

THE REMOVAL OF EXECUTIVE OFFICEHOLDERS AND QUEST FOR SUSTAINABLE DEMOCRACY IN NIGERIA\*

**Abstract**

*In almost all forms of government, the activities of government are piloted by the executive arm of government or a group of individuals that wears the toga of executive powers implementing and executing mostly laws made by the legislature. As a result of the focal importance of the executive and the legislature arms of government, there is the likelihood of misconduct in the exercise of the powers and functions of the executive and ineffective representation of the electorate by the legislature. One of the major tools at the disposal of the legislature in ensuring that an erring executive does not remain in power is the power of impeachment/removal. This work therefore x-rayed and appraised the relevant provisions of the laws of Nigeria vis-à-vis the removal of executive office holders as a means of ensuring sustainable democracy. The researchers critically analyzed the existing legal and institutional frameworks vis-à-vis the removal of executive officeholders in Nigeria and found among other things that there are shortcomings, abuse, and misuse of the powers of removal of executive officeholders as have been so far experienced in Nigeria. The researchers recommended among others that the existing legal and institutional frameworks should be reviewed and amended to strengthen the legal and institutional frameworks to make the removal of executive office holders less cumbersome and more achievable. Also, impeachment/removal at the legislature stage should be made to serve pre-trial purposes only*

**Keywords:** Removal, Impeachment, Democracy, Legislature, Democracy, Sustainable Democracy, Gross Misconduct.

**1. Introduction**

In democracies, sovereignty belongs to the people from whom the government through the Constitution derives all its powers and authority.<sup>1</sup> Universally, impeachment clauses are meant to make the elected executives to be alive to their responsibilities and to confirm that, sovereignty really belongs to the people. Over the years, there have been unending debates and arguments among legal researchers and experts on the meaning and effect of impeachment in the parlance of Nigerian Constitutional Law; the debates and arguments may be so because the term “impeachment” does not appear in sections 143 and 188 of the Constitution of the Federal Republic of Nigeria 1999 instead removal is provided for in the said sections. Whether or not impeachment can be used interchangeably with the removal provisions in sections 143 and 188 of the Constitution of the Federal Republic of Nigeria 1999 continues to generate debates among legal researchers and experts in Nigeria. First, this research will examine the term impeachment before resolving the issue of whether the researchers will use impeachment interchangeably with removal of executive office holders. The Black’s Law Dictionary defined impeachment as:

A criminal proceeding against a public officer, before a quasi-political court, instituted by a written accusation called articles of impeachment; for example a written accusation of the House of Representatives of the United States to the Senate of the United States against the President, Vice-President, or an officer of the United States, including federal Judges<sup>2</sup>.

Ozekhome<sup>3</sup> defined impeachment as follows:

The word impeachment connotes the practice and procedure by which political elected persons are constitutionally removed from office by the legislature before the expiration of the tenure of office of such elected person. It is the modality adopted by the legislative arm of Government to bring to an end or prematurely determine the tenure of a person’s term of office before its due expiration. It is the sword of Democles over members of the legislature and executive.

In *Inakoju v. Adeleke*<sup>4</sup> the Supreme Court per Tobi JSC, used the definition by the Black’s Dictionary in arguing that impeachment cannot be used as a substitute to the removal provisions in Section 188 of the Constitution of the Federal Republic of Nigeria 1999. The eminent Jurist stressed that the definition of impeachment does not totally reflect the content of section 188 of the Constitution of the Federal Republic of Nigeria 1999 as it conveys some measure of the element of criminality. He maintained that Section 188 of the Constitution is not so worded; that Section 188 of the

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<sup>1</sup> See for example, Section 14(2)(a) of the Constitution of the Federal Republic of Nigeria 1999.

<sup>2</sup> B A Garner, *Black’s Law Dictionary*, (7<sup>th</sup> Edition, West Publishing Co., St. Paul, Minn, 2004) p.755.

<sup>3</sup> M Ozekhome, ‘The Impeachment Process in the Third Arm of Government’ in O Anwo, ‘Critical Appraisal of Impeachment Proceedings of a Governor under the 1999 Constitution’ (2016) Vol. 4, No. 2, *EBSU Journal of International Law & Juridical Review* p. 151.

<sup>4</sup> (2007) 4 NWLR (Pt. 1025) 423 at p. 634, paras. D – E.

Constitution of the Federal Republic of Nigeria 1999 covers both civil and criminal conduct. Therefore, the word should not be used as a substitute for the removal provisions of section 188 of the Constitution of Federal Republic of Nigeria 1999. His Lordship considered impeachment to be peculiar to the United States. The learned and erudite Justice totally rejected the argument of Mr. Ayanlaja SAN (Appellants' Counsel in that appeal) who called his attention to Section 191 of the Constitution of the Federal Republic of Nigeria 1999 where the word impeachment was used on the ground that the case was not instituted pursuant to the said section 191 of the Constitution of the Federal Republic of Nigeria 1999. The respected Justice concluded by stating that section 188 of the Constitution of the Federal Republic of Nigeria 1999 should be regarded as the procedure for removal of Governor or Deputy Governor, not procedure for impeachment.

Amucheazi and Onwuasoanya<sup>5</sup> agreed with the distinguished and noble Law Lord that the word used in Section 188 of the Constitution of Federal Republic of Nigeria 1999 was removal of Governor or Deputy Governor not impeachment but however observed that impeachment was used in Sections 146 and 191 of the Constitution of the Federal Republic of Nigeria 1999. The learned writers respectfully and logically argued that the extant Constitution does not use word in vain. They submitted that the situations created in Sections 143 and 188 of the Constitution can be correctly referred to as impeachment. They noted that in the subsequent case of *Dapialong v. Dariye*<sup>6</sup> the Supreme Court of Nigeria used the word impeachment as a substitute to the removal provisions in Section 188 of the Constitution of the Federal Republic of Nigeria 1999. Similarly, in *Ladoja v. INEC*<sup>7</sup> the Nigerian apex Court (the Supreme Court of Nigeria) freely used impeachment in place of the removal under section 188 of the Constitution of the Federal Republic of Nigeria 1999.

In this study, impeachment will be used interchangeably with the removal provisions in Sections 143 and 188 of the Constitution of the Federal Republic of Nigeria 1999. In this research, impeachment refers to the removal of the President or the Vice President; Governor or Deputy Governor from office under Sections 143 and 188 of the Constitution of the Federal Republic of Nigeria 1999.

## **2. Legal Framework for Removal of Executive Office Holders in Nigeria**

The Legal Framework for the removal of executive office holders in Nigeria consists in the main, the Constitution of the Federal Republic of Nigeria 1999, but can also be safely said to include the Standing Orders of the National Assembly, and the Standing Orders of the States Houses of Assembly.

### **Constitution of the Federal Republic of Nigeria 1999 (as amended)**

Section 143 of the Constitution of the Federal Republic of Nigeria 1999 provides for the power, ground, and procedure of impeachment/removal of the President or Vice-President of the Federal Republic of Nigeria as the case may be. Section 188 of the Constitution of the Federal Republic of Nigeria 1999 provides for the power, ground, and procedure of impeachment/removal of the Governor or Deputy Governor of any of the States in Nigeria as the case may be,

### **Senate Standing Order 2015 (as amended)**

Impeachment/Removal proceedings for the removal of the President or Vice-President of Nigeria require debate and resolutions. The *Senate Standing Order 2015 (as Amended)* makes provisions on rules of debate and voting in the Senate.

### **States Houses of Assembly Standing Orders**

Impeachment proceedings for the removal of the Governor or Deputy Governor of Nigeria require debate and resolutions. The *Standing Orders of the States Houses of Assembly* make provisions on rules of debate and voting.

## **3. Institutional Framework for Removal of Executive Office Holders in Nigeria**

### **National Assembly**

The power to impeach the President or Vice-President of Nigeria is vested in the National Assembly of Nigeria.<sup>8</sup> The National Assembly is bicameral being made up of the Senate and the House of Representatives.<sup>9</sup> From the provisions of section 143 of the 1999 of the Constitution of the Federal Republic of Nigeria 1999, the procedure for the impeachment (removal) of the President and/or the Vice President from office by the National Assembly is summarized by the researchers as follows:

1. There must be a notice of allegation of gross misconduct [impeachment notice] and for the said notice to be valid, it must be in writing and must be signed by not less than one-third of the members of the National Assembly;

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<sup>5</sup> O Amucheazi and C Onwuasoanya, *The Judiciary, Politics and Constitutional Democracy (1999-2007)* (Snaap Press Ltd, Enugu 2008) pp. 189.

<sup>6</sup> (2007) 8 NWLR (Pt. 1036) 239.

<sup>7</sup> (2007) 10 MJSC 1.

<sup>8</sup> Constitution of the Federal Republic of Nigeria 1999, s. 143

<sup>9</sup> Constitution of the Federal Republic of Nigeria 1999, s. 47

2. The aforesaid notice of allegation of gross misconduct must be presented to the President of the Senate, and the notice of allegation of misconduct must contain the particulars of the gross misconduct which the President or Vice-President is allegedly guilty of;
3. A copy of the notice of allegation of misconduct must be delivered/served on the President or Vice-President. Also, a copy of the notice of an allegation of misconduct and the written defence thereto, if any, shall be served on each member of the National Assembly at the instance of the Senate President, and the service/delivery must be effected within seven days from the date the notice of allegation was received by the Senate President;
4. Within fourteen days from the date of the presentation of the impeachment notice to the Senate President, the National Assembly shall without debate, resolve by motion, whether or not the allegation of gross misconduct shall be investigated;
5. The resolution for the allegation to be investigated shall not be passed except by the support / votes of not less than two-thirds majority of all the members of each house of the National Assembly.
6. Not later than seven days from the date of the passage of the resolution to investigate the allegation, the Chief Justice of Nigeria at the request of the Senate President shall constitute a seven-man Panel made up of people of impeccable integrity to investigate the allegation of gross misconduct. The members of the said Panel must be people who are not members of any public service, legislative house or political party.
7. The President or Vice-President whose conduct is being investigated shall have a right to defend himself in person and be represented before the Panel by legal practitioner(s) of his own choice.
8. The aforesaid Panel shall have such powers and exercise its functions in accordance with such procedure as may be stipulated by the National Assembly.
9. The aforesaid Panel must submit its findings (investigation report) to each house of the National Assembly within three months from the date of the appointment/establishment of the Panel.
10. Where the Panel's investigation report is in the negative, that is to say where it says that the allegation of gross misconduct is not proved, the impeachment proceedings abate/terminate automatically at that stage.
11. Where the panel's investigation report is in affirmative, that is to say where it says that the allegation is proved against the executive office holder in question, then within fourteen days of the receipt of the said report, each house of the National Assembly shall consider the report and if by a resolution supported by two-thirds majority of all members of each house of the National Assembly investigation report is adopted, then the President or Vice-President shall stand removed from the date of the adoption of the report.
12. No proceeding or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any Court.

### **States Houses of Assembly**

The power to impeach the Governor or Deputy Governor of any of the States in Nigeria is vested in the House of Assembly of the State in question.<sup>10</sup> From the provisions of Section 188 of the Constitution of the Federal Republic of Nigeria 1999, the procedure for the impeachment (removal) of the Governor or the Deputy Governor of a State from office by the House Assembly of the State is summarized by the researchers as follows:

1. There must be a notice of allegation of gross misconduct [impeachment notice] and for the said notice to be valid, it must be in writing and must be signed by not less than one-third of the members of the State House of Assembly;
2. The aforesaid notice of allegation of gross misconduct must be presented to the Speaker of the State House of Assembly, and the notice of allegation of misconduct must contain the particulars of the gross misconduct which the Governor or Deputy Governor is allegedly guilty of;
3. A copy of the notice of allegation of misconduct must be delivered/served on the Governor or Deputy Governor. Also, a copy of the notice of an allegation of misconduct and the written defence thereto, if any, shall be served on each member of the State House of Assembly at the instance of the Speaker of the State House of Assembly, and the service/delivery must be effected within seven days from the date the notice of allegation was received by the State House of Assembly;
4. Within fourteen days from the date of the presentation of the impeachment notice to the Speaker of the State House of Assembly, the State House of Assembly shall without debate, resolve by motion, whether or not the allegation of gross misconduct shall be investigated;
5. The resolution for the allegation to be investigated shall not be passed except by the support/votes of not less than a two-thirds majority of all the members of the State House of Assembly.
6. Not later than seven days from the date of the passage of the resolution to investigate the allegation, the Chief Judge of the State at the request of the Speaker of the State House of Assembly shall constitute a seven-man Panel made up of people of impeccable integrity to investigate the allegation of gross misconduct. The members of the said Panel must be people who are not members of any public service, legislative house or political party.
7. The Governor or Deputy Governor whose conduct is being investigated shall have a right to defend himself in person and be represented before the Panel by legal practitioner(s) of his own choice.

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<sup>10</sup> Constitution of the Federal Republic of Nigeria 1999, s. 188

8. The aforesaid Panel shall have such powers and exercise its functions following such procedure as may be stipulated by the State House of Assembly.
9. The aforesaid Panel must submit its findings (investigation report) to the State House of Assembly within three months from the date of the appointment/establishment of the Panel.
10. Where the Panel's investigation report is in the negative, that is to say where it says that the allegation of gross misconduct is not proved, the impeachment proceedings abate/terminate automatically at that stage.
11. Where the panel's investigation report is in affirmative, that is to say where it says that the allegation is proved against the executive office holder in question, then within fourteen days of the receipt of the said report, the State House of Assembly shall consider the report and if by a resolution supported by two-thirds majority of all members of the State House of Assembly, the investigation report is adopted, then the Governor or Deputy Governor shall stand removed from the date of the adoption of the report.
12. No proceeding or determination of the Panel or the House of Assembly or any matter relating thereto shall be entertained or questioned in any Court.

### **Chief Justice of Nigeria**

The Chief Justice of Nigeria plays a sole role in the removal process of the President or Vice President of Nigeria and the said sole role is captured under Section 143(5) of the Constitution of the Federal Republic of Nigeria 1999. Accordingly, not later than seven days from the date of the passage of the resolution by the National Assembly to investigate the allegation of gross misconduct, the Chief Justice of Nigeria at the request of the Senate President shall constitute a seven-man Panel made up of people of impeccable integrity to investigate the allegation of gross misconduct. The members of the said Panel must be people who are not members of any public service, legislative house, or political party.

### **Chief Judge of each State in Nigeria**

The Chief Judge of every State in Nigeria plays a sole role in the removal process of the Governor or Deputy Governor of the State and the said sole role is captured under Section 188(5) of the 1999 Constitution. Accordingly, not later than seven days from the date of the passage of the resolution by the House of Assembly of a State to investigate the allegation of gross misconduct, the Chief Judge of the State in question at the request of the Speaker of the State House of Assembly shall constitute a seven-man Panel made up of people of impeccable integrity to investigate the allegation of gross misconduct. The members of the said Panel must be people who are not members of any public service, legislative house or political party.

### **Court**

It is instructive to observe that there is an ouster clause contained in sections 143(10) and 188(10) of the Constitution of the Federal Republic of Nigeria 1999 to the effect that no proceeding or determination of the Panel or the House of Assembly or any matter relating thereto shall be entertained or questioned in any Court. However, the extant attitude of the Courts to the said ouster clause is that failure to strictly follow the laid down impeachment procedure as set out in the Constitution vitiates any act of impeachment purportedly carried out against any executive office holder and accordingly in such a circumstance, the ouster clause cannot be successfully invoked as to rob the Court of its jurisdiction to intervene in the matter, and to entertain and determine the matter.<sup>11</sup> Accordingly, the Court has jurisdiction to adjudicate and decide matters arising from impeachment.

The Supreme Court of Nigeria per Nikki Tobi, JSC in *Inakoju v. Adeleke*<sup>12</sup> outlined acts constituting violation, contravention or breach of Section 188 of the Constitution to include: (a) the absence of constitutional notice of allegation against the Governor (b) the holding of the meeting at D'Rowan Hotel instead of on the floor of Assembly (c) the non-service of a constitutional notice of allegation against the Governor (d) the failure to obtain the constitutional two-third majority of all the members of the House of Assembly for the removal of the Governor (e) the non-involvement of the in the proceedings leading to the removal of the Governor and (f) the illegal procedure adopted in the suspension of the Order of the House of Assembly. The apex court stated that all the above-stated acts of contravention need not be breached before the court will nullify an impeachment proceeding; breach of one of them is sufficient to render an impeachment invalid.

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<sup>11</sup> *Hon. Muyiwa Inakoju & 17 Ors. v. Hon. Abraham Adeolu Adeleke & 3 Ors (2007) LPELR-1510(SC) pp. 150 – 153, paras A – B; Chief Dieprie S.P. Alamiyeseigha v. Hon. Justice Emmanuel Igoniwari & 10 Ors. (2007) LPELR-8220(CA) pp. 32 – 42 paras. E – E.*

<sup>12</sup> *supra*

#### 4. The Procedure for Impeachment of Local Government Chairman or Vice-Chairman under the Anambra State Local Government Law 1999

The system of democratically elected Local Government Councils is guaranteed under the present Nigeria Constitution.<sup>13</sup> The local government in Nigeria is structured after the presidential system but consists of only two arms i.e. the executive and the legislature.<sup>14</sup> The office of the Chief Executive of the Local Government Council is usually designated as the Chairman while the Vice Chairman is the second-in-command to the Chairman. In accordance with the dictates of Section 7(1) of the Constitution of the Federal Republic of Nigeria 1999, the office of democratically elected Chairman and Vice-Chairman of Local Government Council were established under Section 59 of the Anambra State Local Government Law 1999. The executive powers of the Local government in Anambra State are vested in the Chairman of the Local Government.<sup>15</sup> The Chairman may exercise the executive powers either directly or through the Vice-Chairman or supervisors of the local government or officers in the service of the local government.<sup>16</sup> In contrast to the status of the Vice-President and the Deputy Governor, the Chairman is under legal obligation to assign at least a supervisory position to the Deputy Chairman for the business of the local government.<sup>17</sup> The Chairman and the Vice-Chairman are elected for to hold office for the period of three years.<sup>18</sup> However, the Local Government Chairman and the Vice-Chairman can be removed from office by impeachment pursuant to Section 66 of the Anambra State Local Government Law 1999 (as amended). Section 66 of the Anambra State Local Government Law 1999 (as amended) is identical to Sections 143 and 188 of the Constitution. It is important to briefly probe the process of removal of Chairman or Vice-Chairman under Section 66 of the Anambra State Local Government Law 1999.

A Chairman or Vice-Chairman can be impeached or removed from office on the ground of gross misconduct. Under the Anambra State Local Government Law 1999, gross misconduct means a grave violation or breach of the provisions of the law or a misconduct of such nature as amounts in the opinion of the council to gross misconduct.<sup>19</sup> The process of removal from office, of chairman and vice-chairman of local government is activated whenever a notice of any allegation in writing signed by not less than one-third of the members of the Council is presented to the Leader of the Council stating:-(a) that the holder of such office is guilty of gross misconduct in the performance of the functions of his office; or (b) that the said holder of such office was indicted by the Auditor-General in his report.<sup>20</sup> The leader of the council will within seven days of the notice, serve a copy thereof on the holder of the office and on each member of the Council, and will also serve a statement of reply to the allegation made by the holder of the office (if any), on each member of the Council.<sup>21</sup> Within fourteen days of the presentation of the notice (whether or not the holder of the office has replied to the allegation), the council, without the holder of the office being present at the meeting, will resolve by motion without a debate whether or not to investigate the allegation.<sup>22</sup> Within seven days of the passing of a motion, the Leader of the council will inform the Chief Judge who shall appoint a panel of seven persons of unquestionable integrity to investigate the allegation.<sup>23</sup> The seven persons must not be members of (a) public service; (b) legislative house; or (c) political party.<sup>24</sup> The holder of an office whose conduct is being investigated can defend himself in person or be represented before the Panel by legal practitioners of his own choice.<sup>25</sup> The Leader of the Council will inform the Governor.

The Panel appointed has such powers and exercise its functions in accordance with such procedure as may be prescribed by law and shall within three months of its appointment report its findings to the council.<sup>26</sup> Where the Panel reports that the allegation has not been proved, the impeachment proceedings will end there.<sup>27</sup> Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report the council will consider the report without the holder of the office being present at the meeting.<sup>28</sup> Where the council by a resolution supported by not less than two-thirds majority of all its members, adopts the report of the panel, then the holder of the office stands removed from office as from the date of the adoption of the report.<sup>29</sup> Where the allegation against the holder of such office is based on

<sup>13</sup>See Section 7 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also *Akwa Ibom State v Umah* (2002) FWLR (Pt. 110) 1793; *Dogari & Ors. v. A-G Taraba State & Ors.* (2011) All FWLR (Pt.603) 1926.

<sup>14</sup>OD Amucheazi and EA Oji: 'An Appraisal of the Performance of the 5th Republic Third Tier Legislature in Nigeria' (2014) Nnamdi Azikiwe University Jurisprudence International Law and Jurisprudence <<https://www.ajol.info/index.php/naujilj/article/download/136278/125767>> accessed on 14 March 2024

<sup>15</sup>Section 45(1) of the Anambra State Local Government Law 1999. (as amended).

<sup>16</sup> *Ibid.* Section 45(2).

<sup>17</sup> *Ibid.* Section 69(1).

<sup>18</sup> *Ibid.* Section 70(3).

<sup>19</sup>*Ibid.* Section 66(15).

<sup>20</sup> *Ibid.* Section 66(2).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.* Section 66(3).

<sup>23</sup> *Ibid.* Section 66(4).

<sup>24</sup> *Ibid.* Section 66(5).

<sup>25</sup> *Ibid.* Section 66(7).

<sup>26</sup> *Ibid.* Section 66(8).

<sup>27</sup> *Ibid.* Section 66(9).

<sup>28</sup> *Ibid.* Section 66(10).

<sup>29</sup> *Ibid.* Section 66(11).

the report of the Auditor-General, the resolution of the House may suspend such a person from office from the date of passing of the motion until the final determination of the case.<sup>30</sup> Where the holder of such office is indicted by the Auditor-General in his report, the Governor, may, within seven days of the receipt by him of the said report, direct the Chief Judge to appoint a Panel to investigate the allegation.<sup>31</sup> The panel will report to the Council. The Council must observe the principles of fair hearing while conducting the remaining impeachment process.<sup>32</sup>

### **5. Brief Examination of Selected Past Impeachment/Removal Proceedings in Nigeria**

This research will now examine two impeachment/removal proceedings with a view of seeing how the constitutional provisions guiding the process were observed or otherwise.

#### **Impeachment of Governor Rashid Ladoja of Oyo State**

Governor Rashid Ladoja was elected the Governor of Oyo State in the general election in April 2003. His four-year term of office started in May 2003 and was to terminate in May 2007. Towards the end of 2005, the members of the Oyo State House became polarized as a result of political disagreements among them. The 32-member House was divided into two factions. 18 Legislators were opposed to the Governor while the remaining 14 were in his support. On the 13<sup>th</sup> of December 2005, the 18 Legislators opposed to the Governor met and sat at D' Rovans Hotel, Ibadan, and raised allegations of gross misconduct against the Governor without the involvement of the Speaker and Deputy Speaker. The service of the notice of impeachment on the governor was done by the group through a newspaper advertisement. The notice was not served on the other opposing 14 members. Thereafter, they went ahead and requested the Acting Chief Judge of Oyo State to set up and inaugurate a seven-member panel to investigate the allegation against the Governor. The panel sat for 2 days without taking oral evidence and submitted its report. The factional group of 18 lawmakers passed resolution by which they impeached the Governor. The Speaker of the Oyo State *et al* approached the court to set aside the purported impeachment.

The trial court declined jurisdiction pursuant to the ouster clause contained in section 188(10) of the Constitution of the Federal Republic of Nigeria 1999. Dissatisfied, they appealed to Court of Appeal. The Court of Appeal overturned the ruling of the trial court, invoked its jurisdiction under 16 of the Court of Appeal Act and set aside the impeachment. Upon appeal to the Supreme Court, the apex court upheld the decision of the Court of Appeal and held that the impeachment was done in violation of Section 188 of the Constitution of the Federal Republic of Nigeria 1999<sup>33</sup>.

#### **Impeachment of Governor Joshua Dariye of Plateau State**

Governor Joshua Dariye of Plateau was arrested in London in 2005 for alleged money laundering but he managed to flee to Nigeria where he has immunity against prosecution. Plateau State, like any other State in the Federal Republic of Nigeria, has a House of Assembly established under section 90 of the Constitution of the Federal Republic of Nigeria 1999. The said House of Assembly is made up of 24 members. Between 25<sup>th</sup> and 26<sup>th</sup> July, 2006, fourteen (14) out of the twenty-four (24) members of the Plateau State House of Assembly including the Speaker and Deputy Speaker thereof cross carpeted from the Peoples Democratic Party (PDP), the platform on which they were elected to the House in 2003 to Advanced Congress of Democrats (ACD), a registered political party, as a result of which the 14 members were said to have vacated their seats by operation of law leaving only 10 members of that House. On the 5<sup>th</sup> day of October 2006, the Governor Joshua Dariye was allegedly served with notice of allegations of gross misconduct thereby initiating a process of impeachment by the remaining 10 members of that House. The notice of allegations of gross misconduct was signed by eight (8) out of the ten existing members. Throughout the processes and proceedings leading to and including the impeachment of the Governor Joshua Dariye, the Plateau State House of Assembly had only ten members, eight (8) of who supported and voted in favour of the removal of the Governor. Following the cross carpeting of the said 14 members of the House including the Speaker and the Deputy Speaker, Dapialong became the new Speaker of the House and by a letter dated 5<sup>th</sup> October, 2006 invited the Chairman of Independent National Electoral Commission (INEC) to organize a by-election for the purpose of filling the vacant seats. The new Speaker subsequently requested the Acting Chief Judge of Plateau State to set up a 7 man-Panel to investigate the allegations of gross misconduct against the 1st respondent which was done. The Panel carried out their assignment and submitted a report to the Plateau State House of Assembly which report was adopted by the House on the 13<sup>th</sup> day of November, 2006 resulting in the removal of the Governor Joshua Dariye as the Governor of Plateau State. At the stage of removal of the Governor the by-election had not been conducted.

The Supreme Court per Onoghen JSC held that until the vacancies created by the carpet crossing members are filled by the process of by-election, the Plateau State House of Assembly can only transact such legislative duties that require the participation of less than 2/3 majority of ALL the members of that House, which duties definitely excludes impeachment proceedings<sup>34</sup>. Contributing, Katsina-Alu, JSC stated that it is particularly plain that while the initiation of the impeachment process requires the notice of any allegation to be signed by not less than one third of the members of the Assembly, the actual removal of the said Governor requires the support of not less than two-thirds majority of all its members. This means that 8

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<sup>30</sup> *Ibid.* Section 66(12).

<sup>31</sup> *Ibid.* Section 66(13).

<sup>32</sup> *Ibid.* Section 66(14).

<sup>33</sup> See *Inakoju v Adeleke supra*.

<sup>34</sup> See the case of *Dapianlong & ors v. Dariye & Ors.* <[http://www.nigerialaw.org/LawReporting/2007/Hon%20Michael%20Dapianlong%20%20Ors%20%20v%20Chief%20\(Dr\)%20Joshua%20Chibi%20Dariye%20%20Anr.htm](http://www.nigerialaw.org/LawReporting/2007/Hon%20Michael%20Dapianlong%20%20Ors%20%20v%20Chief%20(Dr)%20Joshua%20Chibi%20Dariye%20%20Anr.htm)> accessed on 6 March 2024.

members of the 24 members of House of Assembly fell far below the 2/3 requirement. Clearly therefore section 188(9) of the Constitution has not been complied with. This alone is sufficient to nullify the entire impeachment proceedings.

#### **6. The Impact of the Misuse of Impeachment Powers on Sustainable Democracy in Nigeria**

Unarguably, Nigeria's democracy remains important to Africa in particular.<sup>35</sup> The effect therefore is that what happens in the political arena of Nigeria affects other aspects of the country, particularly the economic aspect. So, what happens to Nigeria's democracy will affect other African countries and this gives more reason why democracy must be sustained in Nigeria.<sup>36</sup> The pertinent question is what sustains democracy? Diamond<sup>37</sup> viewed democracy as a set of ideas and principles about freedom. On what sustains democracy, he stated that people are more likely to express support for democracy when they see it is working to provide genuine political competition, including alteration in power, and when it has some effect in controlling corruption, limiting abuse of power, and ensuring the rule of law. He further argued that when politicians become class unto themselves, feeding shamelessly at the public trough, they generate an open invitation to reject democracy. He believes that it is only a good mix of institutional functions that can provide the checks and balances upon which democracy can receive consolidation. Scholarly, he outlined the essential attributes of liberal democracy which includes (a) substantial individual freedom of belief, opinion, discussion, speech, publication, broadcast, assembly, demonstration, petition and the internet (b) freedom of ethnic, religious, racial and other minority group (c) the right of all adult citizens to vote and run for office if they meet certain minimum age and requirement (d) genuine openness and competition in the electoral arena, enabling any group that adheres to constitutional principles to form a party and contest for office (e) legal equality of all citizens under rule of law in which laws are clear, publicly known, universal, stable and non-retroactive (f) an independent judiciary to neutrally and consistently apply the law and protect individual and group rights (g) Due process of law and freedom of individual from torture, terror, and unjustified detention, exile, or interference in their personal lives by the state and or non-state actors (i) institutional checks on power of elected officials, by an independent legislature, court system and other autonomous agencies (j) real pluralism in sources of information and forms of organization independent of the State and thus a vibrant civil society (k) control over the military and State Security apparatus by civilians who are ultimately accountable to the people through elections. Diamond concluded by asserting that electoral democracy helps to make certain essential values of democracy achievable, but it does not in any way ensure them.

It can be distilled from the above scholarly statements that proper application of impeachment powers, rule of law, accountability, and rights of individuals are some of the key elements that sustain democracy. Regrettably, impeachment has thoroughly been abused in Nigeria in recent years. Impeachment proceedings in Nigeria have been trailed by illegality, unconstitutionally, political bitterness, and vindictiveness. It has so far been a show of force where the supposed lawmakers turn the law upside down by embracing political reasons in place of constitutional reasons for impeaching. Gangsterism, hooliganism, and crass lawlessness have been the order of the day during impeachment proceedings in Nigeria.<sup>38</sup> Contrary to the constitutional provisions, impeachment proceedings are conducted at midnight, in private homes, hotel rooms, and other strange enclosures.

Obviously, abuse of impeachment power is a recipe to anarchy and underdevelopment. On the unsavory manner in which state legislatures conduct removal proceedings against Governors and its probable debilitating consequences, the Supreme Court per Tobi, JSC in *Inakoju v. Adeleke*<sup>39</sup> held thus:

The plethora of removal proceedings in respect in respect of Governors is not only frightening but is capable of affecting the stability of Nigeria. It is like a child's play as some State Legislatures indulge in it with all ease and comfort like the way the English man sips his coffee on his breakfast table. Unless the situation is arrested, Nigerians will wake up one morning and look for their country is. That should worry every good Nigerian. It does not only worry me; the idea frightens me.

Finer<sup>40</sup> stated that the nature of a society's political culture accounts for the intervention of the military in political affairs. According to him in a society of low political culture and low-level support for political structures, the military is most likely to intervene in politics.<sup>41</sup> The persistent misapplication of impeachment powers in Nigeria does not only undermine our democratic credentials, it is also capable of aborting Nigeria's evolving democracy. It is an invitation to anarchy and political instability.<sup>42</sup> Potentially, there may be no Nigeria in the future if the indiscriminate and unconstitutional abuse of impeachment power is not timely checked. The misuse of impeachment powers in Nigeria has made it difficult for the executives to discharge

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<sup>35</sup>F Ogun, 'Appraisal of Law and Politics of Impeachment in Nigeria' <<https://ssrn.com/abstract=3663884>> on accessed on 6 March 2024.

<sup>36</sup> *Ibid.*

<sup>37</sup> L Diamond, 'The Spirit of Democracy: How to make Democracies Work' (2009) *Zenith Economic Quarterly*, Vol. 4, No. 1, p. 49-56 in West-Idahosa, *Separation of Powers and Democracy in Contemporary Nigeria* (Rymconcept Investment Limited, 2010) pp. 78-94.

<sup>38</sup> F Ogun, 'Appraisal of Law and Politics of Impeachment in Nigeria' *op cit.*

<sup>39</sup> (2007) 4 NWLR (Pt. 1025) 423 at p. 634, paras. D-E.

<sup>40</sup> SE Finer, *The Man on the Horse Back* (Eaglewood Prentice, London, 1972) p. 16 cited in IO Obijaku, 'Local Government in Nigeria: A Weeping Third Tier Under the Law' (2008) Vol., No.1, *UNIZIK Journal of Public and Private Law* p. 177

<sup>41</sup> *Ibid.*

<sup>42</sup> Misuse of impeachment powers resulted in declaration of state of emergency in Ekiti State and Plateau State of Nigeria.

their constitutional responsibilities without lobbying or settling the legislators. Development and dividends of democracy have been relegated to the background.

Ogun<sup>43</sup> correctly asserted that a politically motivated impeachment threat poses a great danger to sustainable democracy and development as it will create tension in the country or state, as the case may be, and bring woe to the people living in the country. Impeachment threats and proceedings usually distract the attention of the three arms of government from the real business of government which is the security and welfare of the people.

Similarly, Offor<sup>44</sup> *et al* discussed the implications of the misuse of impeachment on democratic consolidation in Nigeria. They stated that impeachment is like a man with a broken leg, even when treated with the world best doctors can never work well. The writers argued that a wrongly impeached Governor or deputy Governor would not fold his arms and allow the government that impeached him to sleep well. The impeached man or woman and their loyalists would do anything humanly and politically possible to destabilize the government. The money meant for development is usually applied to sponsor and defend political impeachment. Money that should be used to provide greatest happiness for the greatest number of people was used to bribe state House of Assembly members, lawyers and judges.<sup>45</sup> No democracy can survive if the money meant for development is used to bribe selfish and greedy politicians. Nigeria politicians employ sponsored impeachment to unjustly remove political opponents from office, this has whittled down the values and principles of democracy. It portends doom for its proper practice as it negates some of its basic principles. The result has therefore been the subversion of the democratic process rather than its consolidation.<sup>46</sup>

The plague of abuse of impeachment powers in Nigeria bedevilling Nigeria's democracy if unbridled could snowball into uncontrollable political unrest and result in irreversible political instability. Nigeria's democracy may collapse if the unhealthy political trend is allowed to continue. This state of affairs if unchecked will plunge Nigeria into destruction and ruin. For instance, the political unrest caused by the misuse of impeachment powers led to the declaration of a state of emergency in Plateau State and Ekiti State. This state of emergency resulted in unwarranted termination of the choice of the electorates in the affected states. Nigeria has only moved a short distance away from the factors that orchestrated military intervention in Nigeria. The resurgence or return to power by the military in Burkina Faso, Mali, Sudan, Niger Republic, and Chad calls for anxiety and crying out in Nigeria. It has therefore become imperative for Nigeria to strengthen and update its laws on the removal of the executive to combat the high incidences of abuse of impeachment power to ensure sustainable democracy in Nigeria. The researchers agree that where the impeachment proceeding is carried out without recourse to the rule of law and due process; there will be political instability, economic downturn, and social insecurity.

## **7. Conclusion and Recommendations**

Of the many forms of government known to mankind, democracy would appear to be the most acceptable across the globe.<sup>47</sup> Democracy stands for the simple idea that those who control the reins of power are exercising a delegated authority. Today, every serious representative democratic society has mechanisms that checkmate its leaders and representatives from becoming autocratic and unanswerable. The concept of accountability is one of the few principles central to democratic thought, the absence of which breeds impunity. Accountability is one of the cardinal pillars of good governance and therefore key to sustainable democracy and effective representation.<sup>48</sup> Accountability and checks and balances are the bedrock of democracy. Among other findings, the researchers observed that there is a strong correlation or interplay between sustainable democracy and some effective mechanisms of holding elected officeholders accountable. The power to remove chief executives conferred on the legislature is often prone to political appropriation and employment for improper purposes.<sup>49</sup> The instrument of impeachment has been turned into a tool of political vendetta and victimization in Nigeria. The Nigerian political actors currently use impeachment/removal of democratically elected executives against their actual or perceived political enemies. It is therefore recommended that impeachment/removal at the legislature stage should be made to serve pre-trial purposes only. The impeachment/removal by the legislature should not be the final determination of guilt, and there must be a separate forum for reaching a final verdict, which would be the Court of Impeachment. The Court of Appeal should be made a special court of impeachment to try executive officeholders after pre-impeachment activities at the legislature. The legislature should be to have the power to suspend the executive officeholder so that an impeached executive officeholder should only leave office permanently upon conviction by this special court. As done in the election petition the impeachment court must deliver its decision within a prescribed timeframe.

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<sup>43</sup> F Ogun, 'Appraisal of Law and Politics of Impeachment in Nigeria' *op cit*.

<sup>44</sup> MA Offor *et al*, 'Politics of Impeachment in Nigeria; A Discourse on Causes and Implications for Democratic Consolidation' (2016) Vol. 10, No. 1, *Journal of Policy and Development Studies*. <[www.arabianjbm.com/JPDS\\_index.php](http://www.arabianjbm.com/JPDS_index.php)> accessed on 7 March 2024.

<sup>45</sup> *Ibid*.

<sup>46</sup> *Ibid*.

<sup>47</sup> E West-Idahosa, *Separation of Powers and Democracy in Contemporary Nigeria* (Rymconcept Investment Limited, 2010) p. 49.

<sup>48</sup> Policy and Legal Advocacy Center, Abuja, 'Guide to Effective Representation in National Assembly' <<https://placng.org/i/wp-content/uploads/2019/12/Guide-to-Effective-Representatio-for-Lawmakers.pdf>> accessed on 29 January 2024

<sup>49</sup> O Amucheazu and C Onwuasoanya, *The Judiciary, Politics and Constitutional Democracy (1999-2007)* (Snaap Press Ltd, Enugu 2008) p. 193.