific role to play during impeachment proceedings.

4. Supra

5. Supra

To convince any doubting Thomas about this anomaly, it is very obvious and conspicuous that the 1999 Constitution of Nigeria (as amended)⁶ unambiguously and specifically strip the courts the requisite jurisdiction to entertain any issue arising from impeachment proceedings.

However the courts have refused to be caged by the above ouster clauses. It is very glaring and obvious that the Constitution never intended donating functions and jurisdiction to the courts under section 6(6) of the 1999 Constitution only to

deprive them of the same power completely in matters relating to impeachment proceedings.

In the words of Niki Tobi, J.S.C.,⁷ the learned jurist opined inter alia as follows:

...Fortunately, the society and its people are not totally helpless as the judiciary, in the performance of its judicial functions under section 6 of the Constitution is alive to check acts of violation, breach and indiscretions on the part of the Legislature. That is what I have done in this judgment. I do hope that this judgment will remove the apparent wolf in the appellants as members of the House of Assembly of Oyo State.

His Lordship has said it all and cannot be faulted. In most of the impeachment cases where the legislature violated the provisions of the

6. See Sections 143(10) and 188(10) of the 1999 Constitution (as amended)

7. Inakoju v. Adeleke & Others (2007) 1 S.C.N.J. 1

Constitution relating to impeachment process, the courts never hesitated in nullifying the purported impeachment in all appropriate cases.

In Inakoju's case⁸ for instance where the Oyo State House of Assembly purportedly impeached the then Governor, Ladoja in a Hotel outside the Legislative chamber and without the required quorum for that purpose, the Court of Appeal and later the Supreme Court nullified the process and held that it was null and void.⁹

In the same vein, the Court of Appeal rose to the occasion and voided the impeachment of Mr. Peter Obi of Anambra State on the ground, inter alia, that the notice of impeachment against him was not effected on Peter Obi as constitutionally enshrined¹⁰. Needless to say he was reinstated as the Governor of Anambra State.

The Supreme Court in the case of *Abubakar Danladi v. Narisu Audu Dangiri & 6 Others*¹¹ stamped its authority by nullifying the purported impeachment of the appellant the Deputy Governor of Taraba State on the important ground that he was not given a fair hearing during his purported impeachment by the Taraba State House of Assembly.

8. *Ibid.*

9. The Supreme Court most importantly held in this case that courts have jurisdiction to inquire whether the provisions relating to impeachment process were duly complied with. This decision technically amended the provisions of Sections 143(10) & 188(10) of the 1999 Constitution.

10. *Mike Balonwu & Others v. Peter Obi (Supra)*.

11. *Supra*.

Apart from checking the excesses of the Legislature, the Supreme Court had also risen to the occasion against executive recklessness and excesses in trying to impeach or remove the Vice President of Nigeria through a judicial impeachment¹².

In this case, the Federal Government under the leadership of then President Obasanjo was having a running battle with Atiku Abubakar who was accused of disloyalty to the President by, among other things defecting to another party while still holding the position of Vice President of Nigeria.

The Supreme Court was urged to hold that the act of the Vice President amounted to a gross misconduct and should be removed from office.

The Supreme Court rejected the temptation of usurping the role of the

legislature and held that the act of impeachment of the Vice President could only be carried out by the legislature as there was no room for judicial impeachment under the 1999 Constitution of Nigeria.

At this juncture, one can conveniently vouch for the courts (the judiciary) that the constitutional role of interpretation of statutes as well as the Constitution has been satisfactorily performed without fear or

12. A-G. Federation & 2 Ors. v. Atiku Abubakar & 3 Others (2007) 4 S.C.N.J. 456

favour particularly as it relates to impeachment proceedings. The recent case of APC v. PDP & 2 Others¹³ is a case in point. In this case Mr. Peter Ayodele Fayose of PDP, who won the June 2014 gubernatorial election in Ekiti State was challenged by APC on the ground inter alia that he was not qualified to contest the election having been impeached as a Governor in 2006.

The Supreme Court after reviewing the facts that led to the purported impeachment observed that prior to the purported impeachment of Fayose in 2006, the Ekiti State House of Assembly did not comply with the procedure laid down by the Constitution with regard to impeachment proceedings, particularly as it affects the Constitution of Panel of seven persons by the Chief Judge of Ekiti State. It was shown that the Chief Judge had constituted a panel of seven persons which

exonerated the Governor and his Deputy but the Ekiti State House of Assembly rejected the investigation of the panel but instead suspended the Chief Judge and appointed an Acting Chief Judge who constituted another Panel that eventually gave a verdict of “guilty” against the

13. Supra.

Governor and his Deputy culminating in their purported impeachment on Monday October 16, 2006.

In frowning at the impunity demonstrated by the Ekiti State House of Assembly, the Supreme Court observed inter alia that

- (1) The second impeachment Panel was in violation of section 188(8) of the Constitution.
- (2) The “Acting Chief Judge” who set up the Panel was not appointed in accordance with relevant constitutional provisions. At the material time he was not Acting Chief Judge and he had no powers to act as one.
- (3) The unconstitutionality of his purported appointment as Acting Chief Judge of Ekiti State tainted his action in that capacity with illegality and rendered his actions in that office including the setting up of the Panel null and void and of no factual and legal effect.
- (4) The proceedings conducted by the Panel was an exercise in futility and
- (5) The finding of guilt made against the 2nd respondent¹⁴ is not worth the paper on which it was written¹⁵.

In his own contribution Rhodes-Vivour, J.S.C. held inter alia as follows:

The Panel set up by the Chief Judge of Ekiti State reported to the Ekiti State House of Assembly that the allegations against the 2nd respondent were not proved. That report is final and in accordance with section 188(8) of the Constitution no further proceedings can/shall be taken in

14. Peter Ayodele Fayose

15. At page 50.

respect of the matter resolved by the first Panel. Whether the 2nd Panel was properly or improperly constituted is not the issue. The proceedings of the 2nd Panel falls within “no further proceedings shall be taken in respect of the matter” Consequently further proceedings by the 2nd Panel which culminated in the impeachment of the 2nd respondent was illegal and unconstitutional clearly contrary to the provisions of section 188(8) of the Constitution¹⁶.

There is no doubt that the courts have performed the role expected of them in matters relating to impeachment proceedings. To a very large extent, Nigerian courts have succeeded in checkmating the excesses and constitutional breaches of both the Legislative and Executive arms of Government as shown in the cases discussed in this chapter. In fact for the timely intervention of courts, impeachment of State Executive almost became a past time as some State Assemblies applied it at the slightest provocation¹⁷. There is no gainsaying the fact that this past time activity by legislators has been checked by our courts to the very good and security of our democracy¹⁸. Little wonder that our

16. At page 86.

17. Madaki A.M. “An Examination of the Jurisdiction of Courts to Determine Impeachment Proceedings under the 1999 Constitution of Nigeria In: Agom A. et al (eds) *Ogebe & The Law* op. cit. at p. 143.

18. The Enugu State High Court recently overturned the purported impeachment of the former Deputy Governor of the State Mr. Sunday Onyebuchi. The court found among other things that the allegation

of having a poultry in Government House did not amount to gross misconduct contemplated under Section 188(11) of the 1999 Constitution of Nigeria.

respondents in our questionnaire and oral interview gave the courts excellent marks. The courts deserve the accolade having played the role expected of them very excellently.

5.3 The Role of Security Agencies

The good intention of the framers of the 1999 Nigeria Constitution in bringing sanity, checks and balances to governance comes with it some other inherent dangers such as uprising, violence and mayhem which may follow impeachment proceedings, particularly where the impeachment proceedings were effected or exercised against a popular Chief Executive like the President or a Governor. Such unpopular impeachment proceedings are usually rebuffed by the electorate as witnessed in Ekiti State during the time Governor Ayo Fayose was purportedly impeached. Declaring a State of emergency, the then President, Olusegun Obasanjo announced to the Nation in a live broadcast and gave reasons for the declaration of State of emergency. The President said among other things:

...the situation in Ekiti State...has been characterised by acts of violence and mayhem allegedly instigated by an impeached Governor of the State and some distrungled elements who are bent on taking the State on the road to perdition and destruction. The situation in Ekiti State,

which has severely tasked law enforcement agents, is still smoldering and if not resolutely checked now, could snowball into a complete state of anarchy and lawlessness that could spread to neighbouring States. Given the threat which this unacceptable situation presents to our democratic consolidation process and our collective will as a Nation, this State of affairs cannot be allowed to persist¹⁹.

With all these in our minds, it cannot therefore be overemphasised that our security agencies have much roles to play during impeachment proceedings in any part of Nigeria. It is the duty of the security agencies to be at high alert to prevent any act of mayhem and wanton destruction of lives and property in any part of Nigeria.

For the purpose of this discussion the security agencies will be restricted basically to the armed forces and the Nigerian Police Force even though the roles of the Department of State Security (DSS) in gathering intelligence report is well known and cannot be ignored.

Although the Constitution does not specially provide for any particular role during impeachment proceedings but just as we observed in the case of courts, the roles assigned by the Constitution and other relevant

19. Oguche S. Challenges of use of State of Emergency In Democratic Governance: Plateau and Ekiti Experiences In: Azinge E. (ed) *State of Emergency In Nigeria*. Op. cit. at p. 357. Note, in the First Republic the removal of the Premier of Western Nigeria by the Governor also led to mayhem in the Region and that culminated into declaration of State of Emergency by the Federal Government in Western Region of Nigeria.

Acts of the National Assembly such as the Armed Forces Act and Police Act respectively, the security agencies have the special duty to

enforce peace and security whenever there is a breakdown of law and order in any part of the Federation including crises arising from impeachment proceedings as we saw in Western Nigeria, following the removal of the Premier of the Western Region, Mr. S.L. Akintola. The same scenario also reared its ugly head again when Mr. Peter Ayodele Fayose was purportedly impeached by the Ekiti State House of Assembly in 2006. In both situations, there were moments of mayhem, wanton destruction of lives and property thereby culminating in declaration of State of emergency by the Federal Government of Nigeria.

In recent times, precisely in 2014, the attempt to impeach the Governor of Nasarawa State Alhaji Al-Makura sparked of a hell of crisis in Nasarawa State where the indigenes were pitched against one another. Lives and property were unfortunately lost.

The immediate lesson to be learnt from these incidents is the fact that our security agencies particularly the Armed Forces and the Police should be proactive in checkmating all these calamities by making use of intelligence gatherings and acting on them timeously and to be proactive at any point in time. The Armed Forces and the Police should be mindful of their constitutional and other statutory roles.

To this effect the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides:

214(1) There shall be a Police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.

(2) Subject to the provisions of this Constitution –

(a) The Nigeria Police Force shall be organised and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly,

(b) The members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law...

Following the above constitutional provision, the National Assembly has enacted the Police Act²⁰ which provides for, inter alia, the powers and duties of the police.

Section 4 of the Police Act provides for the general duties of the police which includes the prevention and detection of crime, the apprehension

20. Cap. P19 Laws of The Federation of Nigeria 2004.

of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required of them by, or under the authority of this or any other Act. It cannot be overemphasised that these outlined duties and powers can be brought to bear during any period of impeachment proceeding in any part of the country in other

to nip to the bud any perceived act of mindless and wanton destruction of lives and property as witnessed in the defunct Western Region of Nigeria, Ekiti State under Fayose and Nasarawa State during the failed attempt to impeach the Governor, Al-Makura.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) also provided for the duties and powers of the Armed Forces of the Federation. Section 217 provides as follows:

- 217(1) There shall be an Armed Forces for the Federation as may be established by an Act of the National Assembly.
- (2) The Federation shall subject to an Act of the National Assembly made in that behalf, equip and maintain the armed forces as may be considered adequate and effective for the purport of –
 - (a) defending Nigeria from external aggression.
 - (b) maintaining its territorial integrity and securing its borders from violation on land, sea or air.
 - (c) suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but subject to such conditions as may be prescribed by an Act of National Assembly; and
 - (d) performing such other functions as may be prescribed by an Act of the National Assembly.

The National Assembly consequent upon the above constitutional provision enacted the Armed Forces Act²¹. Section 1(1) of the Act charges the armed forces of Nigeria with the responsibility of defending the country by land, sea and by air and such other duties as the National Assembly may from time to time, prescribe or direct by an Act.

Section 8(1) of the Armed Force Act provides as follows: In this section “operational use of the armed forces” includes the operational use of the Armed Forces in Nigeria for the purpose of maintaining and securing public safety and public order.

The combination of all these legislations, both constitutional and statutory point to the fact that the security agencies have special roles to play during impeachment proceedings. Just as the courts rose up to their roles, the security agencies particularly the police and armed

21. Cap A20 Laws of The Federation of Nigeria 2004.

forces (when the need arises) should be more proactive in their duties and responsibilities in order to prevent any breakdown of law and order which may arise as a result of removal of a political office holder from office.

There is no doubt that the security agencies have played these roles well to the best of their abilities, although it is equally submitted that more efforts need to be employed in seeing that they live up to the desired expectations.

5.4 The Role of The Mass Media

It is often said that the Mass Media is the fourth estate of the realm. By the mass media we are referring to the Newspapers, Magazines, Radio, Television and of course the recent social media such as twitter,

facebook, etc. In recognising the roles of the mass media, the Constitution of the Federal Republic of Nigeria 1999 (as amended)²² provides as follows: The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the Government to the people. (emphasis added)

22. Section 22 thereof.

From the underlined words in section 22 of the 1999 Constitution, it is very clear that the mass media have vital roles to play in seeing to it that every arm of Government is accountable to the people concerning their activities, including impeachment process or proceedings. Therefore it goes without saying that the role of the mass media cannot be overemphasized, hence they are sometimes called “the court of public opinion”. In the words of Nnaemeka-Agu, J.C.A. (as he then was): ...the press and other media have a very vital function to perform in our democratic system of Government and could even be called the court of public opinion²³

The learned Jurist however opined that there is nothing in our Constitution to support the contention that they form the fourth arm of government. As we discussed in other institutions such as the courts

and the security agencies, the Constitution makes no specific provision under sections 143 & 188 as to the roles of the mass media during impeachment proceedings; there is no doubt that the role provided under section 22 of the 1999 Constitution suffices to empower the

23. Tony Momoh v. The Senate (1984) 4 NCLR 269.

mass media to cover impeachment proceedings and educate the masses on the steps taken or being taken by the legislature in impeachment of public officer holders such as President, Vice President, Governor and Deputy Governor. By so doing, their constitutional role of upholding the responsibility and accountability of government to the people will be fulfilled.

For instance, it will be part of the role of the media to report and bring to the knowledge of the electorate the various steps taken by the legislature when any impeachment proceedings are going on against a Governor or his Deputy as well as the President or Vice President. Televising such proceedings will also be part of the role of the media.

In the case of *Danladi v. Taraba State House of Assembly and 5 Others*²⁴ Rhodes-Vivour, J.S.C. while condemning the attitude of legislators who secretly impeached the then Deputy Governor, Alh. Abubakar Danladi in a Guest House instead of in the hallowed

chamber of the House, opined as follows:...The whole world saw on television the impeachment proceedings of one time President of

24. *Supra*, pp. 153-154.

U.S.A., Bill Clinton by the House of Representatives and every step in the impeachment proceedings was taken/done in the House of Representatives and not in a Hotel.

The Nigerian mass media can take a clue from this dictum and do likewise so as to feed the electorate and other willing and interested parties with details of any impeachment process going on in the country.

In *Inakoju & Others v. Adeleke & Others*²⁵ the Supreme Court while condemning the secrecy surrounding the purported impeachment of Ladoja as Governor of Oyo State opined *inter alia* as follows:

A legislature is not a secret organisation or a secret cult or fraternity where things are done in utmost secrecy in the recess of a Hotel. On the contrary, a legislature is a public institution, built mostly on public property to the glare and visibility of the public. As a democratic institution, operating in a democracy, the actions and inactions of a House of Assembly are subject to public judgment and public opinion. The public nature and content of the legislature is emphasised by the gallery where members of the public sit to watch the proceedings...

This dictum underlines the role of the mass media in disseminating pieces of vital information to the public particularly as the gallery will only contain few people

25. *Supra*, p. 67.

while millions of other people will stay at home without hearing the news of the proceedings.

The media, to a large extent, have been living up to expectation in playing this role of informing the public the activities of government, particularly as it relates to removal of political office holders or attempts to do so.

In the ill-fated attempt to remove the then Vice President of Nigeria, Alhaji Atiku Abubakar,²⁶ the news went viral in our Dailies as well as the broadcast media such as the radio and television stations. In his suit to challenge his purported removal from office through unconstitutional means, the then Vice President Atiku Abubakar, relied heavily on the publications contained in the media to prove his case.

In his affidavit in support of the originating summons, the deponent on behalf of the Vice President deposed *inter alia* as follows:

.....

13. That on Saturday 23rd of December, 2006, the President of the Federal Republic of Nigeria through one Mallam Uba Sanni, his Special Assistant on Public Affairs, announced the office of the plaintiff as Vice President of the Federal Republic of Nigeria vacant.

26. *A-G. Federation & 2 Others v. Alh. Atiku Abubakar & 3 Others (Supra)*.

14. That I know as a fact that on Sunday 24th December, 2006, several National Dailies published the announcement as mentioned in paragraph 13 above.

15. ... Now shown to me and attached as exhibits '1', '2' and '3' respectively are copies of Leadership, Thisday and Guardian Newspapers which conspicuously published the said announcement...²⁷

It should be noted that following media publications of the attempt to remove the Vice President by illegal and unconstitutional means there were widespread outcries and condemnation in the court of public opinion and which the Supreme Court in this case endorsed by holding that the President lacked the vires to remove or impeach the Vice President for whatever reason, without recourse to the National Assembly whose constitutional duty it is to remove or impeach the President or the Vice President as the case may be.

5.5 The Role of the Electorate

The electorate in this context refers to all eligible voters in a particular constituency. The electorate may be those who elected the State legislators or the National Assembly lawmakers, as well as the Governors and President.

²⁷. Ibid at p. 537.

There is no specific role assigned by the Constitution to the electorate when it comes to matters of impeachment of political office holders, as we earlier on discussed in the case of the courts, security agencies and the media. In the case of the electorate, the law empowers them under

section 69 of the Constitution of the Federal Republic of Nigeria to recall any National legislator from his parliamentary seat before the end or expiration of his term of office²⁸.

It is submitted that this power given to the electorate can be brought to bear on all those erring legislators who embark on impeachment proceedings unnecessarily to the annoyance of the electorate who elected them into office. Where the electorate exercise this constitutional power very well, it will serve as a deterrent to other lawmakers thereby putting them under a serious check at every point in time.

Recall of a legislator from parliament is the equivalent of the impeachment of the executive such as the President, Vice President, Governor or Deputy Governor from office. To avoid being recalled

28. Section 110 of The Constitution applies to State legislators.

from parliament, a legislator has to ably represent the people of his constituency²⁹.

Unfortunately, there is no known case of any recall orchestrated by the electorate.

For the purpose of recalling a member of the National Assembly, section 69 of the Constitution provides as follows:

A member of the Senate or of the House of Representatives shall be recalled as such a member if:

- (a) There is presented to the Chairman of Independent National Electoral Commission a petition in that behalf signed by more than one half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member, and
- (b) The petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

The provision of Section 110 of the 1999 Constitution which relates to the recall of a member of the State House of Assembly is in pari materia with the above provision of Section 69. It goes without saying that the electorate have a role to play during impeachment proceedings.

29. Malemi E. *The Nigerian Constitutional Law*, Princeton Publishing Company, Lagos (2006) p. 211.

They have a duty to monitor the impeachment proceedings and see to it that the legislature complies with constitutional provisions relating to impeachment process. Where the process is not duly followed, the electorate in the affected area can first organise a peaceful protest to register their grievances and then follow it up with recall proceedings

if the legislators are adamant in continuing with their unpopular impeachment process.

As a general rule, a member of the National Assembly or House of Assembly who is being recalled cannot challenge the action of the electorate in court³⁰. Therefore, where the electorate play this role very well and appropriately too, the unwarranted excesses of our state and national legislatures will be put in check, particularly such excesses that relate to impeachment proceedings.

Unfortunately, despite the unprecedented gale of impeachment proceedings that pervaded our political scene particularly between 1999 and 2014, there is no record of any recall proceedings taken against any legislator by the electorate from the affected areas who

30. Ibid, p. 212.

obviously felt very aggrieved. It is very apparent that the Nigerian electorate are ignorant of this constitutional provision.

5.6 Conclusion

The role of the courts, security agencies, media and the electorate as discussed in this chapter cannot be overemphasised. The 1999 Constitution of Nigeria has indirectly provided for roles expected of these institutions during impeachment proceedings. It is therefore the

duty of these institutions to play their roles well and do the needful at any point in time their roles are required during impeachment proceedings.

In the words of Tobi, J.S.C. in *Inakoju & Others v. Adeleke & Others*³¹

...When the Legislature, the custodian, is responsible for the desecration and abuse of the provisions of the Constitution in terms of patent violation and breach, society and its people are the victims and the sufferers; ...Fortunately, society and its people are not totally helpless, as the judiciary, in the performance of its judicial functions under section 6 of the Constitution, is alive to check acts of violation, breach and indiscretions on the part of the Legislature...

31. *Supra* at pp. 101-102.

It is submitted equally that the mass media's role of informing the people about activities of government, particularly, when the legislature embarks on unconstitutional procedures in removing or impeaching political office holders, cannot be overemphasised. An enlightened electorate may peacefully protest against such unpopular impeachment process or activate the power of recall under the Constitution. In all these, the role of the security agencies is to be alert and proactive to prevent loss of lives and property.

CHAPTER SIX

SUMMARY AND CONCLUSION

6.1. Summary

This project was mainly carried out to appraise generally the impeachment proceedings under the 1999 Constitution of Nigeria. Efforts were made to examine the roles of the courts, the media, security agencies and even the electorate in this appraisal. In order to have a good appraisal, the researcher employed the use of both primary and secondary sources of information.

To actualise this, questionnaires were administered on respondents and interviews were conducted to extract useful information from

respondents. Law reports were consulted extensively. Secondary sources such as text books and journals were also made use of in carrying out this research. Eight literatures were altogether reviewed. The procedure for impeachment as enshrined in the 1999 Constitution was x-rayed vis-à-vis the various impeachment proceedings carried out by our legislative houses, especially the House of Assembly of Oyo State, Ekiti State, Anambra State, Plateau State, Taraba State, Adamawa State and Enugu State.

6.2 Findings

The findings from this research are summarised as follows: -

1. Impeachment process is used by the legislature to witch-hunt the Executive thereby defeating the intent of the Constitution.
2. The provisions of the Constitution relating to impeachment proceedings are observed more in breach by our Legislators. Certain measures should be put in place to checkmate this anomaly.
3. The courts have played good roles in checkmating the excesses of our Legislators who often embark on impeachment process with reckless mentality as if it is a kind of hobby.

4. The Nigerian electorate have not played their roles well in dealing with legislators who embark on unnecessary and unconstitutional impeachment proceedings, may be due to ignorance of their rights.
5. Attempts to carry out unpopular impeachment process often result in chaos, destruction of lives and property thereby requiring high security alert in the affected areas, which often attracts declaration of state of emergency.
6. Almost all the impeachment cases that were adjudicated in courts were all nullified and victims reinstated or compensated by the courts. This is a big indictment on our Legislature as regards impeachment process.

6.3 Recommendations

The gale of impeachment proceedings that rocked Nigeria between 1999 and 2014 cannot be forgotten in a while. Fired on by their erroneous interpretation of Section 188(10) of the Constitution of the Federal Republic of Nigeria, the Legislators from virtually all the States of Nigeria held their Governors and Deputies to ransom with the

constitutional weapon of impeachment which could be unleashed on any political office holder anytime he fails to do their biddings. The

danger this anomaly poses to the society cannot be overemphasised if left unchecked.

For Nigeria and the society to be totally free from this political hostage by our Legislators, the following recommendations will suffice:

1. There is need to have special Constitutional Courts (created for this purpose only) which shall have jurisdiction to entertain impeachment cases. This court shall have jurisdiction throughout Nigeria. Under the rules of the Constitutional Court, a stay of execution shall be recognised to halt the ambition of the Legislators pending the final determination of the matter before the Constitutional Court.
2. There is need to amend the provisions of the 1999 Constitution relating to impeachment of President, Vice President, Governors and Deputy Governors.

To this extent Section 143 of the 1999 Constitution which provides for impeachment of President and Vice President should be amended

particularly subsection (10) which ousts the jurisdiction of courts from entertaining any matter arising from impeachment proceedings.

Similarly, subsection (10) of Section 188 which provides for impeachment of Governors and Deputy Governors should receive equal attention.

It is therefore recommended that both subsections should be amended by adding the following proviso – “Nothing in this section will prevent the Constitutional Courts from enquiring whether the procedure for impeachment outlined in this section was duly complied with”.

3. The definition of gross misconduct under sections 143(11) & 188(11) respectively should be amended in such a way that only acts that amount to statutory and constitutional breaches should be adjudged to be gross misconduct. The issue of a Deputy Governor being impeached for keeping a poultry should not arise again in Nigeria.
4. Legislators who are adjudged to be reckless and unbecoming in breaching the provisions of the Constitution relating to impeachment proceedings should not only be recalled by the electorate from their

constituency, but should be banned for not more than two years from partisan political participation.

5. There is need for public enlightenment and education for the Nigerian electorate who seem not to be aware of the provisions of the Constitution relating to recall of non-performing lawmakers, especially those of them who abuse the constitutional provisions relating to impeachment process. This will go a long way in checking this ugly trend.
6. The security agencies especially the Police, the Armed Forces and other security outfits should always be 100% alert and proactive whenever there is a case of impeachment proceedings taken against the State Chief Executive of any State so as to nip in the bud any crisis which may erupt in the area concerned.

Although there is no known case of impeachment of President or the Vice President in Nigeria, same goes with even more alert and security consciousness from our security agencies whenever there is any attempt to carry out any impeachment process against the President or the Vice President by the National Assembly.

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Appendix A

Please fill in the blank spaces below and answer the questions that follow by ticking the appropriate options

1. Name (optional)
2. State of residence
3. Occupation/profession
4. Geopolitical zone
5. Would you say that impeachment process has done more harm than good in Nigeria's constitutional and political developments
Yes No No idea
6. Would you suggest any form of amendment to the procedure relating to impeachment proceedings under the 1999 Constitution of Nigeria?
Yes No No idea
7. Which of the following constitutional provisions relating to impeachment proceedings would you like to be amended?
Meaning of Gross Misconduct Quorum for impeachment
Service of impeachment
notice None of the above
8. What would you suggest to be the quorum for impeachment proceedings under the 1999 Constitution? simple majority $\frac{2}{3}$ majority
 $\frac{4}{5}$ majority
9. Do you think it is necessary to amend sections 143(10) and 188(10) of the 1999 Constitution of Nigeria that oust the jurisdiction of courts from entertaining issue relating to impeachment? Yes No No idea
10. Has the judiciary done enough in checkmating the excesses of the legislature as regards impeachment proceedings? Yes No No idea
11. What would you suggest as penalties for overzealous legislators who knowingly breach constitutional provisions relating to impeachment proceedings? To be recalled To be banned No idea