A CRITICAL ANALYSIS OF THE IMPEACHMENT POWER OF LEGISLATURE UNDER THE NIGERIAN CONSTITUTION

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ABSTRACT

The power of impeachment is created and vested in the Nigerian legislature under the constitution. Why, when and how the power is to be exercised have been provided under the constitution and some laws. However, compliance with the constitutional requirements for the exercise of this power has always been are concern as almost all the exercises have been challenged in courts for noncompliance. This study, therefore, provides a critical analysis of the law and practice of impeachment. In this light, it analyzes the constitutional and legal provisions in relation to the roles of the lawmakers, chief judges and members of investigation panels. The data used in this study were collected using the library approach and semi-structured interviews conducted with relevant stakeholders. The study found, among others, that noncompliance with the constitutional requirements for impeachment is attributable to some provisions which are difficult to comply with like personal service requirement. Furthermore, the constitution vests enormous impeachment powers on the legislature without any mechanism for check and balance in the course of its exercise. It is also found that there are no provisions on standard of proof of the grounds for impeachment. On judicial review of impeachment, it is found that it is bedeviled by challenges such as delay and lack of respect for court order. Consequently, it is recommended, among others, that the constitution be amended to provide for substituted service where personal service is difficult. Furthermore, Constitutional Court be established and vested with specific power to check the exercise of impeachment power. Standard of proof "on balance of probability" be provided for proof of grounds for impeachment. On the challenges to judicial review of impeachment, it is recommended that time frame to conclude judicial review of impeachment be provided and the laws on contempt proceedings be enforced to ensure compliance with court orders.

Keywords: Constitutional amendment, Impeachment, Legislature, Judicial review, Nigeria.

ABSTRAK

Kuasa pemecatan (*impeachment*) diwujudkan dan diletakkan pada badan perundangan Nigeria di bawah perlembagaan. Mengapa, bila, dan bagaimana kuasa tersebut digunakan telah diperuntukkan di bawah perlembagaan dan beberapa undang-undang. Walau bagaimanapun, pematuhan terhadap keperluan perlembagaan untuk menggunakan kuasa ini selalu menjadi kebimbangan kerana hampir semua kes telah dicabar di mahkamah kerana ketidakpatuhan. Oleh itu, kajian ini menyediakan analisis kritikal terhadap undang-undang dan amalan pemecatan. Dalam hal ini, kajian ini menganalisis peruntukan perlembagaan dan undang-undang berhubung dengan peranan penggubal undang-undang, ketua-ketua hakim, dan ahli panel penyiasatan. Data yang digunakan dalam kajian ini dikumpulkan dengan menggunakan pendekatan perpustakaan dan temu bual separa berstruktur yang dijalankan dengan pihak berkepentingan yang berkaitan. Kajian mendapati, antaranya, bahawa ketidakpatuhan dengan keperluan perlembagaan untuk pemecatan adalah berkaitan dengan beberapa peruntukan undang-undang yang sukar dipatuhi seperti keperluan khidmat peribadi. Tambahan lagi, perlembangan memperuntukkan kuasa yang besar kepada badan perundangan tanpa sebarang mekanisme kawalan yang cekap dalam pelaksanaannya. Kajian ini turut mendapati bahawa tidak ada peruntukan mengenai standard penyediaan bukti bagi tujuan pemecatan. Mengenai semakan kehakiman berhubung pemecatan, kajian ini mendapati cabaran-cabaran semakan yang telah dikenal pasti seperti kelewatan dan kurang rasa hormat terhadap perintah mahkamah. Oleh itu, adalah dicadangkan, antaranya, agar perlembagaan diubah untuk membenarkan khidmat gantian di mana khidmat peribadi sukar diberikan. Di samping itu, Mahkamah Perlembagaan perlu dibangunkan dan diberikan kuasa khusus menyemak pelaksanaan kuasa pemecatan. Standard bukti "mengenai keseimbangan kebarangkalian" disediakan untuk bukti alasan pemecatan. Mengenai cabaran semakan kehakiman mengenai pemecatan, adalah disyorkan bahawa rangka masa untuk membuat penilaian semakan kehakiman disediakan dan undang-undang mengenai prosiding penghinaan dikuatkuasakan untuk memastikan pematuhan perintah mahkamah.

Kata kunci: Pindaan Perlembagaan, Pemecatan, Badan Perundangan, Semakan kehakiman, Nigeria

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Federal High Court (Civil Procedure) Rules, 2009.

Fundamental Rights (Enforcement Procedure Rules) 2009.

High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004.

High Court of Lagos State (Civil Procedure) Rules, 2012.

High Court of Rivers State (Civil Procedure) Rules, 2006.

Interpretation Act, 1958 s 15 (Cap I 23, Laws of the Federation of Nigeria 2004).

Kano State High Court (Civil Procedure) Rules, 1988.

Kwara State Local Government Law, 2005.

Legislative Houses (Powers and Privileges) Act.

Local Government Administration Laws of Kaduna State, 2007.

Matrimonial Causes Act, cap. M20, Laws of the Federation of Nigeria, 2004.

Penal Code, cap. P43 Laws of the Federation of Nigeria, 2004.

Rules (Powers and Procedure of the Investigation Committee) of the Governor of Kaduna State, 1981.

Rules of Procedure for the Investigation of the Deputy Governor of Taraba State, 2012.

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Constitution of Chile, 1980.

Constitution of Croatia, 1992.

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English Finance Act, 1910.

International Commission of Declaration of Athens, Greece, 1955.

The Trade Dispute Act, 1906.

Ugandan Witness Summons (Reciprocal and Enforcement) Act, 1969.

LIST OF CASES

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Amalgamated Society of Engineers vs. Adelaide Steamship Co Ltd. (1920) 28 CLR 129, 161.

American Cynamid Co., Ltd. vs. Ethihon Ltd., (1975) 1 All ER 504.

Anambra State vs. A-G., Federation (2005) 9 NWLR (Pt. 931) 572.

Anie vs. Uzorka (1993) 8 NWLR (pt. 309) 20.

Anthony vs. *Governor of LagosState* (2003) 10 NWLR (pt. 828) 288.

Archbishop Anthony Olubunmi Okojie vs. Attorney General of Lagos State (1981).

Arewa Paper Converters Nig. Ltd vs.N.D.I.C (Nig.) Universal Bank Ltd. (2006) 15 (pt. 1003) 404, 432.

Asogwa vs. Chukwu (2004) All FWLR (pt. 189) 1204.

Atano vs. Attorney General of Bendel State 2 NWLR (75) 132; *Salu vs. Egheibon* (1994) 6(348)23.

Atiku Abubakar vs. Attorney General of the Federation & Ors (2007) 6 NWLR (pt. 1031) 626

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Attorney General of Bendel State vs.Attorney General of the Federation (1982) 10 SC 11.

Attorney General of Benue State vs.Umar & Ors 1 NWLR (pt. 1068) 311.

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Attorney General of Lagos State vs. *Eko Hotels Ltd., & Anor* (2006) All FWLR (pt. 342) 1398.

Attorney General of Ondo State vs. Attorney General of the Federation (2002) 9 NWLR (pt. 772) 222.

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Attorney General of the Federation vs. Attorney General of Abia State (2001) 11 NWLR (pt. 725) 689.

Attorney General of the Federation vs. Attorney General of Abia State and Others (2006) 16 NWLR (pt.1005).

Attorney General of the Federation vs. Sode (1990) 1 NWLR (Pt. 128) 500.

Attorney General of the Federation vs. Atiku Abubakar (2007) 6 NWLR (Pt. 1031) 626; (2009) All FWLR (Pt. 456) 1.

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Attorney-General of Ondo State vs. Attorney-General of the Federation & 35 Ors. (2002)6 SCNJ 1.

Awotubu vs. The state (1976).

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Balarabe Musa vs. Auta Hamza (1982) 3 NCLR 439.

Balarabe Musa vs. Speaker, Kaduna State House of Assembly & Anorther (1982) 3 NCLR450.

Balonwu vs. Obi (2007) 5 NWLR (pt. 1028) 488 C.A.

Barclays Bank (Nig.) Ltd vs. Central Bank of Nigeria (1976) 1 All NLR 409.

Bashir vs. Audu & Ors (1999) 5 NWLR (pt.633) 456.

Basinco Motors Ltd. vs. Woermann-Line (2009) 13 NWLR (Pt. 1157) 149.

Bello vs. Governor Gombe State (2016) 8 NWLR (pt. 1514) 219 at 229.

Brig. Gen. Mohammed Buba Marwa & Ors. vs. Admiral Murtala Nyako & Ors [2012] LPELR–SC 141/2011.

Busari vs.Oseni Suit No. CA/L/284/288; (1992) 4 NWLR (Pt. 237) 557 at 589.

Centre for Oil Pollution Watch vs. NNPC (2013) 15 NWLR (1378) 556 at 574.

Chief Adejumo vs. Golonel Mobolaji Johnson, Military Governor of Lagos State (1972) All NLR 164.

Chief Diepriye Alamieyeseigha vs. Hon. justice Emmanuel Igoniwari & Ors (2007) LPELR-CA/PH/124M/2006 (R)

Ghief Enyi Abaribe vs. The Speaker, Abia State House of Assembly (2002) 14 NWLR (pt. 788) 466 at 478.

Chief Momoh Yusuf Obaro vs. Aihaji Salihu Ohize & Ors (2008) LPELR-19784(CA).

Chijuka vs. Maduewesi [2011] 16 NWLR (Pt. 1272) 181 at 204-205.

Council of University of Ibadan vs. N.K. Adamalekun (1967) NSCC 210.

Danglas vs.Shell Petroleum Development Co. Ltd. (1999) 2 NWLR (pt. 591) 466.

Danladi vs. Taraba State House of Assembly (2015) 2 NWLR (pt. 1442) 103 at 109.

Darlington Eze vs. Federal Republic of Nigeria (2017) 15 NWLR (pt. 1589) 433 at 477.

Denloye vs. Medical and Dental Practitioners Disciplinary Tribunal (1968) 1 All NLR 306.

Foreign Cases

Grey vs. *Pearson* (1857) 6 H.L.C. 61; 10 E.R. 1216.

Hadkinson vs. Hadkinson 1952 All ER 567 (CA) 574.

Hoffman vs. South African Airways 2000 11 BCLR 1211 (CC).

Jammeh vs. Attorney-General (1997-2001) GR 839.

Kigen vs. SSHD (2015) EWCA Civ 1286.

Marbury vs. USA 5 U.S. 1 (Cranch) 176.

Minister of Health vs. Treatment Action Campaign [2002] (5) SA 721 (CC) 98.

Mohamed vs. President of the Republic of South Africa 2001 7 BCLR 685 (CC).

Moseneke vs. The Master 2001 2 SA 18 (CC).

New Patriotic Party vAttorney-General (Ciba case) (1996-1997) SCGLR 729.

Nixon vs. United States, 113 S. Ct. 732 (1993).

Pepper (Inspector of Taxes) Hart Nothman vs.*Barnet Council* (1978) 1 W.L.R. 220.

President of the Republic of South Africa and Others v United Democratic Movement (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another os Amici Curiae*) ("UDM")* 2003 (1) SA 472 (CC); 2002 (11) BCLR 1164 (CC) 25.

Richardson vs. Mellish (1824) 130 ER 294.

S vs. Makwanyane 1995 6 BCLR 665 (CC).

Sussex Peerage Case, 11 CL& F.85; 8 E.R. 1034, 1057.

Treatment Action Campaign vs. Minister of Health [2002] (4) BCLR 356 (T);

Tuffour vs. Attorney-General (1980) GLR 637 CA; Sam (No.2) vs. Attorney-General (2000).

UDP & 2 Ors vs. The Attorney General SCCS No. 3/2000.

Wilbert vs. Wilcox County Commission 623, so. 2d 727 (1993).

LIST OF ABBREVIATIONS

NWLR	Nigerian Weekly Law Reports
Pt.	Part
INEC	Independent National Electoral commission
S.C	Nigerian Law Report
NCLR	Nigerian Constitutional Law Report
NMLR	Nigerian Monthly Law Report
Vs.	Versus
FWLR	Federation Weekly Law Report
C.A	Court of Appeal
NSCLR	Nigerian Supreme Court Report
CLR	Constitutional Law Report
AG	Attorney General
LPELR	Law Pavilion Electronic Law Report
SCNJ	Supreme Court of Nigerian Judgment
SCNQR	Supreme Court of Nigeria Quarterly Report
NSCC	Nigerian Supreme Court Cases
AC	Appeal Cases
ASUU	Academic Staff Union of University
IGP	Inspector General of Police
MJSC	Monthly Judgment of Supreme Court
JSC	Justice of Supreme Court
JCA	Justice of court of Appeal
ER	English Report
LRN	Law Report of Nigeria

CHAPTER ONE
INTRODUCTION

1.1 Background of the Study

Since the attainment of independence in 1960, Nigeria[1] has had a checkered history of military and other undemocratic rule. It returned to another phase of constitutional democracy on 29th may 1999,[2] due largely to global recognition on democracy.[3] Unarguably, the best form of government recognized globally is democracy. This is because it guarantees liberty[4] and ensures participation of the electorates in electing their leaders and encourages transparency and accountability in public affairs management.[5] Equally, democracy exists to ensure justice, equality of rights; good governance; social welfare and equilibrium; safeguard individual freedom of the citizens from abuse of power, arbitrariness and oppression.[6] Therefore democracy has gained ground in most

[1] Nigeria was so named by the wife of the nation's first Governor General, Flora Shaw, in 1914 after the amalgamation of the northern and southern protectorate. The country has an estimated population of about 184, 234, 804 million as at February, 2018 according to the country's population authority, the National Population Commission. See www.population.gov.ng (accessed on 10/2/2018).

[2] Tahir Mamman and Chibueze Okorie "Nurturing Democracy through Constitutional Adjudication: The Contribution of Nigerian Courts" *Journal of Contemporary Legal Issues*, 4 (2012): 40.

[3] Lamidi K. O. and M.L. Bello, "Party Politics and Future of Nigerian Democracy: An Examination of the 4thRepublic",*European Scientific Journal*, 8 no.29 (2012): 169.

[4] Jacob Abiodun Dada, "The Imperatives of Good Governance and Sustainable Democracy in Nigeria" *African Journal of Social Sciences*,3 no. 2 (2013): 49.

[5]Adewale Y., "Democratic Consolidation, Fiscal Responsibility and National Development: An Appraisal of the First Republic" *African Journal of Political Science and International Relations*, 7 no.2 (2013): 7. For a better discussion on the role of politics generally, see Adegboyega, O.O., "Politics and the Nigerian Situation", *International Journal of Advanced Legal Studies and Governance*, 1, no.1 (2010).

[6] Tsega, G.S., *In the Eye of The Law: The Authorized Biography of Justice Umaru Eri*, (Zaria: Tamaza Publishing Company Ltd., 2008), 317-318.

nations of the world as military regime is considered outdated.[7] This is why it is the only form of government envisaged by the Nigerian constitution.[8]

One of the most important elements of democracy is that it enshrines government which may either be presidential or parliamentary.[9] In case of Nigeria, presidential system has been in operation since 1979.[10] This system of government entails separation of powers among the three arms of government i.e. the legislature, executive and judiciary vested with the power to make, execute and interpret law respectively.[11] The principle of separation of powers is an important ingredient of democracy[12] because without separating lawmaking from its execution, arbitrariness of the executive cannot be effectively checkmated.[13] Therefore, the nature of the separation of powers practiced in Nigeria is so rigid that any encroachment of powers by one organ of another is checkmated by the courts.[14]

The legislature is a basic structure of any political government[15] and a major factor in its sustenance. Therefore, it occupies a strategic position in democratic governance.[16] The

[7] Ajape Taiwo Shehu, "Judicial Review and Judicial Supremacy: A Paradigm of Constitutionalism in Nigeria", *International and Comparative Law Review*, 11 no.1 (2011): 50.
[8] See Section 1(2) Constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter referred as the Constitution.
[9] Shehu, "Judicial Review and Judicial Supremacy: A Paradigm of Constitutionalism in Nigeria", 51.
[10] Under the constitution the position of the president is that he is the Head of State, the chief executive of the federal government and Commander in Chief of the Armed Forces while the governor is the chief executive of the state government. See sections 130 and 176 of the constitution
[11] *Ibid*.
[12] Ajikeme Jombo Nwagwu, "Legislative Oversight in Nigeria: A Watchdog or a Hunting Dog? *Journal of Law, Policy and Globalisation*, 22 (2014): 20.
[13] Angela E. Obidinma and Emmanuel O.C. Obidinma, "The Legislative Executive Relations in Nigeria's Presidential Democracy," *International Journal of Business and Law Research*, 3 no.1 (2015): 70.
[14] [15] Malemi Ese, *The Nigerian Constitutional Law*, (Lagos: Princeton Publishing Company, 2012)
[16] Edet J. Tom and Amadu J Atai, "The Legislature and National Development: The Nigerian Experience", *Global Journal of Arts, Humanities and Social Sciences*, 2 no .9(2014): 66.

Legislature cannot be dispensed with as it serves as a vital check on the power of the executive.[17] Moreover, it is regarded as epicenter of national politics and the institution that truly represents the various classes of the society.[18] The basic function which a legislature performs in a democratic regime is lawmaking, representation and oversight the exercise of which is bedrock of democratic governance.[19] Notwithstanding the fact that lawmaking is fundamental legislative role,[20] oversight function, which is incidental to lawmaking, ensures that the executive powers are exercised in accordance with the constitution[21] which protects democratic principles.[22]

Given the fact that the strength of the legislature determines that of the democracy,[23] Nigerian constitution makes the legislature a very strong institution in that it vests on it oversight functions. This function includes the power of impeachment of President, Vice President, Governor, or Deputy Governor.[24] The constitution makes elaborate provisions[25] on the grounds and the procedure for the impeachment of the aforesaid pubic office holders as explained in details in Chapter Three of this Thesis. Suffice it to state here that the power of impeachment of the President and Vice President is vested in

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[16] Ewuim N.C., et al "Legislative Oversight and Good Governance in the Nigeria's National Assembly: An Analysis of Obasanjo and Jonathan's Administration", *Review of Public Administration and Management*, 3 no.6 (2014): 140.
[17] John Lock, *The Two Treatises of Civil Government*, (London: Everyman Library, 1993), 116.
[18] Malcom Jewel, et.al, *The Legislative Process in the US*, (New York: Random House, 1977), 6.
[19] Mamodu A. Jude and Matudi Gambo Ika, "The Implication of Legislative-Executive Conflicts on Good Governance in Nigeria", *Public Policy and Administration Research*,3 no.8 (2013): 30.
[20] Nwaubani Okechukwu, "The Legislature and Democracy in Nigeria (1960-2003): History, Constitutional Role and Prospects" *Research on Humanities and Social Sciences*, 4 no.15 (2014): 84.
[21] Shehu, "Judicial Review and Judicial Supremacy: A Paradigm pf Constitutionalism in Nigeria", 52.
[22] Okechukwu, "The Legislature and Democracy in Nigeria (1960-2003): History, Constitutional Role and Prospects" 83.
[23] Arishe, G.O., "Reflections on Some Issues, Problems and Challenges of the National Assembly" *Abuja Journal of Public International Law*, (2014): 245-246.
[24] Tom and Atai, "The Legislature and National Development: The Nigerian Experience", 67.
[25] See sections 143 and 188 of the constitution.

the National Assembly while impeachment of Governor and Deputy Governor is the responsibility of the State House of Assembly. The procedure to be followed for the impeachment by the National Assembly and State House of Assembly is provided in section 143 and 188 respectively. The procedure is the same except that the National Assembly is bicameral while State House of Assembly is unicameral in nature.[26] It should be noted that impeachment proceedings include investigation proceedings. While the former is conducted by the legislature, the latter is conducted by a panel to be appointed by the legislature as explained in details in Chapter Three of this Thesis.

In this light, impeachment[27] has been recognized as one of the legitimate means through which the President, Vice President, Governor, or Deputy Governor may be removed from office.[28] Even though it is a constitutional provision, it may have the effect of subversion of the mandate freely given by the electorates.[29] It plays no less a role than an electioneering process as it equally leads to institution of new President, Vice President, Governor, or Deputy Governor as the case may be.[30] In fact some scholars argue that it is worse than a coup in that coup is clearly counter to democratic principles but

[26] The meaning of bicameral and unicameral legislature have been explained in item 2.3.2 in Chapter Two of this Thesis.

[27] There appears to be a kind of confusion in the usage and meanings of the terms impeachment and removal under the Nigerian constitution and constitutional discourses among legal experts, public commentators and journalists. This would be explained subsequently. For the purpose of this research, impeachment is used because it is the term most popularly and commonly used in most of the literatures consulted for this research.

[28] Yusuf O. Ali and M.T. Adelilekun, "An Appraisal of the Supreme Court Decision in *Inakoju v Adeleke* and its Impact on the Political Stability of Nigeria", *The Appellate Review*, 1 no.2 (2010): 150.

[29] Charles Arinze Obiora and Malachy Chukwuemeka, "Constitutionalism, Democracy and Impeachment in Nigeria (1999-2007): An Appraisal", *Journal of Constitutional Development*, (2012): 47.

[30] Yekini Abubakar Olakulehun and Owolabani Mausi Olafunmilayo, "The Gale of Impeachments in Nigeria: A Threat to Sustainable Democracy", in *Cross-cutting Issues in Nigerian Law: Essays in Honour of Funsho Adaramola*, 131.

impeachment is based on a legal cloak.[31] In modern democratic society, it is the most effective check on the executive power.[32] Therefore, it is a course where constitutional provisions must be upheld strictly.[33] This means that the powers of impeachment must be exercised only in the circumstances that really justify the price a nation or state clearly pays as a result thereof.[34] Impeachment is not meant as a weapon for political intimidation or molestation of the President or Governor whose face the legislature do not want to see in the government house any more.[35] However, the Nigerian legislature does not seem to heed to the warning sounded above. This is because Nigeria's experience on impeachment leaves so much to be desired.[36] It is only after strictly complying with the constitutional provisions that impeachment is said to be properly and legally carried out.

This seems to be an uphill task as the legislature has always been challenged on its compliance with constitutional provisions in the exercise of impeachment power. It is a truism that when the legislature is found responsible for sacrilege and abuse of the constitution, the society and its people become the victims.[37] Consequent upon the consistent challenge on the exercise of impeachment power of the legislature, some

[31] Jordy C.B., et. al., *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, (London: Preager, 2003), 152.
[32] Ibid.
[33] Olakulehun and Olafunmilayo, "The Gale of Impeachments in Nigeria: A Threat to Sustainable Democracy",136.
[34] Sylvester S. Shikhyl,"Constitutional Design and Justiciability of Impeachment under the 1999 Nigerian Constitution", *Nigerian Journal of Legislative Affairs*, (2007): 2.
[35] Babalola Afe., "Practice Note on Impeachment and the Rule of Law", quoted in Gwaza P.A. , "Comparative Analysis of the Impeachment Powers of the Legislatures in Nigeria", http//ssrn.com/abstract=2573702, (accessed June 16, 2015).
[36] Obiora and Chukwuemeka, "Constitutionalism, Democracy and Impeachment in Nigeria (1999-2007): An Appraisal", 51.
[37] See *Inakoju v Adeleke* (2007)4 NWLR (pt.1025) 123.

scholars described it as "jamboree", "lawlessness", "sham"[38] and "brouhaha".[39] This makes impeachment as one of the most troubling phenomenon[40] and engaging issue in the Nigerian constitutional history.[41]

1.2 Problem Statement

In every research, the problems associated with it should be identified and intended to be addressed.[42] Problem statement entails statement on the problems associated with the research and forms the basis upon which the research will be conducted. Therefore, a research problem is "a statement about an area of concern, a condition to be improved upon, a difficulty to be eliminated, or a troubling question that exists in scholarly literature, in theory, or in practice that point to the need for meaningful understanding and deliberate investigation".[43] In the light of the foregoing, the problems in this research are:

1.2.1 Lack of Sound and Adequate Constitutional Requirements on Impeachment

The constitutional provisions on impeachment do not adequately address some issues consequent upon which some other problems set in. For instance, the meaning and usage of the word "impeachment" has been a subject of misunderstanding in Nigeria. This

[38] Olakulehun and Olafunmilayo,"The Gale of Impeachments in Nigeria: A Threat to Sustainable Democracy".

[39] Nigeria Needs Code of Political, Ethical Conduct–legal expert, http//channelstvnews/enugu_impeachment_ nigeria _ needs_code_of_political_ethical_conduct,(December 10, 2015).

[40] "Incessant Impeachments, a Blot on Nigeria's Democracy", *Osun Defender*, www.osundefenders.org (accessed January 11, 2015).

[41] Ogunsaki Jide, "Evaluation of Impeachment Proceedings under the Constitution of the Federal Republic of Nigeria, 1999" *Journal of Law, Policy Globalization*, 34 (2015), www.iiste.org/index.php/JLPG (accessed January 11, 2015).

[42] Uma Serkaran and Rouger Bougie, "Research Methods for Business: A Skill Building Approach", 5th ed (India: Wiley, 2009) 45.

[43] Bryman, Alan. "The Research Question in Social Research: What is its Role?" *International Journal of Social Research Methodology* 10 (2007): 5; Ellis, Timothy J, and Yair Levy Nova. "Framework of Problem-Based Research: A Guide for Novice Researchers on the Development of a Research-Worthy Problem." *Informing Science: The International Journal of an Emerging Transdiscipline* 11 (2008), 39.

could be found in public discourses, political analyses and legal and judicial proceedings. Even scholars on constitutional law are sometimes found guilty of this misunderstanding. This arises mostly between the word "impeachment" and "removal" where they are used interchangeably. The legal effects of impeachment are also a subject of misunderstanding in Nigeria. For instance, a House of Assembly passed a resolution to grant pardon to a State Deputy Governor following his impeachment.[44] In some other cases, the competence of a person to contest for an election had been challenged on the ground of impeachment.[45] Of concern also are some procedural issues like service of notice of impeachment and numerical strength of members required in impeachment proceedings as they have always been subject of controversy.

1.2.2 Lack of Adequate Constitutional and Legal Safeguards for Investigation and Proof of the Grounds for Impeachment

Investigation and proof of the grounds for impeachment are the fulcrum of impeachment proceedings in that they determine the success or otherwise of all impeachment proceedings. The constitution vests in the Investigation Panel the responsibility of investigation and proof of the grounds for impeachment and stops at that. The Rules of procedure guiding the investigations also do not make provisions for credible investigation as there is no provision relating to admissibility of evidence applicable before the panel. The issue of standard of proof which will enable the investigation panel to arrive at the just conclusion as to whether the grounds for impeachment have been proved has not been adequately taken care of by the constitution or the rules of impeachment procedure. This is also the case with the rules of admissibility of evidence

[44] The Lagos State House of Assembly pardoned Mr. Femi Pedro following his impeachment about ten years ago on the ground that he had shown enough remorse.
[45] *PDP vs. INEC* (2014)

applicable before the panel. Consequently, the credibility of the report of the investigations panel becomes questionable.[46] This is much so as most of the grounds for impeachment investigated were found proved by the panels including cases where the panel did not admittedly call for any evidence.[47]

1.2.3 Socio-Legal Issues and Challenges to Compliance with the Constitutional Requirements for Impeachment

Another problem associated with impeachment is lack of compliance with the requirements laid down by the constitution to carry out this important function. Some scholars wonder whether the procedure, which guides the exercise of the power of impeachment,[48] is very complicated and elaborate that could affect compliance by the legislature.[49] In order to ensure that the chief executives have a fair trial before they are impeached,[50] compliance with the enabling constitutional provisions is necessary for the validity of the proceedings and noncompliance makes it void[51] being an abuse of procedure.[52] In this light, it is disheartening to note that more than 95 per cent of the impeachment proceedings conducted so far in Nigeria have been challenged in court on the ground of noncompliance with the constitutional requirements guiding the

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46 Michael J. Gerhardt, (2000) *"The Perils of Presidential Impeachment"*, University of Chicago Law Review, 293-313; John D. Feerick, (1971) "Impeaching Federal Judges: A Study of the Constitutional Provisions", *Fordham Law Review*, 39 no.1.

47 All these cases will be adequately analyzed at great length in Chapter Four of this study.

48 Sagay, I. A., "Nigerian Appellate Courts as Catalysts for Democratic Consolidation and Good Governance", 3rd Babatunde Benson Annual Lecture, delivered 14th Nov., 2007 at Town Hall, Ikorodu, Lagos.

49 Tsav Steven Aondona," Constitutional Provision: Relationship between the Executive and the Legislature",*International Journal of Business and Law Research*, 3 no.2 (2015): 29.

50 Lawal, "Abuse of Powers of Impeachment in Nigeria", 319.

51 Salman, R.K., "The Impeachment Power of the Legislature: A Comparative Analysis", www.unilorin.edu.ng/articles (accessed June 12, 2015).

52 Diram, A.H.,"Constitutional Violations and the Fallacy of a Political Approach: the Case of Adamawa State" *Kogi State University Bi-annual Journal of Public Law*, 2 (2009): 141.

impeachment procedings.[53] This raises the question as to whether there are problems and challenges either with the law or the attitude of the law makers towards the exercise of the impeachment power or both.

1.2.4 Legal Challenges to Judicial Review of Impeachment

Last but certainly not the least of the statement of the problems are the challenges to judicial review of impeachment where a person is aggrieved with the exercise of the impeachment power. The judiciary, being the guardian of the constitution, ensures that the other organs of government exercise their powers within the limits prescribed by the constitution.[54] So, while the impeachment power of the legislature is a check on the executive arm of government, judicial review also constitutes a check on the excesses of the legislature.[55] The exercise of impeachment powers being a purely legislative business may be subjected to the inherent powers of court of law for judicial review. However, the courts in Nigeria play a restrictive role in such reviews. This is because in most cases the courts do not review such exercise until after they have been concluded when the damage, if any, has been done. On some occasions, the court's intervention by way of an order had been subject to disregard by the stakeholders in the impeachment project. Similarly, judicial review of impeachment is characterized by delays and as the saying goes "justice delayed is justice denied". Worse still, after such delays in the judicial review process, the judicial remedies usually awarded to the public office holders who have been illegally impeached have also been a source for concern. This is

[53] An analysis made in this Thesis reveals that there are about 16 well kown cases of impeachment conducted so far in Nigeria. All the cases have been challenged in court as discussed across the Thesis. However, there are very few of them which have not gone to the court.

[54] Imo J. Udotia, "The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects" *Journal of Law, Policy and Globalization*, 40 (2015): 192.

[55] Taiwo Eliah Adewale, "Judicial Review of Impeachment Procedure in Nigeria" *Malawi Law Journal*, 3 no. 2 (2009): 236.

in view of the fact that at the time of the judgment, a substantial part of their tenure might have elapsed due to the delays. How could a Governor, who enjoys four-year tenure but unconstitutionally removed for more than a year before he was reinstated by court, not be compensated to make up for the period he spent out of office as a result of his unconstitutional removal?[56]

1.3 Research Questions

In view of the problems pointed out above, this research formulates the following questions:

1. Does Nigerian constitution make sound and adequate provision for impeachment?

2. Can the Constitutional and Legal Provisions on impeachment ensure credible investigation and proof of the grounds for impeachment?

3. What are the challenges to compliance with the constitutional requirements for the exercise of the powers of impeachment?

4. Is judicial review an effective mechanism to redress grievances from impeachment proceedings?

5. What lessons could Nigeria derive from constitutional provisions and practices on impeachment from other jurisdictions?

1.4 Research Objectives

This research is aimed at realizing the following objectives:

1. To examine the adequacy of impeachment provisions under the Nigerian constitution.

[56] It takes an average of 10 to 18 months for chief executives who were unconstitutionally removed to recover their mandates through the courts. This period is still computed as part of their four-year tenure even when compensation is specifically asked for. See *Ladoja vs. INEC* (2007) 12 NWLR (pt.1047); (2007) LPELR-CA/A/89/M/2007.

2. To analyse the constitutional and legal provisions governing the investigation and proof of grounds for impeachment.

3. To identify and analyze issues and challenges to compliance with the constitutional requirements for the exercise of the power of impeachment.

4. To examine the legal challenges to effective judicial review of impeachment.

5. To make recommendations from other jurisdictions on how to improve the law and practice of impeachment in Nigeria.

1.5 Significance of the Study

The significance of impeachment proceedings in every jurisdiction where presidential democracy is practiced cannot be overemphasized. It plays equal role as election which effect is institution of new President, Vice President, Governor or Deputy Governor[57] thereby subverting the mandate freely given by the majority of the electorates. This could have a devastating effect capable of heating up the body polity. Therefore, impeachment, which becomes a topical issue in the Nigerian constitutional development, needs a thorough inquisition[58] like this research in order to make contribution to the existing body of knowledge on how best to chart a new legal course to Nigeria's impeachment practice and jurisprudence.

In view of the above, this research will make a significant contribution to the existing body of knowledge on impeachment. This is because the issues and problems pointed

[57] Olakulehin, and Olufunmilayo, "The Gale of Impeachment in Nigeria: A Threat to Sustainable Democracy" 76.

[58] Taiwo Kupolatin, "Crises of Constitutional Impeachment: Governor Fayose as a Case Study" in *Legal Issues for Contemporary Justice in Nigeria,* ed. Olatunbosun, I.A., (Ile Ife: Cedar Productions, 2007), 69.

out in this research have not been adequately addressed by the previous esearches. Thus, since the research is different in substance, scope, form and approach, the contribution will be unique and original. In view of this, it will identify and provide practical solutions on how best to address the legal and attitudinal issues and challenges bedeviling the exercise of the legislative power of impeachment by all the stakeholders in Nigeria. Therefore, the research upon completion would benefit the government, academic community and the general public. For the government, the research will help the legislature, being the arm of government vested with the power of impeachment and amendment of the constitution. The suggestions will address both the constitutional and attitudinal challenges in the exercise of legislative power of impeachment. The judiciary will also greatly benefit from the research in that the challenges on judicial review of impeachment had been addressed. The executive, on the other hand, will find the research useful because it is always the targets of impeachment. It will, on the other hand, benefit the academic community by adding to the existing literature in the area. Lecturers, students and researchers in law, politics and social sciences will find it resourceful in that it will be a gateway to subsequent researches in the area. The general public, including those who are directly or indirectly affected by impeachment, will equally find this research educative on the laws and practice of impeachment in Nigeria and other jurisdictions.

1.6 Research Methodology

Methodology is the science of method and method is the manner of proceedings adopted by legal researchers in their bid to gain systematic, reliable and valid knowledge about

legal phenomena.[59] In social sciences, methodology refers to how research is carried out.[60] In this light, research design; research scope; data collection and analysis will be discussed.

1.6.1 Research Design

The term Research Design is seen as the entire process of planning and carrying out a research study which involves, among others, tools and techniques for gathering data.[61] This process or technique whereby materials relevant to a given situation are identified, stored and retrieved for use is called research method.[62] It deals with the procedure for location, collection and analysis of information. In the legal parlance, research method is the manner of proceeding used by legal researchers to obtain systematic, reliable and valid knowledge about legal phenomena.[63] There are various methods for conducting research but the most popular are doctrinal and empirical methods. In legal research, the doctrinal method is more commonly used.[64] However, a combination of both doctrinal and empirical, called socio-legal, could be conducted. This is a legal research that uses methods taken from other disciplines to generate empirical data in order to answer research questions.[65] Specifically, it uses social science methods to explain the workings

[59] Martin Gasiokwu, *Legal Research and Methodology*, (Enugu: Chenglo Ltd., 2006), 36.
[60] Steven J. Taylor, Robert Bogdan, *Introduction to Qualitative Research Methods: A Guidebook and Resources*, (New Jersy: John Wiley & Sons Inc., 2016), 3.
[61] Gasiokwu, *Legal Research and Methodology*, 87-88.
[62] Yusuf Aboki, *Introduction to Legal Research Methodology*, 3rd ed. (Kaduna: Ajiba Printing Production, 2013), 2.
[63] Gasiokwu, *Legal Research and Methodology*, 90.
[64] However, there are some criticisms against it. See, for instance, Hutchinson Teryy, "Doctrinal Research: Researching the Jury" in *Research Methods in Law*, ed. Watskin, D., Burton, M., (Oxfordshire: Routledge, 2013), 7; Rob Van Gestel and Hans-W Macklitz, "Revitalizing Doctrinal Legal research in Europe: What about Methodology?" *European University Institute Working Papers*, (2011): 4.
[65] Ashish Kumar Senghal and Ikramuddin Malik, "Doctrinal and Socio-legal Methods of Research: Merits and Demerits", *Educational Research Journal*, 2 no.7 (2012): 252.

of law and legal institutions.[66] Considering the fact that there is now a surge in scholarly interest in research designed to achieve a better understanding of the role of the legal process in the society[67] and the nature of this topic, socio-legal research will be adopted. This is because the method will enable the researcher address rightly, comprehensively and authoritatively all the questions raised and the objectives set for this Research.

1.6.1.1 Doctrinal Method

This is called visualized, imaginative, unpractical, visionary, or conceptual research.[68] In other words, it is referred to as academic, traditional conventional, or arm-chair research. It is a library-based, pure theoretical legal study. It involves analysis of the legal doctrines,[69] case laws and statutory provisions by application of the power of reasoning.[70] In view of this, doctrinal method is chosen because it is critical and evaluative[71] as such capable of addressing the research problems and objectives thereby providing an insightful analysis of the constitutional provisions on impeachment. It is also adopted being dominant in legal researches.[72]

1.6.1.2 Empirical Method

This method involves the collection of facts and data through interviews, questionnaires, etc. from a target group. The facts and data are later analyzed from which results are

[66] Micheal Adler, "Recognising the Problem: Socio-Legal Research Training in the United Kingdom", http://www.ucl.ac.uk/laws/socio-legal/empirical/docs/Adler_REPORT.pdf (accessed April 12, 2016).
[67] Gasiokwu, *Legal Research and Methodology*, 90.
[68] Aboki, *Introduction to Legal Research Methodology*, 3.
[69] Sengal and Malik, "Doctrinal and Socio-legal Methods of Research: Merits and Demerits", 252.
[70] Gasiokwu, *Legal Research and Methodology*, 13.
[71] Mahda Zahraa, Research Methods for Law Postgraduates Oversees Students, (Kuala Lumpur, Stiglow, 1998) 18-19.
[72] Hutchinson Terry, and Ducan Niggel, "Defining and Describing what to do: Doctrinal legal Research, Deakin Law Review, 17 no. 1 (2012) 102.

obtained.[73] Although this method is common in the pure-science-based courses, where facts are collected outside and analyzed in the laboratory, it is also believed to be relevant in legal research. Information could also be collected outside and analyzed in a library, office or chambers.[74]Although doctrinal method is mostly adopted in legal research in most developing countries, there is growing need for at least collection of some data through empirical method. It is noted:

> *With the change in the nature of societal realities, the techniques of research are bound to undergo change. This explains why there is a movement from analytical research to empirical research... Obviously the study of law cannot escape this trend if law has to attend its rightful place as a social science.* [75]

Therefore, doctrinal and empirical methods are combined in this research because it will enable the researcher to view the law from within and outside[76] through interaction with the public, experts to obtain facts on the workings of the law.[77] This will make the findings more credible.[78] Another justification for the adoption of socio-legal method is to make the research different because Nigerian legal researches avoid field work or any social science approach.[79] This will enhance the originality of the research.

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[73] Aboki, *Introduction to Legal Research Methodology*, 2.
[74] Ibid
[75] Gasiokwu, *Legal Research and Methodology*. 81.
[76] Cotterrell Roger, "The Sociological Concept of Law", Journal ofLaw and Society, 10 no. 2 (1983) 242.
[77] Wortley, B.A., "Some Reflections on Legal Research after Thirthy Years", *Journal of the Society of Public Teachers of Law*, 8 (1964) 254.
[78] Alexander Volokh, "Choosing Interpretive Methods: A Positive Theory of Judges and Everyone Else", *N.Y.U. Law Review*, 83 (2008) 774.
[79] Ayua, I. A., "Legal Research and Development" in Ayua I.A. and Gubodia D.A., eds *Law and Research Methodology* (Lagos: NIALS, 2001) 1.

1.6.2 Research Scope

This research covers the constitutional provisions on the impeachment power of the Nigerian legislature. Therefore, the power of the National Assembly (the Senate and the House of Representatives) in the impeachment of the President and Vice President; and that of the State Houses of Assembly to impeach the Governor and Deputy Governor are critically analyzed. The study covers impeachment cases in Nigeria from the year 2007 to the time the study was completed in 2017. The rules of procedure for investigation and proof of the grounds for impeachment made by some State Houses of Assembly were also discussed and analysed. The constitutions of some other countries from which Nigeria could draw some lessons were be referred to.[80]

1.6.3 Types of Data

The most popular sources of data are primary and secondary sources which are based on their originality. Primary sources are direct and the most authoritative. They provide direct evidence of the subject matter of the research. Primary sources include legislations (legislative enactments at the federal, state and local government levels); decisions of superior courts (including tribunals and other quasi-judicial bodies).[81] On the other hand, secondary sources refer to the writing of legal scholars or teachers describing, analyzing and criticizing the law.[82] This could include law books, law reference books (including

[80] For instance, in the United States of America, there were 17 cases of impeachments out of which 7 of the public officers concerned were removed from office. See John Murphy, *The Impeachment Process* (New York: Infobase Publishing, 2007), 12. While in Brazil, President Fernando Collor de Mello was impeached in 1992. See Jordy C.B., et. al., *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, (London: Preager, 2003), 152. Equally recently, another President Dilma Rousseff, has been impeached in May, 2016. See www.cnn.com (accessed May 12, 2016).
[81] Aboki, *Introduction to Legal Research Methodology*, 15.
[82] *Ibid*, 17.

encyclopedia, dictionaries), articles about law, treatises, law reviews,[83] texts, treatises and monographs.[84] In view of this, the researcher used such primary data as the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and that of some other countries; Impeachment Investigation Rules made by some Houses of Assembly in Nigeria; decisions of superior courts; and interviews[85] conducted on the selected respondents. Also relied upon in this research is data from secondary sources like textbook, academic journals and the Internet.

1.6.4 Data Collection Methods

The data used in this research was gathered from libraries in Malaysia and Nigeria, interview as well as the Internet. Therefore, primary data such as constitutional provisions and decisions of superior courts as well as secondary data from textbooks and journals emanated from the aforesaid. For interview, the data was gathered from respondents who have knowledge and experience in the subject matter of the research. This is because interview is the the most appropriate method for data collection for qualitative research[86] in that it enables the research unearth information which other methods cannot afford.[87] In a research, interview could be structured, semi-structured or unstructured.[88] The interview adopted in this research is semi-structured interview. This is the interview whereby the interviewer prepares a set of same questions expected to be

[83] GeorgetownUniversitLawLibraryLegalResearchDefinitions,http://www.ll.georgetown.edu/tutorials/definitions/primary_source.html (accessed December 12, 2015).
[84] Gasiokwu, *Legal Research and Methodology*, 53.
[85] Interview is a data collection method whereby one person (an interviewer) asks questions of another person called respondent. See Polit D.F., Beck C.T., (2006) *Essentials of Nursing Research. Methods, Appraisal and Utilization*, (6th ed) (Philadelphia: Williams and Wilkins, 2006), 90.
[86] Turner Daniel, Qualitative Interview Design: A Practical Guide for Novice Investigators", *The Qualitative Report*, 15 no. 3 (2010) 757.
[87] Rowly Jennifer, "Conducting Research Interviews", *Management Research Review*, 35, no 3/4 (2012) 261.
[88] Warren, CAB., Karner, TX, *Discovering Qualitative Methods; Field Research. Interviews and Analysis* (Los Angeles: Roxbury Publishing Company,2005) 34.

answered by all interviewees, but further questions may be asked during the interviews for the purpose of clarification on some issues.[89] The choice of this form of interview was based on the fact that it is a unique,[90] reliable,[91] effective and convenient means of gathering a credible data[92] in that it is in writing and enables the interviewer prepare ahead of time.[93] It is equally flexible,[94] accessible and intelligible with the capability of disclosing hidden facts of human and organizational behavior.[95]

For an interview in qualitative research, sampling method should necessarily be determined. In this regards, researchers use different sampling method like snowballing, theoretical and purposive method in order to identify the respondents.[96] Purposive sampling is the commonest[97] and most effective method in qualitative research.[98] It is a method whereby respondents are selected on the basis of their experience in the subject

[89] Connaway, L. S., Powell, R.R., *Basic Research Methods for Librarians*, (5th ed.) (California: *ABC-CLIO* Publishers, 2010), 171.
[90] Bertholomeow K., et. al, Coding Semi-structurd interview in social psychological research", in Harry Ress and Charles Judd (eds) (Cambridge: Cambridge University Press, 2000) 286.
[91] Donald R. Copper and Pamela S. Schindler, *Business Research Methods*, 12th ed. (New York Mcgrowhill, 2014) 153.
[92] Sandy Q. Qu and John Dumay, "The Qualitative Research Interview" *Qualitative Research in Accounting & Management*, 8 no.3 (2011): 241.
[93] Richard, E., *Beginning Qualitative Research: A Philosophical and Practical Guide*, (Washing D.C.:The Palmer Press, 1994), 89.
[94] It gives the interviewer the freedom to adjust the nature, order and language of the questions even during the interview. See Berg B.L., *Qualitative Research Method for the Social Sciences*, (5th ed.) (Boston: Pearson, 2004) 79.
[95] Sandy Q. Qu and John Dumay, "The Qualitative Research Interview" *Qualitative Research in Accounting & Management*, 8 no.3 (2011): 241.
[96] Robert Mark Silverman, *Qualitative research Method for Community Deveto pment*, (New York: Routledge, 2015) 66. See also Irving Siedman, *Interviewing as Qualitative Research: A Guide for Researchers in the Education and the Social Sciences*, (London: Teachers College Press Ltd., 2013) 89.
[97] Pirkko Makula, Micheal Silk, *Qualitative Research for Physical Culture*, (London: Palgrave Macmillan, 2011) 95.
[98] Malcom Carey, *Qualitative Research Skills for Social work: Theory and Practice*, (London: Ashgate Publishing Ltd., 2012) 39.

matter of the research.[99] This method enables the researcher to choose respondents from whom basic and most reliable data could be obtained based on their knowledge and experience relevant to the problem and/or objective of the research.[100] Furthermore, purposive sampling is very diverse which ensures that the key groups that have relevance to the research are selected[101] in order to achieve its purpose.[102] Therefore, purposive sampling method is the method used for selecting the respondents for this research.

As for the sample size, qualitative research does not specify a particular number.[103] However, some scholars put the number at 12-60,[104] 15-20[105] and 50.[106] Notwithstanding this, it depends on the size that could answer the research questions[107] problems and objectives and the availability of time and resources.[108] And in order to do justice to the data collected from the sample, the size of the sample ought to be small.[109] Additionally,

[99] Jane Ritchie, et. al., *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, (2nd ed) (London: SAGE Publications, 2014) 144. See also Craswell J. W., *Qualitative Inquiry and Research Design*, (3rd ed.) (London: SAGE, 2013) 56.

[100] Carey, *Qualitative Research Skills for Social work: Theory and Practice*,39.

[101] Jane Ritchie, et. al., *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, (London: SAGE publications, 2013) *143*.

[102] Laeey S. Lutton, *Qualitative Research Approaches for Public Administration*, (London: Rutledge, 2015) 39.

[103] Jennifer Mason, *Qualitative Researching*, (London: SAGE, 2002) 135.

[104] Jane Ritchie, et. al., *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, (London: SAGE publications, 2013) 118.

[105] Mark Marson, "Sample Size and Saturation in PhD Studies using Qualitative Interviews" *Qualitative Social Research*, 11 (2010).

[106] Margarete Sendalowski, "Sample Size in Qualitative Research", *Research in Nursing and Health*, 18 no. 2 (1995) 180.

[107] Makula, Silk, *Qualitative Research for Physical Culture, 95.*

[108] Dan Remenyi, *Field Methods for Academic Research: Interview, Focus Group and Questionnaires in Business and Management Studies*, (3rd ed.) (London: Academic Conferences and Publishing International Ltd., 2013) 193.

[109] Craswell , *Qualitative Inquiry and Research Design, 144-45.* See also Mira Crouch, Hearther Mckazie, "The Logic of Small Samples in Interview-based Qualitative Research" 45 no. 4 (2006) 484.

since qualitative research does not require many participants[110] or statistical strength,[111] 16 respondents were selected as sample. They are categorized as follows:

(a) Lawmakers at the National and States Assembly who have the power of impeachment: (four lawmakers from National Assembly and State House of Assembly);

(b) Executive office holders who are the subjects of impeachment: (One Governor or Deputy Governor who experienced threat, attempt or actual impeachment);

(c) Judge: (One Judge of a High Court);

(d) Investigation Panel: (two members);

(e) Legal Practitioners: (Four legal practitioners who handled impeachment case); and

(f) Academics: (Four Professors of constitutional law).

The choice of these respondents is determined by the fact that the data collected based on their knowledge and experience would greatly help in answering the research questions and achieving the research objectives.

The nature of the questions to be used in an interview depends on the research questions and the type of interview to be adopted.[112] The interview questions will be developed in

[110] John W. Cresswell, *Research Designs: Qualitative, Quantitative and Mixed Mode Approaches*, 3rd ed. (London: SAGE, 2009) 178.
[111] Nicky Britten, "Qualitative Research: Qualitative Interviews in Medical Research", *British Medical Journal*,311 no6999(1995)253.
[112]Research Observatory University of the West England,Bristol, http://ro.uwe.ac.uk /RenderPages /RenderLearnin gObject.aspx?Context=7&Area= 1&Room=3&Constellation=25&LearningObject=120 (accessed on May 1, 2016)

such a way as to generate data in support of the relevant literature for realizing the research objectives. Generally, open-ended questions[113] will be used which could take the form of introductory, follow-up, probing, specifying, direct, indirect, structuring, silence, and interpreting questions.[114] Therefore, the interview questions are developed from the examination of the relevant constitutional provisions and literature, judicial decisions and the practice of impeachment. They are also in accord with the research problems and objectives.

1.6.5 Data Analysis

In research context, data analysis entails a careful study of the information obtained and used in a research and the techniques therefor. It involves the process of the examination and conclusions from the information as contained in the raw data.[115] In order to know what it is made up of.[116] The primary and secondary data used for this research substantially came from documents relevant to the research problem and the data generated from semi-structured interview.[117] A widely used qualitative data analytical method is thematic analysis[118] because it is the foundation of qualitative data analysis methods.[119] The method emphasizes on the examination of data relevant to the research

[113] The focus for qualitative research is that questions should be open-ended which allows the interviewee to fully participate. See Richard E., *Beginning Qualitative Research: A Philosophic and Practical Guide*, (Washington D,C.: The Palmer Press, 1994) 88.
[114] Steiner, Kvale, *Interviews: An Introduction to Qualitative Research Interviewing*, (California: SAGE Publications, 1996), 140.
[115] Anwarul Yakin, *Legal Research and Writing* (Malaysia: Lexis Maxis, 2007) 46.
[116] Yusuf Aboki, *Introduction to Legal Research Methodology*, 2nd ed. (Nigeria: Tamaza Publishing Company Ltd., 2004) 6.
[117] Glenn A. Bowen, "Document Analysis as a Qualitative Research Method", *Qualitative Research Journal*, 9 no. 2, (2009), 30.
[118] Virginia Bruant, Victoria Clarke, "Using Thematic Analysis in Psychology", *Qualitative Research in Psychology*, 3, no. 2, (2006), 1.
[119] Ibid.

questions as themes.[120] It could be used to analyze primary qualitative data[121] like the text generated from in-depth interviews.[122] In view of this, the data generated from the interview was analyzed thematically due to its value and flexibility.[123] This will enable the researcher to get the understanding and experience of the respondents on the themes of the research.[124] The themes, as derived from the research questions, are constitutional requirements for impeachment; investigation and proof of the grounds for impeachment; compliance with constitutional requirements and effectiveness of judicial review of impeachment proceedings. In addition, the data from the interview conducted was analyzed manually as against software analysis using tools like NVIVO.[125] The justification for the choice is that the number of respondents is small (16 respondents) and the desire to be more familiar with the data without any interference.[126] In the same vein, the computer software analysis also has interpretation limitations in compared to "intelligence, creativity of the human mind".[127] For the purpose of this analysis, the recorded interview was transcribed into Microsoft word document for easier reading and analysis.[128] This transcription is aimed at transferring the oral version of the interview to

[120] https://en.wikipedia.org/wiki/Thematic_analysis Wikipedia (accessed February 20, 2016).
[121] James Thomas, Angela Harden, "Methods for the Thematic Analysis of Qualitative Research in Systematic Reviews", *Journal of Negative Research in Biomedicine*, http://bmcmedresmethodolbiomedcentral.com/articles/10.1186/1471-2288-8-45 (accessed February 12, 2016).
[122] Greg Guest, Kathleen M. MacQueen, *Applied Thematic Analysis* (SAGE Publications, 2011), 7.
[123] Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology", *Qualitative Research in Psychology*, 3 no. 2 (2006) 77-101; Victoria Clarke and Virginia Braun, "Teaching Thematic Analysis: Overcoming Challenges and Developing Strategies for Effective Learning", *The Psychologist*, 26 no. 2 (2013): 120-123.
[124] G Greg, M MacQueen Kathleen and E. Namey Emily, *Applied Thematic Analysis* (Canada: SAGE publishing Company, 2011) 67.
[125] Uwe Flick, *An Introduction to Qualitative Research* (London: Sage, 2009) 359.
[126] John W. Cresswell, *Educational Research: Planning, Conducting and Evaluating Quantitative Research*, 4th (Boston: Pearson, 2012) 240.
[127] Amos Hatch, *Doing Qualitative Research in Education Settings* (New York; SUNY Press, 2002), 29.
[128] David Boulton and Marty Hammersley, "Analysis of Unstructured Data", in Roger Sapsfort and Victor Jupp (eds) Data Collection and Analysis (London: SAGE, 2006) 246.

text.[129] The textual version was used at appropriate places to address the questions and strengthen some findings and recommendations and other relevant issues in the research.[130]

For the analysis of other documentary materials from statutes, case law and such secondary data as textbooks and scholarly articles, content analysis approach was used. This is because the approach had been applied in legal researches like this Thesis.[131] Content analysis involves a systematic examination of what is recorded in form of document such as book, diary, letter, newspaper or any other medium.[132]

Although the research is not comparative in nature, but reference and discussions had been made to other jurisdictions where Nigeria could learn a lot from their constitutional provisions on impeachment. This practice is important to legal research and scholars who have used it to shape the laws in their societies.[133] Thus, this will assist in the search for the most appropriate constitutional provisions in other jurisdictions to address the inadequacies and other constitutional problems identified in this research. Both the primary and secondary data were analyzed in the library/office with a view to making

[129] Micheal Bloor and Fiona Wood, *Keywords in Qualitative Methods: A Vocabulary of Research Concepts* (California: SAGE, 2006) 167.
[130] Christiana Wieczorek, et. al "The Bumpy Road to Implementing the Baby-friendly Hospital Initiative in Austria: A Qualitative Study", *International Breastfeeding Journal*, 10 no. (2015) 4.
[131] Mark A. Hall, "Systematic Content Analysis of Judicial Decisions", *California Law Review*, 96 no. 1 (2008): 99; Nevendorf Kimberly, *The Content Analysis Guide* (London: Sage, 2002) iv.
[132] Anwarul Yakin, *Legal Research and Writing* (Malaysia: Lexis Maxis, 2007) 48.
[133] Vernon Valentine Palmer, "From Lerotholi to Lando: Some Examples of Comparative Law Methodology", *The American Journal of Comparative Law*, (2005): 262; A. Wilson, "Comparative Legal Scholarship" in Mconville M and Chew W. H., (eds) *Research Methods for Law* (Edinburg University Press, 2007) 87.

recommendations on how the constitutional provisions on the power of impeachment should be provided and exercised.

1.7 Limitation of the Study

Occurrences and matters that may arise in the course of research which may be beyond the control of the researcher is what limitations entail.[134] Resource, time constraints, and lack of cooperation among respondents and access to some government documents are the limitations the researcher is likely to meet in the course of this research. Time constraint will be overcome by working assiduously to ensure that the study is completed within the stipulated time frame. As for the resources, the researcher intends to use his personal savings and soft loan, if the need arises, to overcome any possible financial constraint. In the event of the lack of cooperation from the respondents selected for this research, resort will be made to alternative respondents who also have the required experience in the research area. As for lack of access to government documents, secondary sources of such documents like interview with a respondent who is familiar with the contents of the documents will be resorted to.

1.8 Literature Review

Put literally, literature review means "re-viewing" the literature. It is a written appraisal of an existing knowledge.[135] It is also a scholarly text which includes the current knowledge, substantive findings and theoretical and methodological contributions to a

[134] Wiersma, W., *Research Method in Education. An Introduction*, (Boston: Allyn and Bacon, 2000), 76.
[135] Jill K. Jesson, et. al., *Doing Your Literature Review: Traditional and Systematic Technique*, (London: SAGE, 2011), 12.

particular topic.[136] The purpose of literature review is to show readers that the researcher has read and fully understood important published work relevant to the topic or questions in his field.[137] In view of this, the literature review below shows a collection and appraisal of the relevant literatures on impeachment and related issues. It is divided in accordance with the research questions as follows.

1.8.1 Constitutional Provisions on Impeachment

Many scholars have written on the constitutional provisions on impeachment in other jurisdictions wherein insightful analyses were made. Thus, Hun Kim asserted that comparative researches have shown that impeachment provisions are made to be cumbersome and difficult to execute in order to ensure stability in government.[138] The justification for cumbersome constitutional provisions, as some scholars such as Sullivan believe, is that impeachment is a "drastic remedy that should be difficult to invoke and rarely used".[139] Therefore, Young-Hoa advocates for a strict constitutional requirements for impeachment in order to protect the office holders from abuse by the opposing political parties in the parliament.[140] One way to do this, as Susan suggested, is to amend the constitution to require a higher majority of members of the legislature to approve every stage of the impeachment process.[141]

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[136] https://en.wikipedia.org/wiki/Literature_review Wikipedia, (accessed April 22, 2016).
[137] How to Write a Literature Review, Centre for Academic Success, Birmingham City University, http://library.bcu.ac.uk/learner/writingguides/1.04.htm (accessed April 12, 2016).
[138] Young Hun Kim, "Impeachment and Presidential Politics in New Democracies", *Journal of Democratization*, 21 no 3, (2014).
[139] Kathleen M. Sullivan, "Madison Got It Backward", *New York Times*, Feb. 16, 1999; Ronald Dworkin, "The Wounded Constitution", *New York Review Books*, Mar. 18, 1999,
[140] Jung Young- Hoa, "Impeachment of President for 'high crimes'- A Comparison between US and Korea" *Studies on American Constitution*, 27 no. 3 (2016).
[141] Susan Low Bloch, "A Report Card on the Impeachment: Judging the Institutions that Judged President Clinton", *Law and Contemporary Problems*, 63 no. 1&2, (1999).

Another aspect of impeachment which had not received much constitutional attention as pointed out by scholars is the issue of resignation before the end of the impeachment proceedings. Thus, scholars analysed instances in which the constitution is helpless following the resignation of the office holders subjected to impeachment. For instance, Diego asserted that during the impeachment of Raul Cubas by the Paraguayan Chamber of Deputies for negligence and abuse of power in 1999, he resigned before the completion of the process.[142] This was possible because, according to Gyoung-Moon, the constitutional provisions were silent on the issue.[143] In the same vein, Naoko Kada recalled how the impeachment proceedings against Brazillian President, Fernando Collor, were terminated after he resigned amidst the impeachment proceedings.[144] According to Dimulascu, similar scenario played out before the Romanian legislature in 1994 during the impeachment proceedings against President Ion Iliescu.[145] Hun Kim equally maintained that the parliament in Zambia was rendered helpless after it had initiated the impeachment process against the president, Levy Mwanawasa in 2003.[146] Under the United States constitution, the issue also generates some scholarly arguments. As Kalt rightly put it:

> *This provides a difficult problem of constitutional interpretation. It confronts an ambiguous portion of the text, which renders unclear whether the political focus of impeachment limits just the offenses*

[142] Abente-Brun, Diego. "'People Power' in Paraguay." *Journal of Democracy* 10, no. 3 (1999): 93–100.
[143] Gu Gyoung-Mo, "Impeachment of Fernando Lugo and 'Transitional Justice' in Paraguay", *Democracy and Human Rights*, 12 no. 3 (2012).
[144] Kada, Naoko. "Impeachment as a Punishment for Corruption? The Cases of Brazil and Venezuela", in Jordy C. Baumgartner and N. Kada (eds) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, (Westport, CN: Praeger, 2003).
[145] Valentina-Andreea Dimulescu, (2009) "The Institution of Presidential Impeachment in Semi-presidential System: A Case Study of Romania", (Unpublished LLM Thesis) Department of Political Science, Central European University.
[146] Young Hun Kim, "Impeachment and Presidential Politics in New Democracies", *Journal of Democratization*, 21 no 3, (2014).

and offenders who can be pursued, or whether it also restricts the timing of the proceedings as well.[147]

Scholars such as Gerhardt,[148] Firmage and Mangrum,[149] Bestor,[150] contend that the public officer could be subjected to impeachment even after leaving office. In fact, Rawle argued that "It is obvious, that the only persons liable to impeachment are those who are or have been in public office".[151] On the other hand, authors like Story[152] are of the view that the text of the constitution does not permit impeachment after the public office holder is out of office by whatever means. As such he posited that "it might be argued with some force, that it would be a vain exercise of authority to try a delinquent for an impeachable offence, when the most important object, for which the remedy was given, was no longer necessary or attainable".[153] Turley added another justification that impeachment is meant to get rid of unqualified office holder not to punish him.[154] Therefore, once a public office holder is no longer occupying the office, he cannot be subjected to impeachment.[155]

[147] Brian C. Kalt "The Constitutional Case for the Impeachability of Former Federal Officials: An Analysis of the Law, History, and Practice of Late Impeachment", *Texas Review of Law and Politics*, 6 no. 12 (2001).
[148] Micheal Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* (Princeton: Princeton University Press, 1996).
[149] Edwin Brown Firmage & R. Collin Mangrum, "Removal of the President: Resignation and the Procedural Law of Impeachment", *Duke Law Journal* 1023, (1994).
[150] Arthur Bestor, "Impeachment", *Washington Law Review*, 49 no. 255 (1993).
[151] William Rawle, *A View of the Constitution of the United States of America*, (New York: New York Public Library, 2007).
[152] Joseph story, *Commentaries on the Constitution of the United States: With a Preliminary Review of the Constitutional History of the Colonies and States before the Adoption of the Constitution* (Massachusetts: Harvard University Press, 2006).
[153] Ibid.
[154] Jonathan Turley, "From Pillar to Post": The Prosecution of American Presidents", *American Criminal Law Review*, 1049, 1052 (2000).
[155] *Ibid.*

Many scholars dissipated a lot of energy on the controversy generated where constitutional provisions on impeachment do not make categorical provision on some aspects of impeachment but leave it subject to interpretation. According to McDowell, one of these provisions is "high crimes and misdemeanor" as the ground for impeachment under the United States' constitution.[156] This had attracted varying interpretations from scholars such as Posner,[157] Gerhardt,[158] Griffin,[159] Amar,[160] Berger,[161] Black,[162] and Sunstein.[163] Lamenting on the effect of this constitutional provision, Dworkin argued that "If the politicians who control Congress are numerous enough, and partisan or zealous or angry enough, they can remove a democratically elected President they dislike simply by finding some misdeed that they can label a 'high crime'..."[164] Thus, according to Marcus; prior to the commencement of impeachment proceedings against President Clinton of the United States, the House Judiciary Committee had to assemble legal experts to determine whether his conducts amounted to "high crimes and misdemeanors".[165] This was corroborated by Klarman who contended that about 443 Law Professors expressed their understanding of what "high crimes and misdemeanor" as a ground for impeachment under the United States constitution

[156] Gary L. McDowell, *High Crimes and Misdemeanors: Recovering the Intentions of the Founders*, 67 *Washington Law Review*, 67 no. 626, (1999).
[157] Richard A. Posner, *An Affair of State: The Investigation, Impeachment and Trial of President Clinton*, (Massachusetts: Harvard University Press, 2009).
[158] Micheal Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* (Princeton: Princeton University Press, 1996).
[159] Stephen M. Griffin, "Presidential Impeachment in Partisan Times: The Historical Logic of Informal Constitutional Change", *Connecticut Law Review*, 51 no. 37 (2018).
[160] Akhil Reed Amar, *America's Constitution: Biography*, (Washington: Random House, 2005).
[161] Raoul Berger, *Impeachment: The Constitutional Problems* (Massachusetts: Harvard University Press, 1974).
[162] Charles Black, *Impeachment; A Handbook*, (New Haven, CT: Yale University Press, 1974).
[163] Cass R. Sunstein, *Impeachment: A Citizen's Guide* (Massachusetts: Harvard University Press, 2017).
[164] Ronald Dworkin, "The Wounded Constitution", *New York Review Books*, Mar. 18, 1999,
[165] Ruth Marcus, "Judiciary Panel Signals it Will Pursue Impeachment: Legal Experts Testify on Constitutional Standards", *Washington Post*, Nov. 10, (1998); Laurence H. Tribe, "Rule of Law v. Rule of Life",*Boston Globe*, Nov. 16, 1998.

entailed.[166] Bowman and Sapinuck concluded that this made a United States' congressman to assert that "high crimes and misdemeanor" means "whatever a majority of the House of Representatives considers it to be at a given moment in history".[167] Similarly, Katyal contended that what could amount to "high crime and misdemeanor" as a ground for impeachment is a matter within the exclusive preserve of the interpretation of the congress because the judiciary has no role in impeachment proceedings.[168] However, even the lawmakers who are vested with the power to determine what the phrase means are always not unanimous in their interpretation.[169] For instance, during the debate of the United States' Congress for the interpretation of "high crimes and misdemeanor", The Democrats argued that "high crimes and misdemeanors" had a "very narrow meaning at the founding of the Constitution, and the Republicans responded by arguing that they should not be hemmed in by a two-century-old interpretation of a living document".[170] As Waters argued, "Usually, progressives are accused of loose interpretation and usually conservatives are considered to have strict interpretation of the constitution and law".[171] The effect, according to Lynn Turner, is that there have always been temptations on the part of the legislature to embark on impeachment proceedings even where the ground (s) does not constitute an impeachable

[166] See the letter they wrote to then-Speaker of the House of Representatives, Newt Gingrich. See Michael Klarman, *Constitutional Fetishism and the Clinton Impeachment Debate, Vargiria Law Review*, 85 (1999).

[167] Frank O. Bowman & Stephen S. Sepinuck, "High Crimes and Misdemeanors": Defining the Constitutional Limits on Presidential Impeachment", Southern California Law Review, 72 no. 15 (1999).

[168] Neal Kumar Katyal, "Impeachment as a Congressional Constitutional Interpretation", *Law and Contemporary Problems*, 63 no. 1 & 2 (2000).

[169] Young Hun Kim, "Impeachment and Presidential Politics in New Democracies", *Journal of Democratization*, 21 no 3, (2014).

[170] Neal Kumar Katyal, "Impeachment as a Congressional Constitutional Interpretation", *Law and Contemporary Problems*, 63 no. 1 & 2 (2000).

[171] An excerpt from the arguments of Representative Maxine Waters during the House of representatives debate on what amounted to "high crimes and misdemeanors" for the purpose of impeachment of United States' President, Clinton. See *House of Representatives, Debate on Impeachment*, Dec. 12, 1998, *reprinted in* 1998 WL 857390.

offence.[172] Therefore, as Michelle,[173] Alexender and Schauer[174] pointed out, clear constitutional provisions plays a vital role in impeachment.[175] While scholars such as Story,[176] Isenberg[177] and Douglas[178] advocate that grounds for impeachment need not be clearly defined under the constitution; Chafetz[179] and Kinkopf argues that failure to define them could force the office holder to serve at the will of the Congress.[180] In fact, Katyal added that "clear standards for what constitutes high crimes and misdemeanors allow Presidents to conduct their business without fear that their activities will one day serve as the basis for an impeachment".[181] This is the effect, as Nardy concluded, where constitutional provisions on impeachment are vague and uncertain.[182] According to Easterbrook, this is more so because words in a legal document may not always have their dictionary meaning[183] as such constitutional language may be too confusing to

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[172] For instance the first and successful impeachment under the United States constitution was that of a Federal judge, John Pickering, which was based on confused, contradictory and irregular proceedings which is not considered as a good precedent. He was impeached and removed as a federal judge on allegation of habitual drunkenness even though it did not constitute an impeachable offence under the constitution. This was following the inclusive meaning given to "misdemeanor" by the legislature as a ground for impeachment under the constitution. See Lynn W. Turner, "The Impeachment of John Pickering" *The American Historical Review*, 54, no.3, (1949).

[173] Alison Mitchell, *Senate Acquits Clinton as Perjury and Obstruction Charges Fail to Win Majority*, N.Y. TIMES, Feb. 13, 1999.

[17] Larry Alexander & Frederick Schauer, *On Extrajudicial Constitutional Interpretation, Havard Law Review*, 110 (1997).

[175] Alison Mitchell, *Senate Acquits Clinton as Perjury and Obstruction Charges Fail to Win Majority*, N.Y. TIMES, Feb. 13, 1999.

[176] Joseph story, *Commentaries on the Constitution of the United States: With a Preliminary Review of the Constitutional History of the Colonies and States before the Adoption of the Constitution* (Massachusetts: Harvard University Press, 2006).

[177] Joseph Isenbergh, *Impeachment and Presidential Immunity from Judicial Process, Yale Law & Policy Review*, 18 no. 53 (1999).

[178] Douglas W. Kmiec, Editorial, *Convict, But Don't Remove Clinton, Wall Street Journal*, Jan. 29, 1999.

[179] Josh Chafetz, "Impeachment and Assassination", *Minnesota Law Review* 95 no. 347 (2010).

[180] Neal kinkopf, "The Scope of High Crimes and Misdemeanors after the Impeachment of President Clinton", *Law and Contemporary Problems*, 63 no 1& 2 (2000).

[181] Neal Kumar Katyal, "Impeachment as a Congressional Constitutional Interpretation", *Law and Contemporary Problems*, 63 no. 1 & 2 (2000).

[182] Dominic J. Nardi, "Finding Justice Scalia in Burma: Constitutional Interpretation and the Impeachment of Myanmmar Constitutional Tribunal", *Pacific Rim Law and Policy Journal*, 23 no. 3 (2014).

[183] Frank H. Easterbrook, *The Role of Original Intent in Statutory Construction, Harvard Journal of Law & Public Policy*, 11 (1998).

discern.[184] In the light of the foregoing, scholars such as Krishna S. kumar, McGinnis, Whittington, Baker, Sloss and Gerhardt have shown the imperativeness of clear cut constitutional provisions on all aspects of impeachment in order to avoid such controversy.[185]

In Nigeria Kehinde also contended that the constitution makes subjective the determination of what could amount to gross misconduct[186] which, according to Yemi, leaves so much to the Assembly.[187] This makes Ali to opine that the power is susceptible to dangerous manipulations by the legislatures.[188] To Jide, the determination of what amounts to gross misconduct is the prerogative of the legislature and should not be questioned by any court of law.[189]

From the above literatures, there is no indepth discussion on the constitutional provisions for impeachment in Nigeria. The adequacy or otherwise of the mpeachment provisions on the grounds and procedure for impeachment under the Nigerian

[184] Bradley C. Karkkainen, "Plain Meaning: Justice Scalia's Jurisprudence of Strict Statutory Construction", *Harvard Journal of Law & Public Policy*, 17 (1994).
[185] Anita S. Krishnakumar, "How Long is History's Shadow?, *Yale Law Journal*, 127 (2018); John O. McGinnis, "Impeachable Defenses", *Policy Review*, (1999); Keith E. Whittington, "Bill Clinton Was No Andrew Johnson: Comparing Two Impeachments", *University of Pensylvania Journal of Constitutional Law*, 2 (2000); Michael J. Gerhardt, "The Historical and Constitutional Significance of the Impeachment and Trial of President Clinton", *Hofstra Law Review*, 28 no. 349 (1999); Peter Baker, "The Breach: Inside the Impeachment and Trial of William Jefferson Clinton", 418 (2000); David L. Sloss, *The Death of Treaty Supremacy: An Invisible Constitutional Change* (New York: Oxford University Press, 2016).
[186] Mowoe Kehinde, *Constitutional Law in Nigeria*, (Lagos: Malthouse Press Ltd., 2008).
[187] Akinseye-George Yemi, "Constitutional Framework for Accountability in Nigeria" *University of Ibadan Law Journal*, 1 no.1 (2011).
[188] Ali and Adelilekun, "An Appraisal of the Supreme Court Decision in *Inakoju v Adeleke* and its Impact on the Political Stability of Nigeria", 150.
[189] Jide, "Evaluation of Impeachment Proceedings under the Nigeria Constitution of the Federal Republic of Nigeria, 1999" www.iiste.org/index.php/JLPG (accessed January 11, 2015).

constitution have not been covered. In fact, the sociolegal method used in this research is different from those in the litearatures above.

1.8.2 Investigation and Proof of the Grounds for Impeachment

Researches have been conducted which pointed out that investigation of grounds for impeachment or impeachable offences is indispensable across many jurisdictions. Scholars such as Ross and Carter have established the imperativeness of investigation for the purpose of impeachment proceedings.[190] Richard Posner asserted that for the purpose of impeachment proceedings, a meticulous investigation is a necessary requirement despite the possibility of some factors that could militate against it.[191] Firmage, Magrum and Penn contended that investigation by the parliament has been considered to be an essential part of every impeachment to date and that the importance of this preliminary investigation to the ultimate effectiveness and fairness of the overall procedure cannot be over-emphasized. It is here that charges are investigated and facts supporting possible articles of impeachment are elicited. Consequently, the power of the investigatory committee to secure evidence relevant to its investigation cannot be separated from the impeachment powers itself.[192] According to Micheal Gerhardt and Donald Smaltz, the investigation is not merely required to be conducted but should be by

[190] Edmund G. Ross, *Impeachment of Andrew Johnson, President of the United States of America*, (United States of America: Sheba Blake Publishing, 2016); Stephen L. Carter, "The Independent Counsel Mess", *Harvard Law Review*, 10 no. 105 (1989).

[191] Richard A. Posner, *An Affair of State: The Impeachment, Investigation and Trial of Clinton* (Massachusetts: Harvard University Press, 1999).

[192] Edwin Brown Firmage, Collin Mangrum and William Penn, "Removal of the President: Resignation and the Procedural Law of Impeachment", *Duke Law Journal*, 12, no. 6. (1975).

an independent body or authority.[193] This position has the scholastic backing of researchers such as Julie Sullivian and Ken Gomerly across various jurisdictions.[194] Another scholar, Kada Naoko while making a comparative analysis of the powers and roles played by investigation committees in Brazil and Colombia, found out that their roles determine the success or otherwise of impeachment proceedings.[195] All these investigatory measures are put in place to ensure fairness in impeachment proceedings in view of its significance. Thus, the warning sounded by the Chairman of the Alabama House Judiciary Committee is a testimony to this fact. He said, on the occasion of the commencement of investigation for impeachment against Alabama Governor, Roberts Bentley, that:

> *The gravity of the task we are charged with undertaking as a committee cannot be overstated. Few issues should be considered more carefully and deliberately than the removal of a person who was elected by the democratic process to hold office.*[196]

Scholars have argued that the practice of investigation for impeachment in other jurisdictions is that it is likely to be influenced by political considerations. Thus, to buttress this argument, Victor and Anibal asserted that when Colombian President,

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[193] Michael J. Gerhardt, "The Historical and Constitutional Significance of the Impeachment and Trial of President William Jefferson Clinton", *Hofstra Law Review* 28, no. 4 (1999); Donald C. Smaltz, "The Independent Counsel: A View from Inside", *Georgia Law Journal*, 86, no.98 (1998).

[194] Julie R. O'Sullivan, "The Interaction Between Impeachment and the Independent Counsel Statute", 86 *Georgia Law Journal*, 39; no.20 (1998); Ken Gormley, "Impeachment and the Independent Counsel: A Dysfunctional Union", *Stanford Law Review*, 5 no. 2 (1999); Julie R. O'Sullivan, "The Independent Counsel Statute: Bad Law, Bad Policy", *American Criminal Law Review*, 23, no. 46(1996).

[195] Naoko Kada, "The Role of Investigative Committees in the Presidential Impeachment Processes in Brazil and Colombia", *Legislative Studies Quarterly*, 28, no. 1 (2003).

[196] Mike Jones, (2016) "Impeachment Investigation Of Alabama Governor Over Sex Scandal Begins", *Chicago Tribune*, July 15, 2016, http://www.chicagotribune.com/news/nationworld/ct-impeachment-alabama-governor-20160615-story.html (accessed on July, 2016); News.net, http://www.alabamanews.net/2016/07/15/governor-bentley-mlpeachment-investigation-moves-forward-attorneys-hired-on-both-sides/ (accessed on July 18, 2016); Birmingham Attorney Appointed Special Counsel In Bentley Impeachment Investigation, *Birmingham Business Journal*, http://www.bizjournals.com/birmingham/news/2016/07/15/birmingham-attorney-appointed-special-counsel-in.html (accessed on July 15, 2016).

Sampler, was under investigation, he was exonerated by the legislature because it was controlled by his own party.[197] Similarly, researches have revealed that this political influence played out in the investigations of grounds for impeachment in Brazil and Venezuela,[198] Madagascar,[199] Philippines,[200] Russia[201] to mention just a few. These scenarios, Fukuyama, Dressel and Chang argued, emphasized the role of political considerations in the practice of investigations of the grounds for impeachment.[202] This made Pérez-Liñán to conclude that "No matter the constitutional framework, if the President is able to keep control over Congress, his or her constitutional removal is virtually impossible".[203] This fact, Gomley maintained, reiterated the importance of independent and fair investigation of the ground for impeachment.[204] Thus, according to Bloch, it should be conducted with a "non-partisan, dispassionate fashion" for a fair adjudication.[205] This is necessary because fairness in investigations determines the success or otherwise of impeachment proceedings. The findings of Kada Naoko's

[197] Hinojosa, Victor J., and Aníbal Pérez-Liñán. "Presidential Survival and the Impeachment Process: The United States and Colombia", *Political Science Quarterly*, 121 no. 4 (2006).

[198] Kada, Naoko. "Impeachment as a Punishment for Corruption? The Cases of Brazil and Venezuela", in J.C. Baumgartner and N. Kada *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, (Westport, CN: Praeger, 2003.

[199] Allen, Philip M. "Madagascar: Impeachment as Parliamentary Coup d'Etat", in J.C. Baumgartner and N.Kada (eds) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, (Westport, CN: Praeger, 2003 81–94.

[200] Kasuya, Yuko. "Weak Institutions and Strong Movements: The Case of President Estrada's Impeachment and Removal in the Philippines." in J.C. Baumgartner and N.Kada (eds) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, (Westport, CN: Praeger, 2003) 45–63.

[201] Baumgartner, Jody C. "Impeachment, Russian Style (1998–99)." in J.C. Baumgartner and N.Kada (eds) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, (Westport, CN: Praeger, 2003 95–112.

[202] Fukuyama Francis, Bjorn Dressel and Boo-seong Chang, "Facing the Perils of Presidentialism?" *Journal of Democracy*, 16 no. 2 (2005).

[203] Pérez-Liñán, Anibal. *Presidential Impeachment and the New Political Instability in Latin America* (New York: Cambridge University Press, 2007).

[204] Ken Gormley, *Impeachment and the Independent Counsel: A Dysfunctional Union, Stanford Law Review*, 51 (1999) 309; Julie R. O'Sullivan, *The Interaction Between Impeachment and the Independent Counsel Statute, Georgia Law Journal*, 86 (1998); Julie R. O'Sullivan, *The Independent Counsel Statute: Bad Law, Bad Policy, American Criminal Law Review*, 33 (1996) 463.

[205] Susan Low Bloch, "Cleaning up the Legal Debris Left in the Wake of Whitewater", 43 *ST. Louis University Law Journal* 43 (1999) 783.

comparative research of the Presidential impeachment in Colombia and Brazil revealed that this is exactly the reason why impeachment succeeded in one country but failed in the other.[206]

Some literatures have focused on the thoroughness of investigations. While this has been a great problem in some jurisdictions, full scale and thorough investigations are carried out as required by law in others. For, instance, Linder explained that during the impeachment of the United States' President, Bill Clinton, the special investigator, Kenneth Starr, was required to furnish "any substantial and credible information" for there to be a ground for impeachment. In this light, "Starr piled thirty-six boxes of evidence on the Lewinsky scandal into two vans and ordered them driven to Capitol Hill for deposit..."[207] This was contained in a 458-page report.[208] According to Bloch, this made it practically impossible for the investigation authority to resist.[209] Similarly, Heo and Yun[210] demonstrated how investigations were conducted during the impeachment of Korean President, Park Geun-hyen. They maintained that two different independent and thorough investigations were conducted by a special prosecutor and government agency which lasted for about 70 days.

[206] Naoko Kada, "The Role of Investigative Committees in the Presidential Impeachment Processes in Brazil and Colombia", *Legislative Studies Quarterly*, 28, no.I, (2003) 29.
[207] Douglas A. Linder The Impeachment Trial of President William Clinton available at http://www.law.umkc.edu/faculty/projects/ftrials/clinton/clintontrialaccount.html (accessed on October 29, 2017).
[208] *Ibid.*
[209] Susan Low Bloch, "A Report Card on the Impeachment: Judging the Institutions that Judged President Clinton", *Law and Contemporary Problems*, 63 no. 1&2, (1999).
[210] Uk Heo and Seongi Yun, "Presidential Impeachment and Security Volatility in Korea", *Asian Survey*, 58 no. 1 (2017).

The proof of grounds of impeachment or impeachable offences had attracted the attention of scholars due largely to its importance. Thus, Gerhardt postulated that lack of well-articulated and fair procedure about the burden and standard of proof in impeachment proceedings most at times point to the reason most impeachment proceedings do not meet minimum standard of legal justice.[211] The argument as canvassed by some scholars centered on what the standard of proof should be adopted by the panel or the committee or body responsible for investigation. They argued that the constitution of the United States of America and the Senate rules for investigations do not make provision on the standard of proof. Thus, Thomas Ripy concluded that "The Constitution gives the United States Senate the responsibility for trying impeachments, but does not address the standard of proof that is to be used in such trials".[212] According to Firmage, Mangrum and Penn; the question which should always be addressed is should the standard in criminal or civil cases be applicable for impeachment? Or that it should neither be criminal nor civil standard but something in between as impeachment is in a class of its own.[213] Thus, according to Gray & Reams, while some lawmakers propose "beyond reasonable doubt" as the standard, others propose a lesser standard.[214] This made Ripy to conclude that there is no definite solution as to what is or ought to be

[211] Michael J. Gerhardt, "The Perils of Presidential Impeachment", *University of Chicago Law Review*, (2000) 293-313; John D. Feerick, "Impeaching Federal Judges: A Study of the Constitutional Provisions", *Fordham Law Review*, 39 no. 1 (1971).

[212] Thomas B. Ripy, "Standard of Proof in Senate Impeachment Proceedings" *CRS Report for Congress*, Report 98-990 (1999).

[213] Edwin Brown Firmage, Collin Mangrum and William Penn, "Removal of the President: Resignation and the Proceedural Law of Impeachment", *Duke Law Journal*, (1975) 1023.

[214] Gray & Reams, "The Congressional Impeachment Process and the Judiciary: Documents 7 and Materials on the Removal of Federal District Judge Harry E. Claiborne", Vol. 5, Document 41 (Motions Referred to the Senate by the Senate Impeachment Trial Committee), IX (Judge Claiborne's Motion to designate "Beyond a Reasonable Doubt" as the Standard of Proof in the Impeachment Trial (and supporting memorandum)) (1987).

the standard.[215] Scholars such as Micheal Gerhardt and Richard Pious have argued that the proof of what constitutes impeachable offences is what the Congress should always pay more attention to in impeachment proceedings.[216] The use of evidence is *sine qua non* in proof of the grounds for impeachment in every investigation. Thus, scholars such as Ripy and Gerhardt pointed out that the constitutional, practical and procedural problems or issues bedeviling impeachment include lack of standard of proof and absent of rules of evidence.[217] The effect, as pointed out by Black, an American scholar; is that "Senators (who are responsible for impeachment trials in the United Sates) are in any case continually exposed to hearsay evidence".[218] Gerhardt posited that the best approach, therefore, for a credible and fair investigation is to call and examine witnesses in order to verify the allegations against the office holder.[219]

In the light of the above, researches on the laws and practice of investigations were not conducted as in this Thesis. In fact, the focus of most of the literature is on the importance and problems of investigations in some jurisdictions. No reference to the investigation rules made by some State Houses of Assembly in Nigeria as made and analyzed in this Thesis.

[215] Thomas B. Ripy, "Standard of Proof in Senate Impeachment Proceedings" *CRS Report for Congress*, Report 98-990 (1999).
[216] Micheal Gerhardt "Putting the Law of Impeachment in Perspective", *St. Louis University Law Journal*, 43, no. 2 (1999) 905; Richard Pious, "Impeaching the President: The Intersection of the Constitutional and Popular Law", *St. Louis University Law Journal*, 43, no.21 (1999) 895.
[217] Thomas B. Ripy and Gerhardt, "The Federal Impeachment Process", 40-43
[218] Charles Black, *Impeachment: A Handbook* (New Haven, CT: Yale University Press, 1973) 18.
[219] *See* Michael J. Gerhardt, *The Historical and Constitutional Significance of the Impeachment and Trial of President William Jefferson Clinton*, *Hofstra Law Review*, 28 (1999) 352.

1.8.3 Compliance with the Requirements for Impeachment

The issue of compliance with the constitutional requirements for impeachment has received attention from scholars. They identified some of the factors which influence such compliance. To Park, political and other interest of the members of the legislature is said to constitute motivation behind some impeachment proceedings.[220] Thus, Spann maintained that "Political antagonism among opposing factions… played roles as the primary causes of impeachment".[221] The consequence, Gerhardt argued, is that the constitutional and other legal provisions guiding impeachment may be sacrificed.[222] In the same vein, Black[223] acknowledged the fact that partisan politics play an important role in impeachment and compliance with its requirements. In this light, Posner concluded that "no presidential impeachment will refuse to be suffused with politics".[224] Gerhardt suggested how impeachment power should be exercised to avoid the negative effect of politics on compliance with constitutional requirements. To him, "members of Congress should treat their impeachment authority as one of their most important duties and to undertake political risks for the sake of checking the most serious kinds of abuses by certain executive and judicial officers".[225]This is what plays out in some jurisdictions across the globe.

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[220] Jonghyun Park, Judicialisation of politics in korea", *Asian-Pacific Law & Policy Journal*, 10 no 1 (2008).

[221] Girardeau A. Spann, "Pure Politics", *Michigan Law Review*, (2018) 88; Michael J. Gerhardt, "Rediscovering Nonjusticiability: Judicial Review of Impeachments after Nixon", *Duke Law Journal*, (1994) 244.

[222] Michael J. Gerhardt, *A Symposium on The Impeachment Of William Jefferson Clinton: The Historical And Constitutional Significance Of The Impeachment And Trial Of President Clinton*, *Hofstra Law Review*, 28 (1999).

[223] Charles Black, *Impeachment; A Handbook*, (New Haven, CT; Yale University Press, 1974).

[224] Richard A. Posner, *An Affair of State: The Investigation, Impeachment and Trial of President Clinton*, (Massachusetts: Harvard university press, 2009).

[225] Michael Gerhardt, "The Constitutional Limits to Impeachment and its Alternatives", *Texas Law Review*, 1 no. 5 (2009) 68.

There are reports that corruption also plays a significant role in noncompliance with constitutional requirements for impeachment in Kenya[226] which was corroborated by some scholars. For instance, Otieno[227] alleged that members of the county assembly demanded for allowances; oversee trips and other bribes during impeachment proceedings against chief executives. The consequence of these corrupt practices, as Mukainde rightly put it, is "flouting of assembly rules" meant to guide the impeachment proceedings.[228] According to Rose and Wessels, corruption reduces the level of trust the citizens have on the legislature and consequently affects compliance with rule of law in the exercise of legislative functions.[229]

In the same vein, legislators were accused of using impeachment as a mechanism to achieve their personal interest in Kenya. Thus, Etale asserted that "Members of the County Assembly (MCAs) have been accused of driving a political agenda through threats of impeachment motions against the county executives".[230] This, he added, resulted in the abuse of the constitutional provisions for impeachment. Consequently, the High Court in Kenya concluded that a particular case of impeachment "was a deliberate scheme hatched to settle scores and was actuated with malice, bad faith, ill spite, witch-

[226] See for instance 'Report of the Special Committee on the proposed removal from office of Prof Paul Kiprono Chepkwony, the Governor of Kericho County' dated 3 June 2014 ("Kericho Governor Senate Select Committee report") para 41. The Governor alleged that an MCA had approached him to solicit bribes on behalf of the other MCAs in order to 'save the Governor' from the impeding impeachment proceedings.

[227] Otieno A, "Governor finally wins MCAs' hearts with a trip to Coast" 21 June 2014 and Lumiti D "MCAs pass bill to award themselves more perks" *Mediamax network* 19 May 2014.

[228] Petronella Karimi Mukainde, (2014) "Kenya's Devolution Implementation: Emerging Issues in the Relationship between Senate and the County Government", (Unpublished LLM Thesis) Faculty of Law, University of Western Cape.

[229] Richard Rose and Benhard Wessels, "Money, Sex and Broken Promises: Politician's Bad Behavior Reduces Trust", *Parliamentary Affairs*, 2 no.1 (2018).

[230] Etale P, "Grey Areas in Law make MCAs the Worst Enemies of Devolution" *The People*, 22 May 2014. See also Editorial team, "Probe Claims of MCAs Hounding Governors for Self-gain", *The People*, 9 May 2014.

hunting and revenge".[231] In some cases, it is not only noncompliance with the constitutional requirements for impeachment that affects the validity of impeachment proceedings, lack of respect for court orders also does. Thus, a number of literatures buttress this assertion. For instance, Obala argued that lack of respect for court order is a great threat to compliance and consequently affects the validity of impeachment proceedings in Kenya.[232] This mostly resulted in nullification of the entire impeachment proceedings. He cited the decision of High Court of Embu which stated that "anything done in disobedience of court orders is null and void *ab initio* and is a nullity in law".[233]

Compliance with the constitutional requirements for impeachment is very imperative in view of the negative consequences of impeachment in the jurisdictions where it was conducted. Thus, many scholars have documented these negative effects which underscore the importance of compliance. For instance, impeachment may have negative effects on a country, its people, public governance and public affairs. Shade Okpara asserted that it can cause the breakdown of a nation or its institutions.[234] At the international level, impeachment could lead to a breakdown of diplomatic relations among nations. Alonso Soto and Peter Cooney reported that the impeachment of Brazil President led to recall of the Brazilian ambassadors in Ecuador, Venezuela and

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[231] *Ibid.*

[232] See Obala R "Kenya Senate to Discuss Kibwana Impeachment Despite Court Order", *Standard Digital*, 13 October 2014. See also Burrows O "LSK Warns Lawyer Senators over Disobeying Courts", *Capital News* 6 October 2014.

[233] See *Martin Nyaga Wambora & 4 others vs. Speaker of the Senate & 6 others* [2014] eKLR).

[234] Shedie Okpara, (2016) "Nigerian Legislature and Impeachment Procedure", The Tide, http://www.thetidenewsonline.com/2016/03/04/nigerian-legislature-and-impeachment-procedure, (accessedonApril 17,2016).

Bolivia.[235] Katherine, Guico, Kevin G. Areta asserted that impeachment had great effects on governance and public affairs in the Philippines.[236] This was corroborated by Jayson Lamchek and he added that impeachment threatened a total shut down of government activities in the Philippines[237] following the desertion of the streets of Manilla as a result of the pro and anti-impeachment protests that erupted.[238] Scholars such as Ascani argued that impeachment especially in the powerful nations may cause global financial market collapse or decline. He cited the cases of the impeachments of the US Presidents in 1868, 1974 and 1998 in support of this argument.[239] Or it may have negative impact on the economy of the nation engulfed in impeachment crises.[240] Thus, in Brazil, impeachment crises affected foreign investment.[241] Gloria Nakiyimba asserted that business activities were paralyzed in Kampala, Uganda, due to the ensuing tension which put in danger the lives of the inhabitants of the City of Kampala following the

[235] Alonso Soto and Peter Cooney, (2016) "Brazil Recalls ambassador to Venezuela over Impeachment Spat", http://www.reuters.com/article/us-brazil-impeachment-venezuela-recall-idUSKCN1 16358. (accessed on September 2, 2016). See also Lisandra Paraguassu, (2016) "Brazil Impeachment opens Diplomatic Rift in Latin America", Sep 1, 2016, http://www.reuters.com/article/us-brazil-impeachment-diplomacy-idUSKCN1 16341; (accessed on September 1, 2016); *Anon HQ* "Venezuela Breaks Ties With Brazil As RousseffImpeachment Takes Effect", September 1, 2016.

[236] Katherine Mae L.et. al. "Impeachment of a Former Chief Justice: Its Effects to the Court Employees in Batangas City", *Asia Pacific Journal of Education, Arts and Sciences*, 1, no. 2. (2014) 80-85.

[237] Jayson Lamchek, (2012) "Thrilla in Manilla: The Impeachment of Chief Justice Cristiana Bonoan", *East Asia Forum*, March 3, 2012, www.eastasiaforum.org (accessed on July 14, 2016). See also *The Adobe Chronicles*, August 6, 2014, http//adobechronicles.com. (accessed on June 16, 2016).

[238] Mona Lee Tevez, (2012) "Courtroom Drama in the Philippines: Impeachment Trial Find Chief Justice Guilty", June 20, 2012, http//www.transparencyinternational.org (accessed on July 19, 2016).

[239] Dan Ascani, (1998) "To Impeach or not Impeach: Full Analysis of Effects the Impeachment Process on Global Markets", Gold Eagle, September 14, 1998, http.//www.gold-eagle.com/article/impeach-or-not-impeach-full-analysis-effects-impeachment-process-global-markets, (accessed on February 12, 2016).

[240] Rakesh Sharma, (2015) "Brazil's Presidential Impeachment and the Economy", December 3, 2015, http://www.investopedia.com/articles/investing/120315/brazils-presidential-impeachment-and-economy.asp, (accessed on July 20, 2016).

[241] Mark Weisbrot, "Brazil,s Impeachment Crisis undermines Investor Confidence", *The Hill*, July 21, 2016, http://thehill.com/blogs/pundits-blog/international/288675-amid-political-upheaval-is-brazil-facing-long-term-economic, (accessed August 21, 2016).

impeachment of the City Mayor.[242] Tom Rhodes added that the impeachment fallout was characterized by clampdown on media outlets broadcasting the impeachment proceedings.[243] An opinion poll conducted among the citizens of the US after presidential impeachment of 1998 showed that majority of them lost faith in the government and politicians who they hitherto saw as role models as the impeachment was capable of damaging the moral values of the country.[244]

Predicting the political effects that Clinton impeachment was going to have on the public, Don Eberly said that it would degrade and divide the politics as "trust is eroding and goodwill is gone".[245] According to Kenneth Roberts, impeachment is capable of reversing democratic gains of a country as it opens a new era of institutional uncertainty and political conflict.[246] This is because in addition to the political tension that usually characterizes impeachment as argued by Sara Silveer,[247] it is likely to affect the fortunes of a party in an election. In support of this position, Alan I. Abramowitz's research revealed that the low success or failure of the Republican Party in the United States' midterm election of the year 1998 was attributable to the way Republican lawmakers

[242] Gloria Nakiyimba, "Court Nullifies Kampala Mayor Impeachment as City Operations Shut Down" *Radio France International Africa*, November 20, 2013. See also Olive Nakatudde, "Kampala Mayor, Erias Lukwago, Impeached", http//www.ugandanradio.com, (accessed on August 3, 2016).

[243] Tom Rhodes, "Uganda: Block the Opposition and Block the Press", December 12, 2013, http//www.cpj.com/Uganda-bock-the-opposition-and-block-the-press, (accessed on July 7, 2016).

[244] Donald R. Wolfensberger, "Congress and the People: Deliberative Democracy on Trial", Woodrow Wilson Center Press, 27 Apr 2001.

[245] David S. Broder and Dan Baiz, "Scandal's Damage is Wide, if not Deep" *Washington Post*, February 11, 1999.

[246] Kenneth M. Roberts, "Impeaching Brazil's President Rousseff Opens New Era of Institutional Instability", htt// www.mediarelations.cornell.edu (accessed July 18, 2016).

[247] Sara Silveer, "Mexican Congress Vote for Impeachment Trial", *Financial Times*, April 22, 2005, http///www.ft.com (accessed on October 12, 2015).

handled the impeachment of President Clinton.[248] The separate researches conducted by James Brooke, Anthony Fiola and Barbara Demick proved that the impeachment of South Korean President in 2004 brought about a period of uncertainty and turmoil in the polity.[249]

In some other cases, impeachment led to political imbroglios that seriously affected governance and political life.[250] Scholars like Ibrahim Salawu related how impeachment in Ekiti State of Nigeria resulted in the declaration of state of emergency.[251] This was following the claim to the office of the State Governor by three different persons- the purportedly removed Governor, his Deputy and the Speaker of the State House of Assembly.[252] Even legislative business could be impeded by impeachment. Thus, at various times the Nigerian National Assembly threatened or actually took over the legislative affairs of some Houses of Assembly due to impeachment crises. Reacting to the effects that impeachment brings on public governance as a result of the takeover of Rivers State House of Assembly by the National Assembly, the former Nigerian Vice President, Alhaji Atiku Abubakar, said that it was capable of seriously harming the

[248] Alan I. Abramowitz, "It's Monica, Stupid: The Impeachment Controversy and the 1998 Midterm Election", *Legislative Studies Quarterly*, 26, no. 2. (2001).
[249] James Brooke, "Constitutional Court Reinstates South Korea's Impeached President", *New york Times*, May 14, 2004; Anthony Faiola, "Court Rejects South Korean President's Impeachment", *Washington Post*, May 14, 2004; Barbara Demick, "South Korean President Is Reinstated: A Court Rules That His Impeachment Was Unjustified", *Los Angeles Times*, May 14, 2004.
[250] Rotimi Ajayi, "Constitution and Constitutionalism", in Adeboye Akinsanya, (ed) *An Introduction to Political Science in Nigeria*, (University Press of America: Ruman & Littlefield, 2013).
[251] Ibrahim O. Salawu, "Governance and National Security in a Democracy: Avoiding the 'Down Risks' to Statehood in Nigeria", *Scientific Research Journal*, 1, no.2. (2013) 19-25.
[252] Eghosa E. Osaghae, *Crippled Giant: Nigeria since Independence*, (Indiana University Press: Hirst & Co. Publishers, 1998).

nation's democratic order.[253] The same takeover was contemplated by the National Assembly when the Kogi State House of Assembly was engulfed in impeachment crises.[254] In the light of the foregoing, compliance with constitutional requirements for impeachment becomes necessary.

It should be noted that this Thesis is different from the literatures reviewed above in many respects. While some of them discussed the importance of compliance with the constitutional requirements for impeachment across jurisdictions, the focus of this Thesis is on the issues which posed challenge to compliance with the provisions on impeachment under the Nigerian constitution.

1.8.4 Judicial Review of Impeachment

Judicial review has become a mechanism through which the exercise of executive and legislative power (such as impeachment) is checkmated across some jurisdictions especially in Asia as pointed out in researches conducted by scholars such as Tinambunam, Boi, Gingsburg, Chang, Sator, Chen, Morris, Lee Gerwirzt and Kawagishi.[255] These researches cut across jurisdictions like Korea, Hong Kong, China,

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[253] Nigerian Lawmakers Beat Themselves up In Rivers State Assembly House, http://newsrescue.com/video-nigerian-lawmakers-beat-themselves-up-in-rivers-state-assembly-house/#ixzz4JgE9FSd7, Newsrescue, July 19, 2013.

[254] Okpara, "Nigerian Legislature and Impeachment Procedure"; John Ameh and Olusola Fabiy, "Impeachment: National Assembly may Takeover Kogi Assembly", http://punchng.com/impeachment-nassembly-may-take-over-kogi-assembly-2/, Feb, 19 2016 (accessed on March 12, 2016).

[255] Hezron Sabar Rotua Tinambunan, "Reconstruction of the Authority of Constitutional Court in Impeachment Process of President and/or Vice President in Indonesian Constitutional System", *Jurnal Dinamika Hukum*, 16 no. 1 (2016); Ngoc Sun Boi, "Beyond Judicial Review: The proposal of the Constitutional Academy", *The Chinese Journal of Comparative Law*, 2 no. 1 (2014); Arie C. Ip, "Mapping Parliamentary Law and practice in Hong Kong", *Chinese Journal Of Law And Practice*, 3 no. 1 (2015); Tom Ginsburg, *Judicial Review in New Democracies Constitutional Courts in Asian Cases* (Cambridge University Press 2003); Wen-Chen Chang, "Transition to Democracy, Constitutionalism and

Indonesia, Taiwan and Japan. It is what Park[256] Yoon[257] and many other scholars[258] described as "judicialisation of politics". According to Hyunjin, it is a situation whereby courts play political role in constitutional democracy.[259] Hirschl[260] described it as a situation "Where judicial bodies around the world have come to assume increasingly important roles in resolving some of the most fundamental political conflicts that countries face".[261] Thus, recounting what judicial review entails, Pushaw posited that it involves "an examination of an act of congress or executive branch, and a decision to strike down such an action necessarily implies that the political officials who took it

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Judicial Activism: Taiwan in Comparative Constitutional Perspective", JSD Dissertation,Yale Law School (2001); Jun-ichi Satoh, "Judicial Review in Japan: An Overview of the Case Law and an Examination of Trends in the Japanese Supreme Court's Constitutional Oversight", *Loyola Law Review* (2008) 41 603; Albert Chen,"Constitutional Adjudication in Post-1997 Hong Kong" *Pacific Rim Law & Policy Journal*, 15 no. 3 (2006) 627; Thomas E Kellogg, "Constitutionalism with Chinese Characteristics? Constitutional Development and Civil Litigation in China", International Journal of Constitutional Law, 7 no. 2 (2009) 218; Robert J Morris, "China's Marbury: Qi Yuling v. Chen XiaoqiçThe Once and Future Trial of Both Education and Constitutionalization", Tsinghua China Law Review, 2 no. 2 (2010) 273; Tahirih V Lee, "Exporting Judicial Review from the United States to China", *Columbia Journal of Asian Law*, 19 no. 1 (2005) 152; Paul Gewirtz, "Approaches to Constitutional Interpretation: Comparative Constitutionalism and Chinese Characteristics", *Hong Kong Law Journal* 31 (2001) 217; Norikazu Kawagishi, "The Birth of Judicial Review in Japan", *International Journal of Constitutional Law*, 5 no. 8 (2007) 308.

[256] Jonghyun Park, Judicialisation of politics in korea", *Asian+Pacific Law & Policy Journal, 10 no.*1 (2008).

[257] Bae Jong Yoon, "Korea's Presidential Impeachment in 2004 and 'Judicialization of Politics', *East and West Studies*, 26 no. 3 (2014).

[258] The phrase has become popular among scholars. See for instance, Neal Tate, "The Judicialization of Politics in the Philippines and Southeast Asia", *International Political Science Review*, 15 no. 2 (1994) 187; Tamir Moustafa, "Law Versus the State: The Judicialization of Politics in Egypt", *Law & Social Inquiry*, 28 no. 4 (2003) 883; Rachel Sieder, et. al, *The Judicialization of Politics in Latin America* (New York: Palgrave Macmillan, 2005); Neal Tate et. al, *The Global Expansion of Judicial Power* (London: New York University Press, 1995); John Ferejohn," Judicializing Politics, Politicizing Law", *Law & Contemporary Problems* 65 no.3 (2002). The phrase is borrowed from Ran Hirschi, "Towards Juristocracy: The Origins And Consequences Of The New Constitutionalism", 169 (2004).

[259] Kim Hyunjin, "Would Congressional-court Governance based on Judicial Review Enhance Democracy? Focusing on the Korean Constitutional Court's Decisions on Presidential Impeachment", *Memory and Future Vision*, 37 no. 1 (2017).

[260] Ran Hirschl, Resituating the Judicialization of Politics: Bush v. Gore as a Global Trend, *Canadian Journal of law & jurisprudence*, 15 no. 191 (2002).

[261] See also Sam Is- Sacharoff, "Constitutionalizing Democracy in Fractured Societies", *Texas Law Review*, 82 no. 18 (2004); Russell A. Miller, "Lords of Democracy: The Judicialization of Pure Politics' in the United States and Germany", *Wash & Lee Law Review* 61 no. 5 (2004) 587; Richard H. Pildes, "The Supreme Court, 2003 Term-Foreword: The Constitutionalization of Democratic Politics", *Harvard Law Review*, 18 no. 3 (2004).

either violated their oath to uphold the constitution or were ignorant of its meaning".[262] According to Barnett, judicial review controls the exercise of powers by government departments, local authorities, tribunals and all the agencies exercising governmental powers.[263] Mark Ryan asserted that the High Court had historically exercised an inherent power to supervise the actions of the public bodies and inferior courts in order to ensure that they act strictly within their legal powers.[264] Thus, the rationale behind judicial review is to supervise the decision making process of public bodies and not to act as an appellate court.[265] To Mukainde[266] and Cheouljoon,[267] judicial review of impeachment is meant to ensure that the constitutional procedure for impeachment have been followed before a public office holder is removed. Justifying the necessity of judicial review of impeachment in order to safeguard the rights of the public officers subject to impeachment, UN Human Rights Committee stated that "There is no determination of rights and obligations in a suit at law where the persons concerned are confronted with measures taken against them in their capacity as persons subordinated to high degree of administrative or parliamentary control, such as the impeachment procedures".[268]

[262] Robertj Pushaw, "Judicial Review of Political Question Doctrine: Reviving the Federalist 'Rebuttable Presumption' Analysis", *North Carolina Law Review*, 8 no. 2 (2002).
[263] Henry Barnett, *Constitutional and Administrative Law*, (New York: Routledge Taylor & Francis, 2013).
[264] Mark Ryan, *Unlocking Constitutional and Administrative Law*, (New York: Routledge, 2014)
[265] *Ibid.*
[266] Petronella Karimi Mukainde, (2014) "Kenya's Devolution Implementation: Emerging Issues in the Relationship between Senate and the County Government", (Unpublished LLM Thesis) Faculty of Law, University of Western Cape.
[267] Chang Cheouljoon "Government Replacement Process through Emergency Procedures", *National Law Research*, 13 no. 2 (2017).
[268] U.N Human Rights Committee on *Rolandas Paksas vs. Lithuania* U.N Doc. CCPR/C/110/D/2155/2012 (2014).

Judicial review of impeachment proceedings has been a subject of recurring controversy across the globe.[269] For instance, its prominence is noticeable in jurisdictions like the United States, Brazil and South Korea. American constitutional scholars are almost unanimously of the view that judicial review of impeachment is not recognized under the United State constitution due to the doctrine of political question.[270] To Maria Simon, since impeachment is a proceeding of a political nature, "confined to political characters" for "political crimes and misdemeanors," which resulted only in "political punishments";[271] "the courts have, in this, no part at all to play".[272] Suzan Low Bloch and Richard A. Posner lent their voices to this issue by concluding that the judiciary has a limited role to play in impeachment.[273] Tushnet contended that judicial review in the United States is nonexistent as far as impeachment of judges is concerned.[274] This is because, as Bloch put it, impeachment is the only mechanism available to check the excesses of judicial officers by the legislature. If judicial review of impeachment of judges were to be allowed then that would be inconsistent with the checks and balances

[269] David O. Stewart, "Impeachment By Ignorance", *A.B.A. Journal*, (1990); Rose Auslander, "Impeaching The Senate's Use Of Trial Committees", *New York University Law Review*,62, no.5 (1992); Brendan C. Fox, "Impeachment: The Justiciability OfChallenges To The Senate Rules Of Procedure For Impeachment Trials", *George Washington Law Review*, 6, no.17 (1992); Daniel Luchsinger, "Committee Impeachment Trials: The Best Solution?", *Georgia Law Journal*, 16, no. 7 (1991).

[270] Rachel E. Barkow, "More Supreme Than Court?: The Fall of the Political Question Doctrine and the Rise of Judicial Supremacy", *Columbia Law Review*, 102 (2002); Erwin Chemerinsky, "Cases Under the Guarantee Clause Should Be Justiciable", *University of Columbia Law Review*, 5, no. 7 (1994); Michael J. Gerhardt, "Rediscovering Nonjusticiability: Judicial Review of Impeachments After Nixon", *Duke Law Journal*, (1994); Robert J. Pushaw, "Justiciability and Separation of Powers: A Neo-Federalist Approach", *Cornell Law Review*, (1996); Ronald D. Rotunda, "An Essay on the Constitutional Parameters of Federal Impeachment", *Kentucky Law Journal*, 2 no. 3 (1988).

[271] Maria Simon, "Bribery and Other Not so "Good Behavior": Criminal Prosecution as a Supplement to Impeachment of Federal Judges", *Columbia Law Review*, 94, no. 5 (1994).

[272] Charles L. Black, (1974) *Impeachment: A Handbook*.

[273] Susan Low Bloch, "A Report Card on the Impeachment: Judging the Institutions That Judged President Clinton", *Law & Contemporary Problems*", 63, no. 2(2000); Richard A. Posner, "An Affair of State: The Investigation, Impeachment, And Trial Of President Clinton" (1999).

[274] See Mark Tushnet, "Law and Prudence to the Law of Justiciability: The Transformation and Disappearance of the Political Question Doctrine", *North Carolina Law Review*, 8 no 2, (2002); *Nixon vs. United States*, 506 U.S. 224 (1992).

provided in the United States constitution.[275] Thus, "the only role the judiciary has in the impeachment of a President is the role played by the Chief Justice as presiding officer and that judicial review is likely to be limited at best"[276] In a similar vein, Posner contended that "It is clear as a matter of political theory, and not only as 'a matter of law', why the role of the judiciary should be limited in the presidential impeachment context".[277]

However, Gerhardt expressed a contrary view. He drew an analogy from the United States constitution and concluded that:

> *The action of the Senate in impeachment, if amounting to a fundamental failure of process, can be attacked in court, as can any grievous denial of due process of law. The Fifth Amendment's guarantee of due process of law is a categorical imperative, good for the benefit of any person against any action by any part of government.*[278]

Thus, scholars such as Gerhardt, Gunther, Feerick and Tushnet find justification for this position on the fact that there is strong textual, historical and structural basis for it.[279] Describing the circumstance which could justify judicial review of impeachment under

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[275] Susan Low Bloch, A Report Card on the Impeachment: Judging the Institutions that Judged President Clinton", *Law and Contemporary Problems*, 63 no. 1&2 (1999).
[276] *Ibid.*
[277] Richard A. Posner, *An Affair of State: The Investigation, Impeachment and Trial of President Clinton*, (Cambridge: Harvard University Press, 2009) 23.
[278] Micheal Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* (Princeton: Princeton University Press, 1996).
[279] Gerhardt, (1994) "Rediscovering Nonjusticiability: Judicial Review Of Impeachments After Nixon"; See Also Gerald Gunther, "Judicial Hegemony And Legislative Autonomy: The Nixon Case And The Impeachment Process", *University Of California Law Review*, 22, no.30 (1974); John D. Feerick, "Impeaching Federal Judges: A Study Of The Constitutional Provisions", *Fordham Law Review*, 39, no.1(1970); Mark Tushnet, "Principles, Politics, And Constitutional Law", *Michigan Law Review*, 88 no.4 (2009).

the United States constitution, Perlingeiro[280] relied on the opinion of Justice Souter of the United States Supreme Court that "... if the Senate were to act in a manner seriously threatening the integrity of its results... judicial interference might well be appropriate..."[281] He further contended, in the light of the United States Supreme Court decision in *Powell vs. McCormack,*[282] that"... the principle of separation of powers does not always preclude judicial review of political question and that judicial interference may be necessary in cases involving constitutional interpretation".[283]

In Brazil, the judiciary does not always question the exercise of impeachment power by the Federal Senate under the constitution.[284] In fact, Perlingeiro stated that "It is inappropriate for the judiciary to interfere with the discretionary power of the Federal Senate regarding the timeliness and suitability (of impeachment) nor to examine the merits of judgment".[285] In another scholarly writing, Perlingeiro further contended that facts outside the expertise of judges should be barred from judicial review of impeachment not constitutional interpretation.[286] Thus, when Dilma Rousseff challenged her impeachment and removal in court for lack of due process in the exercise, the Federal Supreme Court recognized the competence of the Brazilian judiciary to intervene where there is deviation from the laid down impeachment procedure provided

[280] Richardo Perlingeiro, "Due Process in the Brazilian Presidential Impeachment", *Florida Journal of International Law,* 28 no. 3 (2016).
[281] See also Joseph Isenbergh, "Impeachment and Presidential Immunity from Judicial Process", *Yale Law Journal,* 18 no. 53 (1999).
[282] 395 US, 486 521 (1969).
[283] Richardo Perlingeiro, "Due Process in the Brazilian Presidential Impeachment", *Florida Journal of International Law,* 28 no. 3 (2016).
[284] Marcus André Melo & Carlos Pereira, *Making Brazil Work: Checking the President in a Multiparty System* (Palgrave Macmillan, 2013).
[285] Richardo Perlingeiro, "Due Process in the Brazilian Presidential Impeachment", *Florida Journal of International Law,* 28 no. 3 (2016).
[286] Richardo Perlingeiro, "Due Process Prior to Administrative Decision and Effective Judicial Protection in Brazil; A New Perspective?", *Vienna Journal Of International Constitutional Law,* 10 no. 3 (2016).

under the constitution.[287] This is also supported by the Inter-American Commission on Human Rights in the following words:

> *In light of these concerns over compliance over compliance with due process guarantees, the IACHR considers important the monitoring and supervision functions that the competent authorities of the judiciary in Brazil implement on this case.*[288]

In South Korea, scholars have documented the active participation of courts in impeachment process and judicial review of the process. West and Yoon,[289] Gingsburg,[290] Hahm,[291] Moonsoon,[292] Yonghoon,[293] Ki-choon[294] and Jeong-In[295] traced the historical significance of the establishment of constitutional court in resolving unconstitutional legislative acts such as impeachment, Park pointed out that the extent of the power of the court in impeachment proceedings is "when there is a valid ground for the petition for impeachment adjudication, the Constitutional Court shall issue a decision removing the respondent from office."[296] However, according to Suk Ha,[297] there is no

[287] See the opinion of Justice Teori Zavascki of the Federal Supreme Court of Brazil, Medida Cautelar/Mandado de Seguranca 34.371 DF (Judgment of September 8, 2016).
[288] Press Release, "Inter-American Commission on Human Rights IACHR Expresses Concern over Impeachment of President of Brazil" (2016)
[289] James West & Dae-Kyu Yoon, "The Constitutional Court of the Republic of Korea: Transforming the Jurisprudence of the Vortex?, 40 *American Journal of Comparative Law*, 73, 73-119 (1992).
[290] Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press 2003); Chaihark Hahm, "Law, Culture, and the Politics of Confucianism", *Columbia Journal of Asian Law*, 16 (2003) 265.
[291] Chaihark Hahm, "Beyond "law vs. Politics" in Constitutional Adjudication: Lessons from South Korea", *International Journal of constitutional Law*, 10 no. 1 (2012).
[292] Kim Moonsoon, "Critique of 'Serious Abuse' as a Requirement for Constitutional Court to Uphold Impeachment", *Younsei Journal of Public Governance and Law*, 9 no. 1 (2018).
[293] Kim Yonghoon, "Constitutional Meaning of the System of Impeachment and Strategy of Reasoning of Constitutional Court - Focusing on the President Roh Impeachment Case", *Soong Sin Law Review*, 37 no. 1 (2017).
[294] Son Ki-choon, "A Study on the Impeachment of the President in Korean Constitutional Law", *Public Law*, 32 no. 5 (2004).
[295] Yun Jeong-In, "The Scope of Impeachable Offenses in the Presidential Impeachment Process-Pgesident (Park Geun-hye) Impeachment Case", *Public Law Research* 45 no. 3 (2017).
[2] Jonghyun Park, Judicialisation of politics in korea", *Asian-Pacific Law & Policy Journal*, *10 no.* 1 (2008).

unanimity among members of the legal profession on the extent of the involvement of the Constitutional Court in impeachment as members of the Korean Bar and its local affiliates such as Seoul Bar expressed divergent views. The views are based on whether impeachment is a political matter or not. This is also the case with academics as a survey conducted among law professors showed that 56 per cent of them believed that the Constitutional Court had power not only to intervene but also override any decision of the National Assembly in impeachment.[298] The response of the Constitutional Court, according to Park, is that "it is natural for the Court to intervene in political matters because its role is to solve this kind of pure political question and to protect constitutional democracy".[299] Notwithstanding the arguments above, the court had exercised the power in couple of cases. Thus, Kim[300] and Line,[301] analyzed how the Korea's Constitutional Court voided the impeachment of President Roh Moo-hyun. Lee[302] posited that it was the first time in the history of Korean constitutional democracy when the Constitutional Court intervened in impeachment proceedings. Another constitutional scholar, Taek,[303] also conducted a legal exposition of the grounds for the impeachment of President Park under the Korean constitution *vis-a-vis* the judgment of

[297] Suk Ha et al., "The Announcement of the Korea Bar Associa on", *The Hankyoreh*, Mar. 9, 2004; "The Objection Of Seoul Bar Association", *Yonhap News*, Mar. 18, 2 004.
[298] See "Poll", *The Hankyoreh*, Mar. 11, 2004.
[299] Jonghyun Park, Judicialisation of politics in korea", *Asian-Pacific Law & Policy Journal, 10 no.* 1 (2008).
[300] Joungcheol Kim, "Critical Review of the Main Arguments of the Constitutional Court in the Case of President Roh Moo-Hyun's Impeachment Trial", *World Constitutional Law Review*, 9 no. 1 (2004).
[301] Acostic Line, "Presidential Impeachment Case: Trial for Rule of Law", *Soonchunhyan Social Science Review*, 1 no. 1 (2004).
[302] Youngjae Lee, "Law, Politics, and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective", 53 *American Journal of Comparative Law*, 3, no. 4 (2005).
[303] Seoum Kim Taek "Whether the Intervention in State Affairs by Confidante of the President could be the Grounds for Impeachment ofthe President", *Constitution Studies*, 23 no. 3 (2017).

the Constitutional Court. To Lee,[304] the major advantage of the involvement of the judiciary is the development of impeachment constitutional jurisprudence and precedent which will bind future generations.

In Nigeria, scholars like Oyeyemi and Poopola had argued that judicial review of impeachment had been a subject of controversies and criticisms[305] due largely to the doctrine of political question[306] and ouster clause in the constitutional provision.[307] Analyzing the controversy brought about by the ouster clause in the impeachment provision, Jemide[308] noted how the ouster clause constituted an impediment to challenge the impeachment and removal of Governor Balarabe Musa of Kaduna State in 1981. However, Popoola expressed a slightly different opinion. Ouster clause, he argued, as contained in the impeachment provisions is meant to confine impeachment within the jurisdiction of political branches. Therefore, courts should refrain from looking into the merits of impeachment proceedings unless where there is a clear breach of the procedure prescribed in the constitution.[309] However, authors such as Ali and Adekilekun[310] have argued that the constitutional provisions on impeachment and specifically the ouster

[304] Youngjae Lee, "Law, Politics, and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective", 53 *American Journal of Comparative Law*, 3, no. 4 (2005).
[305] Kolawale Kazeem Oyeyemi, "Stare Decisis in Nigeria – *Inakoju vs. Adeleke* Revisited" *South Asian Journal of Multidisciplinary Studies*. 2 no.2 (2012), http//www.sajms.com, (accessed September 18, 2015).
[306] A question is described as political when either the constitution has expressly vested jurisdiction over the issue on the other two branches or it is implicit in line with the concept of separation of powers that this should be so. See Popoola A.O., "Politics of the Nigerian Judiciary" Proceedings of the 32nd National Association of Law Teachers Conference, held at the Nigerian Institute of Advanced Legal Studies, Lagos, (1994), 70.
[307] See the cases of *Balarabe Musa vs. Auta Hamza & Ors* (1982) 3 NCLR 439 and *Abaribe vs. Speaker, Abia State House of Assembly* (2002) 14 NWLR (pt.788) 466
[308] Jemide, I. O., "Legislative Remedies Under the 1989 Constitution" in *Law Making Process in Nigeria*, ed. Okon E., (Benin: UNIBEN, Press, 2009).
[309] Popoola, "The Courts and the Democratic Process in Nigeria: An Appraisal of the Application of Some American Judicial Doctrines" in *Law, Democratic Governance and Justice Administration in Nigeria*.
[310] Ali and Adekilekun, "An Appraisal of the Supreme Court Decision in *Inakoju vs. Adeleke* and its Impact on the Political Stability of Nigeria", *The Appellate Review*, 1 no.2 (2010) 149.

clause have been largely misunderstood and politicized. To them, it is misunderstanding of the entire provision to interpret the ouster clause to mean the total ouster of the court's jurisdiction to entertain any matter relating to impeachment. They, therefore, justified their position with the decision of the Supreme Court where it assumed jurisdiction in impeachment cases.

The literatures reviewed above are evidence to the fact that no adequate attention is paid to the recurring problems pointed out and addressed in this research. Previous literatures paid no attention to identifying the challenges that could account for noncompliance with constitutional requirements by the lawmakers. In fact, there is virtually no literature on the role of the other stakeholders in the impeachment project like the Investigation Panel and the Chief Judges as provided based on the case law analysis in this research. Previous literatures are also devoid of case law legal analysis of the challenges to judicial review of impeachment. Additionally, the socio-legal approach adopted in this research makes it unique in that, to the best of our knowledge, no such approach was used to conduct a similar research. This research will fill these gaps by addressing the problems identified which were hitherto not adequately attended to. The research is, therefore, different from the previous literatures in terms of substance, scope, form and approach. Thus, in circumstances like this, legal originality can be achieved.[311] This is so in this research because new solutions to the problems pointed out and issues raised will

[311] Mathias M. Siems, (2008) "Legal Originality", *Oxford Journal of Legal Studies*, 28, no.1, 149, 147-164.

be proffered as recommendations. This will in turn make the contribution to be made unique and original.[312]

[312] Anwarul Yakin, *Legal Research and Writing*, (Malaysia: Lexis Nexis, 2007), 42-43.

CHAPTER TWO
CONCEPTUAL BACKGROUND ON IMPEACHMENT AND LEGISLATURE UNDER THE NIGERIAN CONSTITUTION

2.1 Introduction

Some issues related to impeachment have always attracted controversies and misunderstandings under the Nigerian constitution. They include what impeachment entails and its relationship with removal. Equally controversial is the usage of impeachment in the legal circle, the media and by the general public. The nature of impeachment proceedings whether it is judicial, quasi-judicial or political proceedings is also subject to misunderstandings. Notwithsatanding the controversies, scholars have been able to identify the rationale behind the power of impeachment and removal of public office holders in Nigeria. On the legislature, which is responsible for exercising the power of impeachment, there is no controversy on its meaning and related issues. Thus, the constitution makes elaborate provisions on the nature of the Nigerian legislature. The composition, qualification and geographical spread of the members that make up the Nigerian legislature at both the federal and state levels have been categorically provided under the constitution. Similarly, the powers and functions of the legislature which include lawmaking and oversight have been provided and explained by the constitution and judicial authorities respectively. This also applies to the nature of the constitution under which this research is conducted. In this light, to be found in this Chapter is the conceptualization of the central terms in this research which are

impeachment, Nigerian legislature and the constitution. This is necessary for better understanding of the issues discussed in the Thesis.

2.2 Impeachment

2.2.1 Meaning of Impeachment

There is divergence of views about the meaning of impeachment[1] and its difference, if any, with removal.[2] This is why impeachment may mean slightly different things under different constitutions even though there are basic and universal elements inherent in it. It is not surprising, therefore, that it is sometimes defined in accordance with constitutional provisions. Impeachment is the accusation and prosecution of a person for treason, or other crimes and misdemeanors. Impeachment is the prosecution of a person or commoner by the House of Commons, at the Bar of the House of Lords for treason, high crimes and misdemeanors.[3] Another definition in this line is that it is the procedure by which a minister of the crown may be tried in front of his peers in parliament.[4] All these definitions have connotation with either the United Kingdom or United States Constitutions. To put it more precisely and concisely, impeachment based on the above definitions entails the trial of public office holders for crimes (allegedly committed while holding the office) before legislative house which may lead to his/her removal from the public office. These definitions are restrictive in that they make reference, albeit indirectly, to particular constitutions. A general and more encompassing definition

[1] Murphy, *The Impeachment Process*, 7; Cletus Eze, "A Critical Appraisal of the Procedure for the Impeachment of Elected Public Officers under the 1999 Nigerian Constitution" *Unizik Law Journal*, 1, no.2, (2007), 112.

[2] For instance even in the United States, prior to Clinton impeachment case many citizens could not distinguish impeachment from removal hence considered them one and the same thing. See Jordy, et. al., *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, 2.

[3] Anandan Krishnan, *Words, Phrases and Maxims: Legally and Judicially Defined*, vol.9 (Singapore: Lexis Nexis, 2008), 149. See also Chandrachud Y. V., *The Law Lexicon, The Encyclopedic Law Dictionary*, 2nd ed. (India: Wadhwa & Company, 2004), 880.

[4] Sheila Bone, *Osbone's Concise Law Dictionary*, 9th ed. (London: Sweet & Maxwell), 198.

is that impeachment is the act (by legislature) of calling for removal of a public official, accomplished by presenting a written charge of the official's alleged misconduct.[5]

Describing how impeachment should best be understood, an author likened it to a criminal trial where accusations are made, investigations into wrongdoings are conducted, charges are preferred and the "suspect" is tried in a court of law.[6] In other words, it entails the entire processes of the accusations and investigations of acts of misconduct against a public officer for the purpose of proving the said allegation and consequently removing him from the office.

From the above definitions, impeachment is a process while removal is a possible end product of the process. Therefore, a public officer could be impeached but not removed because he was not found guilty of the misconduct leveled against him or that the required number of the lawmakers in support of the resolution for his removal was not met. In the United States, for instance, an author asserted that from 1789 about 17 federal officers were impeached but only 7 were actually removed.[7] This goes to show the difference between impeachment and removal.

In the Nigerian context, a greater percentage of the members of the media, the general public and even the members of the legal profession (lawyers and judges alike) misunderstand impeachment. This is because the words "impeachment" and "removal" are carelessly used in public affairs commentaries, legal researches and discourses and

[5] Garner, B. A., *Black's Law Dictionary*, (St. Paul, Minn: West Publishing Co., 2009), 678.
[6] Murphy, *The Impeachment Process*, 8.
[7] Ibid, 12.

even in judicial processes and pronouncements. Consequent upon this, we identify two schools of thought as to the meaning and use of the two words. The first school considers and uses impeachment and removal interchangeably. To them, impeachment and removal mean one and the same thing i.e. removing one from public office. The second school is of the view that impeachment is different from removal. According to them, impeachment is a process which may lead to removal where the office holder is found guilty of misconduct.

In view of this, even in the Nigerian context, what impeachment actually entails is that it is a process while the end product is the removal. It is a means to an end and not the end in itself. It is the process whereby elected executives are tried for misconduct by the representatives of the people resulting in their removal from office.[8] This is the correct meaning of impeachment and removal hence it is to be adopted in this research.

2.2.2 The Usage of Impeachment under the Nigerian Constitution

The usage of impeachment and its relationship with removal under the Nigerian constitution had given rise to a lot of controversy. Impeachment and removal have mostly been used interchangeably and carelessly in some constitutional texts, legal discourses and by the media and general public. The nature of this usage has been pointed out in the following words:

> *The correct legal sense of* ***impeach*** *refers only to the bringing of formal charges against an official. Since the purpose of impeachment is the removal from office of an official who has engaged in misconduct, many people focus on the intended result and use* ***impeach***

[8] Owoede, M. A., "Impeachment of Chief Executives under the 1999 Constitution: New Problems, New Solutions" *The Journal of Constitutional Development*, (2007): 1.

> *to mean "to remove (public official) from office". This sense is likely to cause confusion, and people should be aware of the word's proper legal meaning.*[9]

In the same vein, the usage does not escape the "eagle eye" of David Bernard Guralnik as such he properly captured it in the following words:

> *When an irate citizen demands that a disfavored citizen public official be impeached, the citizen clearly intends for the official to be removed from office. This popular use of impeach as a synonym of "throw out" (even if by due process) does not accord with the legal meaning of the word. When a public official is impeached, that is, formally accused of wrongdoing, this is only the start of what can be a lengthy process that may or may not lead to the official's removal from office. In strict usage, an official is impeached (accused), tried, and then convicted or acquitted. The vaguer use of impeach reflects disgruntled citizens' indifference to whether the official is forced from office by legal means or chooses to resign to avoid further disgrace.*[10]

Under the Nigerian constitution, the word impeachment does not appear in the sections which make provision for impeachment. This makes a justice of the Supreme Court to opine that what we have is removal as it is what the constitution categorically uses. He made bold to add further:

> *Impeachment is defined in Black's Law Dictionary 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 State including Federal Judges". This definition, with a slant for the United States Constitution, does not totally reflect the content of section 188 of the 1999 Constitution, as it conveys so much element criminality. Section 188 is not so worded. The section covers both civil and criminal conduct. Therefore the word should not be used as a substitute for the removal provisions of section 188 and the section 188 procedure*

[9] David Bernard Guralnik, Webster's *New World College Dictionary* (New York: Random House Inc., 2010) available at www.frredictinary.com (accessed on February 10, 2017).

[10] Samuel Johnson, Dictionary *of the English Language* (Boston: Houghton Mifflin Harcourt Publishing Co., 2016) available at www.freedictionary.com (accessed on February 12, 2017).

> *should simply be referred to as one for removal of Governor or Deputy Governor...*[11]

In the course of the interview for this research, a Respondent insisted and even challenged the author[12] to tell him anywhere the word "impeachment" appeared in the constitution. The author had to quote judicial authorities and the relevant sections where it appeared before he became convinced. He then reacted:

> *That is why I said the constitution itself has not used the word impeachment it is dealing with removal and so you can see that even right from the word go the constitution and the way people try to actually appraise the provisions of the constitution seems to be a variance in the sense that it requires again another interpretation by supreme court. And so the entire process within the constitutional framework is not clear...*[13]

In a similar vein, Respondent 4 vividly described the situation in the following words:

> *Look! The Nigerian constitution is defective in many respects in relation to impeachment. You see. The word "impeachment" does not even appear anywhere there. In fact, some people are of the view that what we have in our constitution is removal not impeachment because it is what the constitution used. But this is a wrong view as some courts have already clarified.*[14]

This is their understanding of what the word impeachment entails. However, this is wrong for these reasons. First, he, having realized correctly that the definition above was given in relation to United States constitution, fails to understand that the definition only pointed out the grounds of impeachment under the constitution of the United States of America. The definition does not take into cognizance the varying grounds of impeachment under some other constitutions. It is, therefore, restrictive in scope and cannot be the yardstick for determining what impeachment entails generally. If we were

[11] Per Niki Tobi JSC in *Inkoju vs. Adeleke* (2007) LPELR 10354.
[12] The author means myself during the interview.
[13] Interview with Respondent 11 conducted in his office on 8th August, 2017 around 16300hrs
[14] Interview with Respondent 4 on August 1, 2017, at his residence around 1309.

to go by this definition and the understanding, it would mean that any country whose constitution does not recognize these as grounds of impeachment has no impeachment in its provisions. The fallacy of this view is that the meaning of impeachment is tied to the grounds of impeachment only.

Secondly, impeachment is a power given to the legislature with an enshrined procedure to be followed in the exercise of the power. Once the power is vested on the legislature by a constitution and the procedure for exercising it as specified is the same as the procedure for impeachment, then it qualifies as impeachment. The fact that the word impeachment does not appear in any of the constitutional provisions does not take anything away from it. This is because it is not every constitutional concept that bears the name of that concept in the constitutional provision or its head or side notes. For instance, the words "rule of law" and "separation of powers" do not appear in the constitutional provision relating to rule of law and separation of powers. However, the concepts have been enshrined in various provisions of the Nigerian constitution.

Thirdly, the judge closed his eyes to the fact that the same constitution he was referring to had expressly made reference to impeachment although in a manner that twists its meaning. The Constitution provides for impeachment as one of the ways through which the office of the President[15] or Governor[16] may become vacant. It recognizes impeachment, incapacity, death and removal as circumstances under which the Vice President could take over power from the President and the Deputy Governor from the

[15] Section 146 of the constitution.
[16] Section191 of the Constitution.

Governor of a State.[17] However, apart from this section, there is no any other place in the constitution where impeachment is mentioned as a means to bring to premature end the tenure of the President, Vice President Governor, or Deputy Governor. This equally goes to show that impeachment is recognized by the Nigerian constitution. Therefore, this opinion on sections 143 and 188 is unfounded, baseless, misconceived and misplaced. It is one of the sources of confusions associated with the meaning of impeachment in the Nigerian context.

Thus, notwithstanding Justice Niki Tobi's assertion on impeachment in the context of the Nigerian Constitution above, it appears practically difficult even for him to avoid the word in his judgment.[18] A judge in the same case concluded that "impeachment means removal of an elected officer as used in the constitution" while another said that impeachment is recognized as one of the legitimate means by which a Governor or Deputy Governor, President or Vice President may be removed from office.[19] This fact is reiterated severally by the Nigerian Supreme Court in a plethora of subsequent judicial authorities. For instance, a justice of the Nigerian Supreme Court, Rhodes-Vivour JSC held that "... for an impeachment of a Governor or Deputy Governor of a State to be constitutional, there must be strict compliance with section 188 of the constitution..."[20] He went further to add at another breath that "... impeachment proceeding provided by section 188 of the constitution is purely a legislative constitutional affair..."[21] The judge here referred section 188 of the Nigerian constitution as impeachment provisions. In

[17] See sections 146 and 191 of the constitution of Nigeria.
[18] He subsequently used impeachment and removal interchangeably in other places in the same judgment.
[19] See the judgments of Mustapher and Katsina_Alu JJSC in *Inajoku vs. Adeleke (supra).*
[20] *Danladi vs. Taraba State House of Assembly* (2015) 2 NWLR (pt.1442) 103 at 106.
[21] *Ibid.*

fact, the instances are just too numerous to mention. Suffice it to say that there was no case brought pursuant to the provisions of section 188 or 143 of the Nigerian constitution in which no mention of it as impeachment provision was made. In view of the above, impeachment is provided for under sections 143 and 188 of the constitution of Nigeria.

Another twist as to the usage of impeachment and removal under the constitution could be found in the provision which empowers the Vice President to take over from the President and Deputy Governor to suceed the Governor. In the provisions, the two terms were used in such a way as to give the wrong impression that impeachment and removal are two different ways through which the office of the President and the Vice President becomes vacant. It thus provides:

> *The Vice-President shall hold the office of President if the office of President becomes vacant by reason of death or resignation, impeachment, permanent incapacity or the removal of the President from office for any other reason in accordance with section 143 of this Constitution.*[22]

From the above provision, it is discernible that the office of the President and the Vice President becomes vacant as a result of death, resignation permanent incapacity and impeachment. These are the only causes for which the President or Vice President ceases to function in the office under the constitution.[23] The confusion is when the section added another cause which is "removal of the President from office for any other reason in accordance with section 143 of this constitution". And section 143 of the constitution is the impeachment provision. This is where the problem of the meaning of

[22] Section 146(I) of the constitution of the Federal Republic of Nigeria, 1999.
[23] *See Atiku Abubakar vs. The Attorney General of the Federation & Ors* (2007)

the two terms lies as one is bound to wrongly understand that impeachment is one way through which the President and the Vice President cease to function while removal in accordance with the provision of section 143 is another and different means.[24]

The way the constitution of Romania is couched reveals the understanding of the correct meaning of impeachment and removal and could serve as inspiration for Nigeria. It provides, in part, thus: "From the date of the impeachment until his/her eventual removal from office, the President is suspended by law from the exercise of his/her functions". It is discernible from the above provision, and the heading of the provision which reads "impeachment", that impeachment connotes the process while removal is the end-result.[25] In the same vein, the constitution of Liberia makes similar provision which states: "The President and the Vice-President may be removed from office by impeachment for treason, bribery and other felonies, violation of the Constitution or gross misconduct".[26]

Apart from the constitutional provisions analyzed above, the judicial processes especially those in Nigeria have sometimes contributed in no small measure in creating the confusion about the meaning of impeachment and removal. This is expressed in the court processes filed by lawyers and rulings and judgments of some courts. While this may be attributed to carelessness on the part of the courts and the lawyers, it sometimes arises out of sheer misunderstanding of what the two terms actually mean. Thus, the

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[24] A similar provision could be found in respect of Governor and Deputy Governor of a state. See section 188 of the constitution.

[25] Article 97 of the constitution of Romania, 1991.

[26] Article 62 of the constitution of Liberia, 1986. Similar provisions could also be found under Articles 74, 86 and 88 of the constitution of Lithuania, 1992.

judicial processes of our courts will also be explored in relation to how they sometimes perceive the meaning of the two words. One of the earliest Nigerian judicial authorities on impeachment is the case of *Hon. Micheal Dapialong & Ors vs. Chief Joshua Dariye & Ors.*[27] In the judicial processes filed and the decision of the court, there were a lot of contradictions in the usage of the words "impeachment" and "removal" which gave rise to confusion as to their exact meaning. For instance, in formulating the sixteen questions for the court's determination, the appellant's counsel asked the court thus:

> *Whether the appointment, constitution and swearing in of the seven (7) man panel of the investigation by the first defendant herein and its entire proceedings leading to the purported* ***impeachment*** *of the plaintiff as the Governor of Plateau state in the unholy hours of Monday, 13th of November, 2006...*[28]

This has clearly shown how the counsel misunderstood the meaning of impeachment. What really happened on the date he mentioned was not impeachment but the removal of the Governor. The impeachment started from the date the impeachment notice containing all the allegations against the Governor was presented to the Speaker of the House. This same misunderstanding was exhibited again by him in yet another question for determination as contained in his brief of argument. He posed that: "whether the purported **impeachment** of the plaintiff on Monday, the 13th day of November, 2006 by the 2nd to 7th defendants..."[29] This also makes one to understand that impeachment is the ultimate removal of the Governor in this case, and not the processes leading to his removal, which took place on the mentioned date. The Supreme Court in its judgment as delivered by Mahmud Mohammed JSC, said "... as far as I am concerned, the main and crucial issue for determination in this appeal is whether the ***removal*** **or** ***impeachment*** of

[27] (2007) LPELR-SC.39/2007.
[28] *Hon. Micheal Dapialong & Ors vs Chief Joshua Dariye & Ors* LPELR-SC.39/2007
[29] *Ibid.*

the first respondent in an impeachment proceedings..."[30] He went further to add that"... proceedings of the House which culminated in the alleged ***removal or impeachment*** of the first respondent. (Bold for emphasis). This shows that the words "removal" and "impeachment" were used interchangeably in the instances cited above which is a clear misunderstanding of their import. Similarly, in *All Progressive Congress vs. People Democratic Party,*[31] one of the issues formulated by the respondent in his brief of argument was whether the impeachment of the appellant as the Governor of Ekiti State constituted a ground for his disqualification.

In addition to all of the above, the Nigerian media perception of what impeachment entails is also a force to be reckoned with in this direction. Whenever a media outlet is reporting cases of impeachment or any case of removal of public office holders, it easily misleads the gullible public as to what really impeachment means. Although so many cases abound, suffice it to cite few instances to drive home the point. When the Plateau State House of Assembly removed its Deputy Speaker, the media was awash with the news that the Deputy Speaker was impeached. For instance, the Premium Times Newspaper reported that: "Plateau House Deputy Speaker impeached".[32] The same story was reported in similar tone by another newspaper, the Vanguard, in these words: "Flateau Deputy Speaker impeached". It went further to add that "The Plateau State House of Assembly has impeached its Deputy Speaker Hon Yusuf Gagdi by voice votes..."[33] On the part of Daily Trust Newspaper, it reported that the Plateau Deputy

[30] Mahmud Mohammed JSC in *Hon. Micheal Dapialong & Ors vs. Chief Joshua Dariye & Ors at*
[31] (2015) 15 NWLR (pt. 342) 4
[32] Andrew Ajijah, available at www.premiumtimesng.com (accessed April, 5, 2017).
[33] Adekunle Adebayo, available at www.vanguardngr.com (accessed April 4, 2017).

Speaker Gagdi was impeached[34] while the Nation Newspaper's headline carrying the news read "Plateau lawmakers impeached deputy speaker".[35] It should be noted that the members of the legislative houses are not subject to impeachment under the Nigerian constitution as would be discussed later. Therefore, regarding as "impeachment" the removal of any of the principal officers of the House of Assembly is not only a misunderstanding of the meaning of impeachment but also misleading. Such cases are just too numerous to mention due to space constraint.

In the light of the foregoing discussions, the correct meaning of impeachment is that it is a process through which some public officials could be removed from office on ground of misconduct. Thus, its usage under the Nigerian constitution should reflect a process whereby the President, Vice President, Governor and Deputy Governor could be removed from office on ground of gross misconduct.

2.2.3 The Nature of Impeachment Proceedings in Nigeria

Impeachment proceedings arise in the exercise of the impeachment powers vested in the legislative arm of government by the constitution. There are always procedures to be followed for impeachment proceedings either laid down by the constitution or some other laws or both. Thus, a distinction had been drawn between what constitutes procedure and proceedings in this respect. The Supreme Court said:

> *Procedure is the set of actions necessary for doing something. It is also the method and order of directing business in an official meeting.*

[34] Lami Sadiq, "Plateau Deputy Speaker Gagdi was impeached" available at https://wwwdailytrust.com.ng (accessed April 4, 2017).
[35] Osagie Otabor, www.thenationonline.net (accessed on April 4, 2017).

> *On the contrary proceedings are the records of activities. Procedure generally comes before proceedings. In other words, proceedings are built on the procedure established for the particular activity or business.*[36]

From the above explanation, while impeachment procedure is the process to be followed for impeachment, impeachment proceedings are the activities that take place during the impeachment. But both the procedure and the proceeding culminate in the removal or acquittal of the subject of the impeachment. In view of this, what then is the nature of impeachment proceedings? There are virtually two divergent arguments as to the nature of impeachment proceedings. One is that it is a political proceeding while the other is to the effect that it is a semi- judicial or quasi-judicial proceeding. To those who see it as purely political proceeding, they hinge their argument on the fact that the legislature have a discretion as to whether to initiate the impeachment or not and what transpires before and after the proceedings involves a lot of politicking. Thus, it was opined long time ago that impeachments were "proceedings of a political nature... confined to political characters, to political crimes and misdemeanors, and to political punishments".[37] Similarly, in impeachment proceedings, the fate of the public office holder who is the subject of impeachment is decided by men and women who are political beings.[38]

There is no doubt that the removal of an elected public officer by impeachment involves serious political considerations in the determination of whether or not to initiate the

[36] *Inakoju vs. Adeleke* (2007) LPELR 10354.
[37] James Wilson, *The Works of James Wilson* (Chicago: Callaghan and Company, 1896) 408.
[38] Micheal J. Gerhard, *The Federal Impeachment process: A Constitutional and Historical Analysis*, (2nd ed) (Chicago: University of Chicago Press, 2000)

proceedings. This is because there may be many Presidents, and other public office holders, who may have acted contrary to the prescription of the law but have never been threatened with impeachment.[39] And where the legislature decides to embark on impeachment of an elected public official, politics equally rears its ugly face to play a major role. Thus, a renowned author painted the picture in the following words:

> *The major problem with the impeachment process is that members of the congress are likely to feel tremendous pressure to forgo investigating President with high approval ratings or substantial popularity.*[40]

Similarly, politics play a major role in the decision of the lawmakers at the various stages of the impeachment proceedings in which numerical strength is required. This is why it was cautioned that "... and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of innocence or guilt".[41]

In the same vein, the attitudes of the Nigerian courts from the 1980s to early 2000s clearly depicted impeachment proceedings as political in nature. This is because the courts had, during the period, avoided questions bordering on impeachment on the basis of political question doctrine.[42] Political question entails an issue over which jurisdiction

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[39] Jody C. Baumgatner, "Comparative Presidential Impeachment" in Jody C. Baumgatner and Naoko Kada(eds) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, (Preager Publishers: Westport, 2003) 4.

[40] Micheal j. Gerhard, *The Federal Impeachment process: A Constitutional and Historical Analysis*, (2nd ed) (Chicago: University of Chicago Press, 2000).

[41] Alexander Hamilton, *The Federalist* (New York: Barnes and Nioble, 1961) 43.

[42] See Enyinna Nwauche, (2007) "Is the End Near for Political Question Doctrine? A Paper Presented at African Network for Constitutional Law Conference on Fostering Constitutionalism in Africa, Nairobi, Kenya, 3.

is vested on the other branches of the government by the constitution[43] or a doctrine which attributes finality of an issue, omission or commission to the political department of the government and political party as enshrined under the constitution and the system of government in Nigeria.[44] Thus, under the Nigerian jurisprudence, it is a judicial principle that the internal proceedings of the legislature cannot be questioned in a court of law on the basis that it is a political question[45] provided that the legislature does not thereby breach any constitutional provisions.[46] This is in accord with separation of powers.[47] It is discernible that the internal affairs of the legislature which are not provided for either expressly or otherwise shall not be the concern of the court as such is regarded as political in nature. However, where it is so regulated by the law or the constitution like impeachment, the court is duty bound to inquire into it as such it is not political in nature. This is as laid down in the plethora of judicial pronouncements.[48] Therefore, impeachment proceedings which are regulated by the constitution should not be so considered as political in nature. This is because, as the Supreme Court put it, the entire considerations may not be purely political as they may involve legal questions.[49]

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[43] Oba Popoola, "The Courts and the Democratic Process in Nigeria: An Appraisal of the application of some American Judicial Doctrines" in Ajibade Bello (ed) *Law, Democratic Governance and Justice Administration in Nigeria,* (Ibadan: Life Gate Publishing Co. Ltd., 2009) 275.

[44] *Onuoha vs. Okafor* (983) NSCC 494. See also the case of *Attorney General of Eastern Nigeria vs. Attorney General of the Federation* (1964) All NLR 218;

[45] See the cases of *Senate of the National Assembly vs. Tony Momoh (1983) 4 NCLR 295; Hon. Edwin Ume-Ezeoke vs. Alhaji Isa Makarfi* (1982) 3 NCLR 663; *Senator Okwu vs. Senator Joseh wayas (1981) 2 NCLR522.*

[46] *Attorney General of Bendel State vs. The Attorney General of the Federation* (1982) 10 SC 1.

[47] *Inakoju vs. Adeleke* (2007) LPELR 10354.

[48] See for instance, *Ekenkhio vs. Egbadon* (1993) 7 NWLR (pt. 308) 717; *Asogwa vs. Chukwu* (2004) All FWLR (pt. 189) 1204; *Ndayeyo vs. House of Assembly* (1985) 6 NCLR 663.

[49] *Attorney General, Bendel State* vs. *Attorney General of the Federation* (1982) 3 NCLR 1; *Ezeoke* v. *Makarfi* (1982) 3 NCLR 663

In this respect, it is a legislative constitutional affair[50] because the power belongs to the legislature and it is provided under the constitution. More so, the whole arrangement of the impeachment proceedings before the impeachment panel is judicial-like. This is because it makes provision for the presentation of accusations against the subject of the impeachment and the observance of fair hearing. It is, thereafter, that the panel will make conclusion as to whether the allegations have been proved or not on the basis of the strength of the case presented by the parties involved. This makes impeachment proceedings to become quasi-judicial proceedings.

In the light of the above, the view that impeachment proceeding is not political but quasi-judicial proceeding is more preferable. This is due to the simple reason that Nigerian courts had alsways insisted that legislative houses and investigation panels shall strictly observe all the aspects of fair hearing in impeachment proceedings.

2.2.4 The Philosophical and Rationale Basis of Impeachment Power

The power of impeachment as vested on the Nigerian legislature by the constitution is based upon a philosophy and rationale. First and foremost, it is intended to function as an instrument to check the excesses of the executive and in some dominions even the judicial arm of government.[51] This is on the basis of the principle of separation of powers which defends the society from impunity by any arm of government and make certain that each arm preserves its own sphere of influence.[52] So, the judiciary checks

[50] In *Danladi vs. Taraba State House of Assembly* (2015) 2 NWLR (pt. 1442) 103 at 109, it was held that impeachment proceedings provided under section 188 of the constitution is a purely legislative constitutional affair.
[51] Section 6 (6) of the Constitution of Nigeria; *Adesanya vs. President of Nigeria* (1982) 2 NCLR 356
[52] Charles Arinze Obiora and Eze Malachy Chukwuemeka,(2012) "Constitutionalism, Impeachment and Democracy in Nigeria: An Appraisal", *Journal of Constitutional Development*, 12 no. 1, 44-45.

the exercise of powers by both the executive and the legislature by way of judicial review to guarantee that they function within their scopes as provided by the constitution.[53] The executive, on the other hand, exercises some level of power over the judiciary in terms of appointment and discipline and over the legislature in cases of endorsement of legislations[54] and fiscal expenditure, The legislature also checks the judiciary in terms of endorsement of their appointment and financial expenditure[55] while the executive is exposed to the control of the legislature in case of expenditure and impeachment. Therefore, impeachment is machinery meant to check the excesses in the exercise of the executive powers.[56] Furthermore, impeachment affords an opportunity to hold the elected executive responsible for misconducts committed while in office. In many jurisdictions that practice democracy across the globe, the President, Vice President and other members of the executive at the various levels of government enjoy legal protection from suits for their acts or omissions during the period they occupy the particular offices. In Nigeria, for instance, the President, Vice President, Governor and Deputy Governor enjoy such legal protection. Thus, no civil or criminal proceedings shall be instituted against them while in office.[57] This is immunity from legal proceedings which elected executive office holders who are subjected to impeachment enjoy while in office.[58] Therefore, impeachment presents itself as the only way to call

[53] See section 6 of the Constitution of Nigeria.
[54] *National Assembly vs. The President of Federal Republic of Nigeria* (2003) 41 WRN 94; Kehinde Mowoe, *Constitutional Law in Nigeria*, (Lagos: Malthouse Press,2008) 26.
[55] Sections 80-84 of the constitution.
[56] Mowoe, Constitutional Law in Nigeria, 26.
[57] See section 308 of the constitution.
[58] The concept of Immunity under the Nigerian constitution had received so much judicial interpretation in a lot of pronouncements from the Nigerian superior courts. See for instance the cases of *Tinubu vs, I.M.B. Securities Pic* (2001) All FWLR (t.77) 1003; *Alameyeseigha vs. Yeiwa* (2002) All FWLR (t. 96) 552; *Media Tech Nig. Ltd., vs. Lam Adesina* (2005) 1 (t. 908) 461; *I C S Nig. Ltd. vs. Balton B. V.* (2003) 8 NWLR (pt. 822) 223; *Umnah vs. Attah* (2004) 7 (t. 871) 63; *Alameiyeseigha vs. Federal Republic of*

elected executives to account for their wrongdoings in Nigeria during the pendency of their offices.[59]

2.3 The Legislature

2.3.1 Meaning of Legislature

Legislature is "official bodies, usually chosen by election, with the power to make, change and repeal laws; as well as powers to represent the constituent units and control government".[60] In other words, it is defined as "assemblies of elected representatives from geographically defined constituencies, with lawmaking functions in the governmental process of a country".[61] From the above definitions, it is discernible that the legislature is an arm of government which is responsible for lawmaking and representation of the electorates. Thus, the most important functions of the legislature- lawmaking and representation- are recognized in the definition.

2.3.2 Nature of the Nigerian Legislature

Generally, the number of legislative houses recognized in a given constitution determines its type, although the constitutional arrangement of a country would depend on its own peculiarities. In view of this, two types of legislature exist. They are Unicameral and Bicameral. Unicameral is the legislature with only one chamber as the

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Nigeria (2006) 16 (t. 1004) 1; *Gani Fawehinmi vs. Inspector General of Police* (2002) All FWLR (pt. 108); *Global Excellence Communication Ltd. vs. Mr Donald Duke* (2007) 16 NWLR (pt. 1059) 22.

[59] This is because the executive cannot be subjected to any legal process while holding the xecutive office. See section 308 of the constitution.

[60] Lafenwa, Stephen A. (2009) "The Legislature and the Challenges of Democratic Governance in Africa: The Nigerian Case." *A* seminar paper delivered *at a* conference on *Governance and Development on Democratization in Africa: Retrospective and Future, Prospects* held on December 4-5, held at University of Leeds, United Kingdom.

[61] Okoosi-Simbine, A. T. (2010) "Understanding the Role of the Legislature in the Fourth Republic: The Case of Oyo State House of Assembly", *Nigeria Journal of Legislative Affairs*, 3. no. 1 & 2.

legislative house. For example, there is only one legislative house at the state level in Nigeria. It is called the State House of Assembly.[62] Thus, unicameral legislature is provided at the state level in Nigeria. For bicameral legislature, it is the legislature which has two chambers. The first chamber is normally called "the upper house" while the other is called "the lower house". Usually, the former comprises of more experienced but fewer members than the latter. Therefore, the Nigerian National Assembly is bicameral in nature as it comprises of the upper chamber called the Senate and the lower chamber called the House of Representatives. Under the Nigerian constitution, the age qualification for the upper chamber is 45 years while that of the lower chamber is 35 and the total number of members at the upper chamber is 109 while that of the lower chamber is 360.[63]

In Nigeria, the number of members representing a particular area in the legislature may be determined on equal basis or by its population. At the federal leve, for instance, the number of the representatives is on equal basis. Therefore, in the upper legislative chamber called the Senate, each State of the federation is represented by three senators irrespective of the population of the State. While the lower chamber, the House of Representatives, has membership from all the States which make up the federation on the basis of population. The fundamental basis of this representation is that the legislators should reflect the composition of the country as much as possible both in

[62] See section of the constitution of Nigeria.
[63] See sections 48 and 49 of the constitution of Nigeria.

number and heterogeneity of population.[64] Thus, there is no arm of government which is more representative in nature than the legislature as it comprises of people from different ethnic, social, religious and, sometimes, political background.[65]

2.3.4 Functions and Powers of the Nigerian Legislature

Under the Nigerian constitution, function includes power. Power is the ability, authority, strength, official or legal right to do something.[66] Thus, there are some functions and powers vested in the Nigerian legislature under the constitution. They form part and parcel of their primary responsibilities. There are also others which arise only on some occasions. Thus, the traditional and most important functions of the Nigerian legislature are: lawmaking and oversight.

2.3.4.1 Lawmaking

Generally, the primary function of the legislature world over is lawmaking. Nigerian legislature is no exception as it is the arm of government saddled with the responsibility of making law at all the levels of government in the country. This is part of the legislative powers vested in it by the constitution in the following words:

> *(1) The legislative power of the Federal Republic of Nigeria is vested in the National Assembly for the Federation, which shall consist of a Senate and the House of Representatives.*
> *(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any art thereof with*

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[64] Iwu Maurice, (2008) "INEC's New Roadmap: Addressing the Imbalance", *Tell*, September, 43; Benjamin, "The Legislature and Constituency Representation", in Hamalai Ladi (ed) *The National Assembly and Democratic Governance in Nigeria*, 336.
[65] Miller, Kristina C. (2010) *Constituency Representation in Congress: The View from Capitol Hill*. (Cambridge: Cambridge University Press, United Kingdom).
[66] Malemi Ese, *The Nigerian Constitutional Law*, 3rd ed. (Lagos: Princeton Publishing, 2012), 218.

respect to any matter included in the Exclusive Legislative List set out in part I of the Second Schedule to this constitution.[67]

From the foregoing, it is clear that the constitution provides a mechanism through which a harmonious lawmaking relationship is created between the legislature at the federal and state government levels. This is in recognition of e principle of federalism which Nigeria practices. According to the provision, the atters over which the federal legislature has exclusive legislative jurisdiction to ake law are called Exclusive Legislative list. This means it is only the National Assembly that could make law in respect of those matters,[68] and matters that are incidental or supplementary to them.[69] There are also other matters considered as Concurrent Legislative List over which both the National and the State Houses of Assembly could make law. A State House of Assembly, on the other hand, is empowered to make law with respect to matters not included in the exclusive legislative list but included in the concurrent legislative list.[70] The Supreme Court expatiated on the meaning of "concurrent" as contained in this provision that "What is meant therefore when a matter is said to be concurrent to Federal and State Governments is that their powers in respect of it exist side by side together."[71] This is to ensure that there is no conflict or confusion between the Federal and State Government in the exercise of this legislative power. However, where a conflict arises in

[67] Similar provisions are made in respect of the Houses of Assembly of States. See section 4 of the constitution.

[68] See *Attorney General of Abia State vs. Attorney General of the Federation* (2002) 6 NWLR (pt.762) 264, 300.

[69] Under section 4(7) (a), a State House of Assembly can legislate on matters on the concurrent list as well as on all other matters which are not on either of those two lists except where the matter is "incidental" or "supplementary" to matters on the exclusive legislative list. See *Attorney General of Abia State vs. Attorney General of the Federation* (2002) 6 NWLR (pt.762) 264, 300; *Attorney General of Ondo State vs. Attorney General of the Federation* (2002) 9NWLR (pt. 772) 222.

[70] *Attorney General of Abia State vs. Attorney General of the Federation* (2002) 6 NWLR (pt.762) 264, 305.

[71] *Olafisoye vs. Federal Republic of Nigeria* (2004) 4 NWLR (pt. 864) 580 SC

that a law made by State House of Assembly is inconsistent with that of the National Assembly, the latter prevails over the former. This is called the doctrine of covering the field as explained by the Supreme Court that: "The doctrine of 'covering the field' also referred to as doctrine of inconsistency means that when a state law, if valid, would alter, impair or detract the operation of a Federal Law, then to that extent it is invalid".[72] Furthermore, a State House of Assembly can make law in respect of matters which are contained neither in the exclusive nor concurrent list. They are the residual matters which are meant for the state, and not the federal, to legislate on. However, the lawmaking power of the legislature is subject to some limitations.[73]

2.3.4.2 Legislative Oversight

Legislative oversight is the basis of impeachment proceedings. It is the review, monitoring and supervision of government and public agencies including the implementation of policy and legislation.[74] It is "keeping eye on the activities of the executive and, on behalf of the citizens, holding the executive to account".[75] It entails

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[72] *Attorney General of Abia State vs. Attorney General of the Federation* (2002) 6 NWLR (pt.762) 264, 327.

[73] For instance, it cannot make law to oust the jurisdiction of the court; or to have retrospective effect in criminal matters; or which contradicts other principles of the constitution like separation of powers or federalism. See Section 4 of the constitution of Nigeria; *Lanlokunmi v. A.G (Western Nigeria)* (1974)4 ESCSLR 413; See also *Onyiuke v. ESIALA* (1974)4 ESSLR 679; *Attorney General of Ondo State vs. Attorney General of the Federation* (2002)6 SCNJ at 42; *Attorney General of Abia State vs. Attorney General of the Federation* (2002)3 SCNJ 158; *Usman Mohammed vs. Attorney General of Kaduna State* (1981)1 NCLR 117.*Attorney General of Abia State & 35 ors vs. Attorney-General of the Federation* (2002)3 SCNJ 158; *Attorney-General of Ondo State vs. Attorney-General of the Federation & 35 Ors.* (2002)6 SCNJ 1; *Attorney-General of Lagos State vs. Eko Hotels Ltd* (2007)9 WRN 1.

[74] Yamamoto H., (2007) "Tools for Parliamentary Oversight: A Comparative Study of the National Parliament", Inter-Parliamentary Union, 1-82, 3.

[75] Hudson A. and Wren C.,(2007) "Parliamentary Strengthening in Developing Countries", United Kingdom: Oversees Development Institute.

the supervision and monitoring of the executive whether covert or overt.[76] It is elaborately defined as the power of the legislature to check or control the exercise of executive powers or to make the executive accountable and responsible to the electorates.[77] This entails the formal and informal watchful, strategic and structured scrutiny by the legislature in respect of the implementation of laws, application of budget and strict observance of statutes and the constitution.[78] This function of the legislature is, as argued by some scholars, the most crucial of all legislative functions including lawmaking.[79] This is because it "ensures both the vertical accountability of rulers to the ruled as well as the horizontal accountability of all other government agencies to the one branch- the legislature".[80] Legislative oversight focuses on policy, programs and projects of the government with the purpose of detecting and preventing abuse of office, holding government accountable, ensuring policies of government are actually implemented and in the process, improving transparency.[81] The oversight function of the legislature ensures that activities of the executive are carried out legally, efficiently and according to legislative intent. Through this mandate, the legislature ensures that laws made are faithfully implemented; corruption, arbitrariness and abuse of executive powers are curbed.[82] Consequently, this increases compliance with

[76] Morris S. and Berth A., (1990) "Overseeing Oversight: New Departures and Old Problems", *Legislative Studies Quarterly*", 15 no. 1 5-24, 4.
[77] Oyewo O, (2007) "Constitutionalism and Oversight Function of the Legislature in Nigeria", A Paper Presented at African Network of Constitutional Law Conference, Nairobi Kenya, 17.
[78] Madue, S. M., (2012) "Complexities of the Oversight Role of the Legislatures", *Journal of Public Administration*, 47, no. 2, 431- 444, 434.
[79] Verney D. V., *Structure of Government*, (London: Macmillan, 1969) 167. Fashagba Joseh (2009) "Legislative Oversight under the Nigerian Presidential system", *The Journal of Legislative Studies*, 15 no. 4, 439-459.
[80] Barkan J., Legislatures on the Rise? (Baltimore: John Hopkins University Press, 2010) 34.
[81] Mobolaji H. I., "Legislature, Governance and Development" in Hamalai Ladi (ed) *The National Assembly and Democratic Governance in Nigeria*, (Abuja: Imax Media Ltd., 2014) 54.
[82] Committees in the National Assembly: A Study of the Performance of the Legislative Function (2003-2010), A Report of the Policy Analysis and Research Project, National Assembly, Abuja, (2011).

constitutional provisions, improves welfare of the citizenry, deepens democracy and enhances public trust.[83] Thus, the objectives of the oversight function are to ensure transparency and openness of executive activities; hold accountable the executive; provide financial accountability; and uphold the rule of law.[84]

The Nigerian National Assembly is mandated by the constitution to carry out this oversight function most importantly pursuant to the legislative powers to control government expenditure through appropriation[85] and conduct of investigations into the way and manner in which the laws made and the moneys provided are complied with and spent respectively. The control of government expenditure by the legislature is done through authorization of all spending of public fund for the running of the government and the welfare of the citizens by the executive through a law known as Appropriation Act. It is the Act that will authorize the withdrawal of moneys from the consolidated revenue and other public fund and the way and manner through which the moneys withdrawn are to be spent.[86] The effect of this is that at the beginning of every financial year, the President is duty bound to submit to the National Assembly the estimated

[83] Mobolaji, "Legislature, Governance and Development" in Hamalai Ladi (ed) *The National Assembly and Democratic Governance in Nigeria*, 54.
[84] Hamalai Ladi, *Legislative Practice and Procedure of the National Assembly*, (Abuja: Imax Media Ltd., 2014) 64. See also Pellizo R, and Staphenhurst R, *Parliamentary Oversight for Government Accountability*, (Washington D.C.: World Bank Institute, 2006) 23; Pellizo R, and Staphenhurst R, (2014) "Oversight Effectiveness and Political Will: Some Lessons from West Africa", *Journal of Legislative Studies*, 20 no. 2
[85] The legislature authorizes the expenditure of the Federal and state governments through the approval of the estimated revenues and expenditure of the federal and state governments for the next financial year. This is otherwise known as budget. See sections 81, 82, 121 and 122 of the constitution of Nigeria.
[86] Section 80 and 81 of the constitution of Nigeria

income and expenditure of the federal government for scrutiny by the legislature before the authorization.[87]

The other aspect of oversight of the activities of the executive is investigation. Thus, investigation is one of the most popular mechanisms of legislative control of the executive. "The power to investigate and expose is probably one of the most well-known instruments through which legislators could supervise the administration".[88] In view of this, the constitution makes elaborate provision empowering the legislature to conduct investigations on any matter over which it has power to make law.[89]

Although this is an effective mechanism for legislative control of the executive, its effectiveness is determined by the political will of the legislature.[90] Therefore, we make bold to state and without fear of any contradiction, that the Nigerian legislature most at

[87] Section 82 of the constitution of Nigeria provides: "If the Appropriation Bill in respect of any financial year has not been passed into law by the beginning of the financial year, the President may authorize the withdrawal of moneys in the Consolidated Revenue Fund of the Federation for the purpose of meeting expenditure necessary to carry on the services of the Government of the Federation for a period not exceeding months or until the coming into operation of the Appropriate Act, whichever is the earlier: Provided that the withdrawal in respect of any such period shall not exceed the amount authorized to be withdrawn from the Consolidated Revenue Fund of the Federation under the provisions of the Appropriation Act passed by the National Assembly for the corresponding period in the immediately preceding financial year, being an amount proportionate to the total amount so authorized for the immediately preceding financial year".

[88] Onyekwere Nwanko, (1989)"Legislative Supervision of the Administration", a paper presented at the workshop for Legislators of the Anambra State House of Assembly held in Enugu.

[89] See sections 88 and 128 of the constitution of Nigeria. In *Ebrufai vs House of Representatives* (2003) 46 WRN 12 the court held that an investigation carried out not for the purposes specified under the constitution, but for personal aggrandizement of the lawmakers, is *ultra vires* the powers of the National Assembly. See also *Shell Petroleum Development Company of Nigeria ltd., vs. Ajuwa* (2015) 14 NWLR (pt. 1480) 203 at 418; *Adikwu vs. Federal House of Representatives* (1982) 3 NCLR 394 and *Tony Momoh vs. The Senate & Ors.* (1981) 1 NCLR 105.

[90] Pelizo R, and Staphenhurst R, (2014) "Oversight Effectiveness and Political Will: Some Lessons from West Africa", *Journal of Legislative Studies*, 20 no. 2, 255-261, 258.

times embarks on oversight function not for the purpose for which it is meant but for the benefit they want to derive.

2.4 The Constitution

2.4.1 The Meaning of the Constitution

Constitution is an organic instrument which vests powers and creates rights and limitations. It is the supreme law in which fundamental principles are established.[91] To Nwabueze, it is the body of fundamental principles according to which a state is organized.[92] In the same vein, another author describes it as a body of rules agreed upon by the people of a country as its supreme law for the regulation of its government and national life.[93] Furthermore, it is an instrument of the government made by the people, establishing the structure of a country, regulating the powers and functions of government, the rights and duties of the individual and providing remedies for unconstitutional acts.[94]

2.4.2 Nature of the Nigerian Constitution

The nature of a constitution may be determined by its contents and how it is classified. For the purpose of the discussion here, the nature of the Nigerian constitution will be considered in the light of its classification. Constitution may be classified on broadly two bases – the manner of its documentation and the procedure of its amendment/alteration. On this premise, therefore, constitution may be classified into written and unwritten or rigid and flexible. Written constitution is where the basic law

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[91] Per Uwaifo JSC in the case of *Attorney General of Ondo state vs. Attorney General of the Federation & Ors* (2002) 7 MJSC 18.
[92] Nwabueze, B. O., *Constitutional History of Nigeria*, (London: Christopher Hurst, 1982), 5.
[93] Ese, *The Nigerian Constitutional Law*, 53.
[94] *Ibid*, 2.

and principles in relation to organization of government, the distribution of power and the rights of the citizens are contained in one document or a series of documents. Other characteristics of written constitution are that it is simple to ascertain, easy to refer to and understood by the people because the functions and powers of the organs of government are clearly spelt out by the constitution.[95] Countries like Nigeria, the US, and the Republic of Germany are examples of countries whose constitutions are written.[96] Therefore, Nigerian constitution is written in nature. Unwritten constitution, on the other hand, is where the basic laws and principles guiding the state are not codified or expressly written as a document or series of documents. Example of this type of constitution is the British constitution.[97] Thus, Nigerian constitution is not unwritten as this type of constitution is not suitable for heterogeneous society like Nigeria.[98]

Another classification of constitution is from the perspective of its amendment procedure. Thus, it could be rigid or flexible in nature. Rigid constitution is a constitution that requires a long and difficult process beyond the ordinary lawmaking procedures for its amendment or alteration. A stringent procedure for its amendment or alteration is usually provided for.[99] In this light, the Nigerian constitution is rigid by nature. For instance, the provision on the creation of new state and boundary adjustment and Chapter Four (dealing with fundamental rights) can only be amended with the support of not less than four-fifth majority of the members of the National Assembly and

[95] Malemi Ese, *Administrative Law*, 3rd ed. (Princeton Publishing Co., 2008) 34.
[96] Emmanuel, *The legislator's Companion*, (Ibadan: Book Builders, 2010) 48-9.
[97] Ibid, 49.
[98] Ese, *Administrative Law*, 25.
[99] Emmanuel, *The legislator's Companion* 49.

the Houses of Assembly of not less than two-third of all states.[100] For other provisions, they could only be amended with the support of two-third majority of members of the National Assembly and not less than two-third of State Houses of Assembly.[101] To this extent, the Nigerian constitution is rigid in that the amendment of its provisions require more than the ordinary lawmaking process. However, a rigid constitution does not easily meet the dynamic, social, economic and political needs and development of the people.[102]

As for flexible constitution, it is one which can easily be amended or changed without a cumbersome procedure. This means that the method for amendment of the constitution is the same as the ordinary lawmaking process. It can be amended just like any other statute with a simple majority of votes of the members of the legislature. It is easily adaptable to meet the changing social, economic and political developments of the country. This type of constitution is good for a small and homogenous population. However, due to its ease of amendment, it may be amended hastily or unwisely for selfish or sectional purpose.[103] In this light, Nigerian constitution is not flexible in nature.

[100] See section 9 (3) of the Constitution of Nigeria.
[101] See section 9 (2), ibid.
[102] *Attorney General of Bendel State vs. The Attorney General of the Federation & 22 Ors* (1982) All NLR 85 SC
[103] Ese, *Administrative Law*, 28.

Another feature of the Nigerian constitution is that it is federal in nature because it enshrines the concept of federalism. Although federalism defies universal definition,[104] Nwabueze defines it to mean an arrangement whereby the powers of government within a nation or country are divided between a national government and a number of regionalized government in such a way that each exists as an entity separately and independently of the other, and operates directly on the persons and properties within its territorial area, possessing a will of its own and apparatus for conducting its affairs.[105] Therefore, it denotes a political principle as well as ideological position involving the constitutional diffusion of power between the central and constituent government,[106] or central and federating governments,[107] or central governing authority and constituent political units.[108] Nigeria, which practices federalism from 1954,[109] has the following as features of its federalism. They are: the division and sharing of governmental powers between the federal and the state governments; the derivation of the powers of the different levels of government from the constitution; adoption of a written and rigid constitution; the supremacy of the federal government; the existence of the Supreme

[104] Trabor Peter Odion, (2011) "A Critical Assessment on the Nigerian Federalism: Path to a True Federal State", a paper presented at the 4th National Conference of the Colleges of Education Academic Staff Union, held at the Federal College of Education, Potiskum, Yobe State, 10.
[104] Menge Legesse, (2010) "Federalism for Unity and Minorities' Protection: A Comparative Study on Constitutional Principles and their Implications in US, India and Ethiopia", (Unpublished) LLM Thesis, Department of Legal Studies, Central European University, Budapest, Hungary, 3-4.
[104] Birch A, (1966) "Approaches to the Study of Federalism", *Political Studies*, 14.
[104] Dele Babalola, (2015) "The Efficacy of Federalism in Multiethnic State: The Nigerian Experience", *The Journal of PanAfrican Studies*, 8 no. 2, 76.
[104] Duckachec I.D., *Comparative Federalism: The Territorial Dimension of Politics* (London: University Press of America, 1990).
[10] Nwabueze Ben, *Federalism in Nigeria under the Presidential Constitution of 1979* (London: Sweet & Maxwell, 1982) 1.
[106] King Preston, *Federalism and Federation* (Baltimore: John Hopkins University Press, 1982) 75.
[107] Babalola, "The Efficacy of Federalism in Multiethnic State: The Nigerian Experience" 77.
[108] Charles Madu Tella, et. Al., (2014) "The Evolution, Development and Practice of Federalism in Nigeria", *Public Policy and Administration Review*, 2 no. 4, (51-66)
[09] Alewo Musa Agbonika, (2012) "Nigerian Federalism: Problems and Prospects", *Kogi State University Biannual Journal of Public Law*, 4 no. 1. 14 14-18.

Court; decentralization of the public service and the judiciary; existence of bicameral legislature at the federal level; the principle of the federal character and the three-tier system of government.[110] Many factors are taken into consideration in the adoption of federalism as a system of government in Nigeria.[111] Prominent among the factors are heterogeneity/cultural differences; size and population; historical/economic considerations and the fear of domination.[112] Thus, the adoption of federalism by Nigeria has greatly helped its unity in diversity among the various ethnic groups that make up the federation.[113] However, one of its shortcomings is the centralization of political powers and economic resources on the federal government which gave rise to strong central but weak state governments.[114] In the light of the concept of federalism, impeachment provisions are made at both state and federal levels. Therefore, the federal legislature (National Assembly) exercises impeachment power over the President and Vice President. The state legislature (House of Assembly), on the other hand, is responsible for the impeachment of Governor and Deputy Governor of a state.

2.5 Conclusion

The constitution vests the powers of impeachment in the Nigerian legislature at both the federal and state levels. The power had been differently misunderstood by the

[110] Onyediran O. et. al., *New Approach to Government* (Ikeja: Longman Nigeria Plc., 2008) 45.
[111] Folabi Ayeni-Akeke, (1996) "Towards a Balanced Federal Political System in Nigeria", a paper presented at a seminar on Nigeria,s political future, held at the Nigerian Institute of International Affairs, Lagos, 1.
[112] Oyeneye L, et.al, *Government: A Complete Guide,* (Lagos: Longman Publishers, 2001) 23.
[113] Auwalu Musa & Ndaliman A. Hassan, (2014) "An Evaluation of the Origin, Structure and Features of the Nigerian Federalism", *Journal of the Social Sciences and Humanities Inventions,* 1 no. 5, 317. 314-325. However, a different view is held by scholars. See for instance, Adam A Anyebe, (2015) "Federalism as a Panacea for Cultural Diversity in Nigeria", *Global Journal of Human Social Sciences,* 15 no. 3, 7. 15-24.
[114] Dele Babalola, (2015) "The Efficacy of Federalism in Multi-ethnic State: The Nigerian Experience", *Journal of Pan African Studies,* 8 no. 2, 76, 74-79.

lawmakers, academics and the general public in Nigeria. Notwithstanding the misunderstandings, impeachment is a process through which the President, Vice President, Governor and Deputy Governor could be removed in Nigeria. The nature of the Nigerian legislature at the federal level is that it is bicameral in that it consists of two legislative houses- the Senate and the House of Representatives. At the state level, the legislature is unicameral because it consists of only one legislative house called the State House of Assembly. The Nigerian legislature is the arm of the government responsible for making laws and oversight of the executive arm of government. Hence, impeachment falls within the oversight powers of the legislature over the executive. Nigerian constitution is written and rigid in nature. It also provides for the principle of federalism hence it is federal constitution. This is reflected in impeachment as the constitution vests in the legislature at both the federal and state levels impeachment power.

CHAPTER THREE
AN ANALYSIS OF THE CONSTITUTIONAL PROVISIONS ON IMPEACHMENT

3.1 Introduction

Impeachment in Nigeria, like in other jurisdictions across the globe, is governed by the constitution. Therefore, the constitution makes provisions for the exercise of the power of impeachment such as its procedure and grounds. All these are requirement of the constitution which must be strictly observed for impeachment to be legal. Any infraction, breach or violation of these constitutional requirements is not only frowned at but also makes the entire exercise void. This is in line with the legal principle on the legal position that an act which is void will automatically collapse as enunciated by the legendary Lord Denning.[1] In the light of the foregoing, any impeachment built on illegality will surely collapse. Thus, to be analyzed in this chapter are the constitutional provisions on the scope, grounds, procedure and other related requirements for impeachment as provided by the Nigerian constitution.

3.2 Public Officers Subject to Impeachment under the Nigerian Constitution

The Nigerian constitution is very explicit about the public officers who are liable to impeachment. The officers, who are elected members of the executive arm of

[1] *Benjamin Leornard Macfoy vs. United Africa Company Ltd.* (1962) AC 150 at 160.

government, are the President; Vice President; Governor and Deputy Governor of a State.

3.2.1 President

The President is the Head of State and the chief executive of the Federation and Commander in-Chief of the Armed Forces of the Federation.[2] The constitution vests the executive power of the Federal Republic of Nigeria in the President.[3] He comes into power through direct election[4] and he is elected for a fixed tenure of four years and subsequent tenure of another four years only.[5] The tenure commences from the date when the person elected into the office took the oath of allegiance and the oath of office.[6] The four-year tenure could be cut short as a result of his death, resignation, incapacity or removal by impeachment.[7]

3.2.2 Vice President

The Vice President of the Federal Republic of Nigeria is the next in rank to the President. In fact, he assists the President in the running of the affairs of the government of the Federation. The Vice President is not elected alone but jointly with the President. The constitution provides that the President cannot be validly elected unless he nominates a candidate as his associate to occupy the office of Vice President who shall stand elected upon the election of the President.[8] This means the Vice President holds a joint ticket with the President who swims or sinks with the President at the time of the

[2] Section 130 of the constitution of Nigeria.
[3] Section 5 of the constitution of Nigeria.
[4] Section 132 of the constitution of Nigeria.
[5] Section 137 of the constitution of Nigeria.
[6] Section 135 of the constitution of Nigeria.
[7] Section 146 of the constitution of Nigeria.
[8] Section 142 of the constitution of Nigeria.

election. However, the ticket becomes somehow independent after the commencement of their tenure as the tenure of either of them may be cut short by death, resignation, permanent incapacity or removal via impeachment without affecting that of the other. Therefore, the Vice President also enjoys the same tenure as the President as if reference to the President is reference to Vice President. This does not, however, mean that the President could remove the Vice President at will or declare vacant his office. The Vice President comes to the office through the same way as the President and so leaves the same way as the President.[9]

3.2.3 Governor

There is established the office of the Governor for each of the 36 states of the Federation and he is considered as the chief executive of that state.[10] The constitution vests on the Governor the executive powers of the state which could be exercised by him either directly or indirectly through his Deputy, Commissioners or members of the public service of the state.[11] The Governor is elected through direct election by the electorates for tenure of four years commencing from the time he took the oath of office and that of allegiance.[12] The tenure could, however, be less than the four years if the Governor resigns, or becomes permanently incapacitated, or dies, or is removed from office through impeachment.[13]

[9] See the case of *Atiku Abubakar vs. Attorney General of the Federation* (2007) 6 NWLR (pt. 1031) 626.
[10] Section 176 of the constitution of Nigeria.
[11] Section 5 (2) of the constitution of Nigeria.
[12] Section 178 of the constitution of Nigeria.
[13] Section 191 (3) of the constitution of Nigeria.

3.2.4 Deputy Governor

The Deputy Governor is next to the Governor among members of executive arm of the state government. He is elected under a joint ticket with the state Governor. Although his tenure commences with that of the Governor, it is somehow independent in that he steps into the shoe of the Governor where the latter dies, resigns, becomes permanently incapacitated or is removed through impeachment.[14] Therefore, the tenure of the Deputy Governor is the same as that of the Governor as if reference to the Governor is reference to the Deputy Governor.

3.3 The Grounds for Impeachment

Impeachment of the elected public officers as provided under the Nigerian constitution is not to be conducted out of vacuum. There must be in existence the grounds upon which it will be based. Therefore, the constitution of Nigeria, and indeed every constitution which makes provision for impeachment, enshrines some grounds which should form the basis for impeachment. The existence of those grounds may trigger the commencement of impeachment proceedings. Furthermore, it is the proof of those grounds that gives rise to successful result of impeachment which culminates in the removal of the public officer involved. Thus, the ground for impeachment under the Nigerian constitution is gross misconduct.[15]

3.3.1 Gross Misconduct

The Nigerian constitution provides that the ground for impeachment of President, Vice President, Governor and Deputy Governor is gross misconduct. Thus, they could be

[14] See section 146 of the constitution of Nigeria.

[15] The President, Vice President, Governor or Deputy Governor may be removed from office on the ground that he was found guilty of gross misconduct. See section 143 (2) (b) and 188 (2) (b) of the constitution.

impeached and possibly removed when found guilty of gross misconduct. Gross misconduct as provided under the constitution means grave violation of the constitution or any misconduct considered by the legislature to be gross misconduct.[16] Thus, gross misconduct may come from any of the two categories; grave violation or breach of the constitution and whatever the legislature consider as gross misconduct. The Supreme Court provided an insight into what could mean gross misconduct. The court, per Niki Tobi JSC said:

> *The word "gross" in section 188(11) of the 1999 Constitution means generally in the context atrocious, colossal, deplorable, disgusting, dreadful, enormous, gigantic, grave, heinous, outrageous, odious and shocking.*[17]

Based on this, for a misconduct to be gross, it must carry any of the adjectives enumerated above by the learned justice of the Supreme Court. Below is further explanation on gross misconduct as a grave breach or violation of the constitution and any misconduct which the legislature considers as such.

3.4.1.1 Grave Breach or Violation of the Constitution

The grave breach or violation of the constitution as a gross misconduct is an all-embracing provision as a ground for impeachment. The question that poses some difficulty, and the constitution is silent, is what amounts to grave breach or violation of the constitution. According to the Black's Law Dictionary "breach" means a violation or infraction of a law or obligation.[18] Another synonym for the word "breach" is

[16] See sections 143 (10) and 188 (10) of the constitution of Nigeria.
[17] *Inakoju vs. Adeleke* (2007) LPELR 10354.
[18] Bryan A Garner, *Black's Law Dictionary*, (USA: Thomson Reuters, (1999) 213.

"contravention" which means an act of violating a legal condition or obligation.[19] In view of the above, breach or violation of the constitution is the failure to comply or abide by or obey or observe the provisions or requirements of the constitution.

The Nigerian constitution consists of 320 sections and many provisions contained in seven Schedules. Does the breach or violation of any of the provisions in the sections or in the Schedules give rise to misconduct upon which impeachment could be based? Or must there be constant and repeated breach or violation before it amounts to grave breach or violation? In other words, is it the frequency or nature of the violation that determines its gravity? Of the 320 sections of the constitution, there is a whole chapter consisting of 17 sections which is regarded as generally unenforceable.[20] Could a breach of any of its provisions constitute gross misconduct as to justify impeachment? Answers to these, and suchlike, posers that may be raised from this provision need to be determined. In an attempt to provide an insight into the nature of constitutional breach that could justify impeachment, the Supreme Court recognized the following violations. The court said:

> *The following, in my view, constitute grave violation or breach of the Constitution: (a) Interference with the constitutional functions of the Legislature and the judiciary by an exhibition of overt unconstitutional executive power, (b) Abuse of the fiscal provisions 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, (e) Interference with Local Government funds and stealing 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*

[19] *Ibid*, 377.
[20] Chapter Two on Fundamental Objectives and Directive Principles of State Policy.

inimical to the implementation of some other major sectors of the Constitution.[21]

These are some of the constitutional violations that could warrant impeachment under the Nigerian constitution according to Supreme Court of Nigeria. Although it is a judicial opinion, it could go a long way in guiding the lawmakers in the determination of what constitutes violation of the constitution as a ground for impeachment. A further explanation on them will be helpful for a better understanding in this regards. They are, thus, enumerated and explained as follows:

(1) Interference with the Constitutional Function of the Legislature and the Judiciary by the Executive.

Nigeria practices presidential system of government which recognizes separation of powers among the three arms of the government- the executive, legislature and the judiciary. The constitution clearly draws a line of demarcation in the functions of these three arms of government. The most notable functions of these arms are that the legislature makes the laws,[22] the judiciary interprets what the laws mean[23] and the

[21] *Inakoju vs Adeleke* (2007) LPELR 10354.

[22] The Nigerian legislature at the federal level is called National Assembly which comprises of the Senate and the House of Representatives. The function of the National Assembly is captured by the constitution in the following words: "The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution. Section 4(2) of the constitution ofthe Federal Republic ofNigeria, 1999.

[23] The judiciary consists of the courts recognized by the constitution which are the Supreme Court of Nigeria; the Court of Appeal; the Federal High Court; the High Court of the Federal Capital Territory, Abuja; a High Court of a State; the Sharia Court of Appeal of the Federal Capital Territory, Abuja; a Sharia Court of Appeal ofa State; the Customary Court of Appeal of the Federal Capital Territory, Abuja; a Customary Court of Appeal of a State; and any other court as may be established by a law of the National Assembly. (Such as the National Industrial Court). See section 6 (5) (a) of the constitution. The function of these courts, as the judicial arm of government at the federal level, is provide as follows: "The judicial powers vested in accordance with the foregoing provisions of this section... shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person". See Section 6 (6) (b) of the constitution.

executive is responsible for the execution of those laws and government policies.[24] These are their most important constitutional functions. A Governor or Deputy Governor who delves into the function of the judicial arm of government or interferes with the law making function of the legislature stands the risk of impeachment. This is so because it touches on the very rubrics of separation of powers upon which the presidential system of government is based.

(2) Abuse of the Fiscal Provision of the Constitution.

There are many fiscal provisions in the Nigerian constitution relating to public revenues and some other financial issues. These provisions are so important in that they are the fabrics or backbone of the government without which it could not exist or function properly. These fiscal provisions relate to how oil and other revenues[25] accruable to the government are shared and utilized for the benefit of the generality of the Nigerian masses. In view of this, provisions are made for the payment and allocation of funds to the states of the federation and the local government areas and the arms of government recognized by the constitution. The constitution says:

> *All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the*

[24] Section 5 (1) (b) of the constitution provides that: Subject to the provisions of this Constitution, the executive powers of the Federation... shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws".

[25] "Revenue" in this respect is defined to mean any income or return accruing to or derived by the Government of the Federation from any source and includes a. any receipt, however described, arising from the operation of any law; b. any return, however described, arising from or in respect of any property held by the Government of the Federation; c. any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body. See section 162 of the constitution.

Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.[26]

The constitution has gone further to prescribe the manner in which such revenues and moneys as paid into the federation account could be withdrawn. This should be in accordance with the provision of the constitution, an Act of the National Assembly or an Appropriation Act made accordingly.[27] Thus, the constitution prescribed that all the proposed estimates of the revenues and expenditures of the government of the federation,[28] government of the state[29] and local government are required to be prepared and presented to the legislative assembly for approval for the forthcoming financial year.[30] These financial estimates are to be prepared and presented in the form of appropriation bills to be passed by the legislative assembly concerned. It is only after the bill is passed into law that withdrawal could be legally made from the fund of the federation or states called the Consolidated Revenue Fund.[31] It follows from these fiscal provisions of the constitution that any payments and/or withdrawals made contrary to any of the provisions will amount to breach of the fiscal provisions. Consequently, such breaches may constitute ground for impeachment.

[26] Section 80 (1) of the constitution. See also section 120 (1) for a similar provision in respect of states.
[27] Section 80 of the constitution of Nigeria. See also section 122 for a similar provision in respect of states.
[28] Sections 81 and 82 of the constitution of Nigeria.
[29] Sections 121 and 122 of the constitution of Nigeria.
[30] Financial year means any period of twelve months beginning on the first day of January in any year or such other date as the National Assembly may prescribe. See section 318 of the constitution of the Federal Republic of Nigeria, 1999.
[31] Sections 80 and 120 of the constitution of Nigeria.

(3) Abuse of the Code of Conduct for Public Officers

Under the constitution, there is Code of Conduct for Public Officers[32] with which the conducts of all public officers must comply.[33] A public officer is a person who is in the service of a State or Federation in any capacity in respect of the government of the State or Federation.[34] Also public officers for the purpose of the Code of Conduct include President, Vice President, Governor and Deputy Governor.[35] Thus, it is provided that: "A person in the public service of the Federation shall observe and conform to the Code of Conduct".[36] Failure to observe and comply is a criminal offence and a ground for disqualification for any elective position under the constitution. Thus, a person who has been found guilty of contravention of the code of conduct is disqualified from contesting the post of member of a State House of Assembly,[37] member of the Senate or House of Representative,[38] President or Vice President[39] and Governor or Deputy Governor.[40] Some of the codes of conduct that affect the President, Vice President, Governor and Deputy Governor are that they should not operate any foreign account; they should not receive any loan, except from government or its agencies, a bank, building society, mortgage institution or other financial institution recognized by law; they should not also accept any benefit of whatever nature from any company, contractor, or businessman, or the nominee or agent of such person; they should submit to the Code of

[32] See Part I of the 5th Schedule to the constitution.
[33] A Code of Conduct Bureau and Code of Conduct Tribunal were established to enforce the provisions of the Code of Conduct. See the Code of Conduct Bureau and Tribunal Act, cap.15 Laws of the Federation of Nigeria, 2004.
[34] Section 318 of the constitution of Nigeria.
[35] See the Second Schedule to the Code of Conduct Bureau and Tribunal Act; cap c15, Laws of the Federation of Nigeria, 2004.
[36] Section 172 of the constitution. See also section 209 of the constitution for a similar provision in respect of states.
[37] Section 107 (d) of the constitution of Nigeria.
[38] Section 66 of the constitution of Nigeria.
[39] Section 137 of the constitution of Nigeria.
[40] Section 182 of the constitution of Nigeria.

Conduct Bureau a declaration in writing of all their properties, assets and liabilities and that of their children who are below the age of eighteen years and not yet married.[41] This is required to be done before and after taking office.[42] Failure to submit declaration of assets and liabilities is the most rampant. This is because any declaration of the assets and/or liabilities found to be false is considered as breach of the code.[43] In the same token, any property or assets acquired after the declaration which is not fairly attributable to the income, gift or loan as approved by the Code is regarded as breach of the Code. Such breach if alleged against a serving President, Vice President, Governor or Deputy Governor could constitute a ground for impeachment.

(4) Disregard and Breach of Chapter Four of the Constitution

Chapter four of the constitution contains what is called fundamental rights. Fundamental rights are those rights guaranteed to the Nigerian citizens and non-citizens living in Nigeria. The constitution confers on them the status of being more important than other human rights because they are enshrined in Chapter Four of the constitution.[44] These rights include the right to life[45]; right to dignity of human person;[46] right to personal liberty;[47] right to fair hearing;[48] right to private and family life;[49] right to freedom of

[41] Dankofa Yusuf, (2013) "Work Attitude and Organizational Efficiency: The Need to Enforce the Code of Conduct in the Nigerian Civil Service", *Journal of Public and International Law*, Ahmadu Bello University, Zaria, 6, 1-10.
[42] Section 185(1) of the constitution of Nigeria.
[43] See *Saraki vs. Federal Republic of Nigeria* (2016) LPELR-40013 (SC).
[44] [5] *Okafor vs. Lagos State Government* (2017) 4 NWLR (t. 1556) 413.
[45] Section 33 of the constitution of Nigeria.
[46] Section 34 of the constitution of Nigeria.
[47] Section 35 of the constitution of Nigeria. See the cases of *Eze vs. Inspector General of Police* (2017) 4 NWLR (t. 1554) 44 C.A.; *Ajudua vs. Federal Republic of Nigeria* (2017) 2 NWLR (pt. 1548) 1C.A.
[48] Section 36 of the constitution of Nigeria.
[49] Section 37 of the constitution of Nigeria.

thought, conscience and religion;[50] right to freedom of expression;[51] right to peaceful assembly and the press;[52] right to freedom of movement;[53] right to freedom from discrimination;[54] right to acquire and own immovable property[55] and compulsory acquisition of property.[56] All these rights are considered as fundamental and sacrosanct for human comfortable existence and are guaranteed for all Nigerians while some are for all persons residing in Nigeria. However, these rights could be denied through a legislation made by the National Assembly in the interest of defence, public morality, public health, public order, public safety; the defence of the rights of others; in period of emergency;[57] and for the purpose of protecting the rights and freedoms of other persons. In cases other than these, the constitution provides an avenue through which a person whose rights and/or freedom are under threat of violation should seek for remedy.[58]

In view of the above, where the President, Vice President, Governor or Deputy Governor is found in breach of any of the rights and freedoms enumerated, he/she could be impeached. This could arise, for instance, if the public officer kills or prevents a citizen from enjoying any of these rights or freedoms. In other words, the only liability

[50] Section 38 of the constitution of Nigeria.
[51] Section 39 of the constitution of Nigeria.
[52] Section 40 of the constitution of Nigeria. See *Governing Board RUGIOLY, Ondo State vs. Ola* (2016) 16NWLR(t.1537) 1 CA.
[53] Section 41 of the constitution of Nigeria. *Okafor vs. Lagos State Government* (2017) 4 NWLR (t. 1556) 413.
[54] Section 42 of the constitution of Nigeria.
[55] Section 43 of the constitution of Nigeria.
[56] Section 44 of the constitution of Nigeria. See the case of *Adesanya vs President of the Federal Republic of Nigeria* (1981) All NLR 1.
[57] "Period of emergency" has been defined to mean any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution". See section 145 of the constitution of Nigeria.
[58] "Any person who alleges that any of the provisions of this Chapter has been is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress..." See Section 146 (1-2) of the constitution of Nigeria.

the breach of these rights and freedoms will attract is impeachment while the public officer still occupies the office. Other remedies and liabilities may only arise after he/she leaves office at the end of his/her tenure.

(5) Interference with Local Government Funds

The interference contemplated here includes stealing from the funds or pilfering of the funds including monthly subventions for personal gains or for the comfort and advantage of the State Government. Under the Nigerian constitution, local governments, although not strictly recognized as a tier of government like states and the federal government; have some level of independence. The local governments, like state and federal governments, receive monthly allocations of funds from the Federation Account.[59] However, they do not receive the funds allocated to them directly but indirectly. The funds are paid into the State Local Government Joint Account over which the state government has control.[60] As a result, it is a common practice for some state governments to take advantage of this constitutional arrangement to divert the local government funds for their personal gains or other purposes glaringly contrary to this

[59] See section 162 of the constitution of the Federal Republic of Nigeria, 1999, which provides: "The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja".

[60] In this respect the constitution says: "The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the State for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly. Each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State. Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly. The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State". Section 162 of the constitution of the Federal Republic of Nigeria, 1999.

constitutional provision.[61] This practice is what the Supreme Court felt should be constitutional breach cogent enough to warrant impeachment.[62]

(6) Instigation of Military Rule and Military Government

Nigeria has had a long history of military rule since its independence in 1960 before it returned to democratic rule in 1999. Since then, the only form of government recognized by the constitution is democratic governance. Thus, the constitution says: "The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice".[63] And that "The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution".[64] Besides, the Nigerian Criminal Code and the Penal Code make it an offence to try to overthrow the government by the use of force.[65] Thus, where a public officer is found to have instigated a military takeover/rule in any part of the country, his act will be enough ground for impeachment.

(7) Subversive Conduct Inimical to the Constitution

This is referred to as any subversive conduct which is directly or indirectly inimical to the implementation of some other major sectors of the Constitution. What is "subversive conduct" cannot be determined objectively. In addition, what amounts to major sector of

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[61] Fajonyonu O, "Good governance and Local Government Administration for Development", *Journal of Capital Development in Behavioural Sciences*, 1 (2013) 6.
[62] See *Inakoju vs Adeleke* (2007) LPELR 10354.
[63] Section 14 of the constitution of the Federal Republic of Nigeria, 1999.
[64] Section 1(2) of the constitution of the Federal Republic of Nigeria, 1999.
[65] The offence is called treason or treasonable felony which, on conviction, carries the sentence of life imprisonment or even death. See sections 37 and 38 of the Criminal Code which applies in the southern part of Nigeria and sections 410-415 of the Penal Code, 1963 which is applicable in the Northern part of Nigeria. See *Enahoro vs. Queen* (1965) All NLR 1.

the Nigerian constitution cannot easily be determined because every sector is equally important. Besides, the constitution does not identify which sector is major and which one is not. What is only clear is that there is a part or chapter, which is Chapter II titled "Fundamental Objectives and Directive Principles of State Policy", in the Nigerian constitution which is unenforceable.[66] And since it is so, its implementation may not be considered important as to frown at any act inimical to it. It, therefore, follows that no one could be held liable for any conduct which is directly or indirectly inimical to its implementation. In view of the above, this part of the constitution which is not enforceable may be considered as "minor" sector while all the other parts may be regarded as "major" sectors because they are enforceable. Thus, any such conduct which may be termed as subversive and which is capable of threatening the implementation of these enforceable parts of the constitution may be ground for impeachment.

3.4.1.2 Whatever the Legislature Considers as Gross Misconduct

The other aspect of gross misconduct under the constitution as a ground of impeachment is whatever the legislature considers as gross misconduct. This is very nebulous provision in that the legislature has the discretion to term whatever conduct as gross. However, the learned justice of the Supreme Court in *Inakoju vs Adeleke*[67] expressed an opinion as to guide the legislature on what may be regarded as gross misconduct for the purpose of impeachment. These conducts include:

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[66] Section 6(6) (c) of the constitution of the Federal Republic of Nigeria, 1999 provides that the judicial powers of the Nigerian courts "shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution". See also the case of *Archbishop Anthony Olubunmi Okojie vs. Attorney General of Lagos State* (1981) 1 NCLR 218.

[67] (2007) LPELR 10354.

(I) **Refusal to Perform Constitutional Function**

The constitution vests in the President and Governor some constitutional functions in the running of the affairs of the federation and state respectively. This is pursuant to the executive powers of the federation and state vested in the President and Governor respectively. Thus, the constitution enacts:

> *Subject to the provisions of this Constitution, the executive powers of the Federation-*
> *a. shall be vested in the President and may subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation; and*
> *b. shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.*
> *Subject to the provisions of this Constitution, the executive powers of a State-*
> *a. shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any Law made by a House of Assembly, be exercised by him either direcly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and*
> *b. shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws.*[68]

According to the aforesaid provisions, the executive functions should be performed directly by the President or indirectly through the Vice President; Ministers or members of the Public Service of the Federation. The Governor should equally perform the function directly or indirectly through his Deputy, Commissioners or any member of the

[68] Section 5 of the constitution of Nigeria. A similar provision is also made in respect of President and Vice President in the same section.

Public Service of the State.[69] According to the above provisions, the functions are: execution of the constitution, execution of the laws made by the legislative assembly, and execution of the matters over which the legislative assembly has power to make laws. So, the refusal of the President, Vice President, Governor or Deputy Governor to perform the functions as vested by the constitution could provide a fertile ground for his/her impeachment.

(2) Corruption

A public officer may be liable to impeachment where he is found to have been involved in corruption and other corrupt practices in the discharge of his official responsibilities. Corruption has been defined as the act of doing something with intent to give some advantage inconsistent with official duty and the rights of others; use of status or office to procure some benefit either personally or for someone else, contrary to the rights of others.[70] Corruption, which includes bribery, fraud and other related offences, is a criminal offence under Nigerian laws such as Corrupt Practices and other Related Offences Act.[71] Corrupt practices include corruptly asking for, or receiving, or obtaining or giving any property or benefit of any kind for anything done or omitted to be done by a public officer[72] in the discharge of his official duties or in respect of any matter related

[69] The constitution says: "The Governor of a State may, in his discretion, assign to the Deputy Governor or any Commissioner of the Government of the State responsibility for any business of the Government of that State, including the administration of any department of Government". Section 193 (1) of the constitution of Nigeria. A similar provision is also made in respect of the President which says: "The President may, in his discretion, assign to the Vice-President or any Minister of the Government of the Federation responsibility for any business of the Government of the Federation, including the administration of any Department of government. See section 148 (1) of the constitution of Nigeria.

[70] Bryan A Garner, *Black's Law Dictionary*, (USA: Thomson Reuters, (1999) 397.

[71] Section 2 of the Corrupt Practices and other Related Offences Act, cap. C32 Laws of the Federation of Nigeria, 2004.

[72] Public officer under the Corrupt Practices and other Related Offences Act means a person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public

to the functions of any government department or institution or organization. This is called official corruption which, on conviction, carries the punishment of imprisonment for seven years.[73] It is also an offence for a public officer to inflate the price of any goods or services above the prevailing market price, to award or sign any contract without budgetary provisions and approval; transfer or send any sum of money allocated and meant for a specified project or service on a different project or service not so specified.[74] These are some acts on the part of the President, Vice President, Governor or Deputy Governor which constitute corruption as grounds of impeachment.

(3) Sexual Harassment

Sexual harassment is a type of employment discrimination consisting of verbal or physical abuse of a sexual nature.[75] In Nigeria, sexual harassment prohibition laws exist in some states[76] and tertiary institutions.[77] For instance, under the Sexual Harrassment in Tertiary Educational Institutions Prohibition Act, 2016, sexual harassment includes demand of sexual intercourse from a student for a grade; grabbing, hugging, pinching or stroking any body part of a student; and whistling or winking at a student or making sexually complimentary or uncomplimentary remarks about a student's physique.[78] The

corporations or private company wholly or jointly floated by any government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes judicial officers serving in magistrates, area or customary courts or tribunals. See section 2 of the Corrupt Practices and other Related Offences Act, cap. C32 Laws of the Federation of Nigeria, 2004.

[73] Section 8 of the Corrupt Practices and other Related Offences Act, cap. C32 Laws of the Federation of Nigeria, 2004.

[74] Section 22 of the Corrupt Practices and other Related Offences Act, cap. C32 Laws of the Federation of Nigeria, 2004. For instance, see the case *of Ibori vs. Federal Republic of Nigeria* (2009) 3 NWLR (Pt. 1127) 96.

[75] Bryan A Garner, *Black's Law Dictionary*, (USA: Thomson Reuters, (1999) 1499.

[76] For instance, section 262 of the Criminal Law of Lagos State, 2011 prohibits sexual harassment and makes it a crime liable to imprisonment for three years.

[77] Sexual Harassment in Tertiary Educational Institutions Prohibition Act, 2016.

[78] Section 4, ibid.

Act prohibits sexual intercourse; any unwelcome sexual attention; messages or remarks of sexual nature; between an educator and students.[79] However, generally, Nigerian laws frown at any verbal or physical sexual abuse. This is because the laws do not only prohibit unlawful sexual acts[80] but also unlawful sexual assaults such as indecent assault.[81] Thus, the Nigerian Supreme Court[82] recognized harassment of the opposite sex in relation to sex by the President, Vice President, Governor or Deputy Governor as a good ground for impeachment. This is equally a ground for impeachment in other jurisdictions like the United States of America. In fact, President Bill Clinton was impeached, but not removed, for sexual related harassment against his staff, Monica Lewinsky in 1998.[83]

(4) Certificate Forgery

Forgery is a crime under the Nigerian criminal laws. It is the act of fraudulently making a false document or altering a real one to be used as if genuine.[84] The offence is said to be committed when:

> *... a person makes a false document or writing knowing it to be false, and with intent that it may in any way be used or acted upon as*

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[79] See section 7, ibid.

[80] Under the Nigerian criminal laws, sex with the opposite sex may or may not be an offence. It is an offence to have sex with married or unmarried woman without her consent where it amounts to rape. See sections 282 and 357 of the Penal Code, cap. P43 Laws of the Federation of Nigeria, 2004 and Criminal Code Act, cap. C38 Laws of the Federation of Nigeria, 2004, applicable to the Northern and Southern part of the country respectively. It's also an offence to have sex with a married or unmarried woman even with her consent in northern Nigeria. This is not so in the southern part of Nigeria as it could only amount to ground for divorce. See section 15 of the Matrimonial Causes Act, cap. M20, Laws of the Federation of Nigeria, 2004; *Lt. Col. Shehu Ibrahim (rtd) vs. Mercy Ibrahim (2006)* LPERR 7670 (CA); *Mohammed Damulak vs. Lesley Partricia Damulak* (2004) 8 NWLR (pt. 874) 151.

[81] Indecent assault is prohibited under sections 217 and 222 of the Criminal Code Act, cap C38 Laws of the Federation of Nigeria, 2004.

[82] *Inakoju vs. Adeleke* (2007) LPELR 10354.

[83] Richard A. Posner, *An Affair of State: The Investigation, Impeachment and Trial of President Clinton*, (Cambridge: Harvard University Press, 2009) 23.

[84] Bryan A Garner, *Black's Law Dictionary*, (USA: Thomson Reuters, 1999) 722.

genuine, whether in the state or otherwise, to the prejudice of any person, or with intent that any person may, in the belief that it is genuine, be induced to do refrain from doing any act, whether in the state or elsewhere, is said to forge the document or writing.[85]

In this case, a person is said to make false document under this section if he alters a genuine document or writing through removal, obliteration, erasure or addition to the said document or writing.[86] So, where a President, Vice President, Governor or Deputy Governor is found to have presented a forged certificate to the Independent National Electoral Commission for the purpose of contesting election on the basis of which he was elected, he is deemed to have committed certificate forgery for which he could be impeached. This could be committed by presenting a false academic certificate from a school he has never attended or a grade different from what he actually obtained[87] or false declaration of age certificate.[88]

(5) Drunkenness

This is otherwise known as alcoholism or alcohol-taking. Although this conduct may not amount to an offence in Nigeria, except under the sharia legal system which operates in some states, it is generally frowned at in many communities on moral ground. It is more so when the alcoholism involves a public figure like the President, Vice President, Governor or Deputy Governor and affects or it is likely to affect the discharge of his official responsibilities. Thus, a public officer who comes to the office or discharges his official duties under the influence of alcohol maybe subjected to impeachment on this

[85] Sections 463 of the Criminal Code Act and 362-364 of the Penal Code respectively.
[86] See the case of *Mark Onochie Oduah vs. Federal Republic of Nigeria* (2012) iLAW/CA/L/163/2002.
[87] See the case of *All Progressive Congress vs. Peoples Democratic Party* (20150
[88] See for instance, *Leonard Duru vs. Federal Republic of Nigeria* (2016) LELR 40088; *Awotubu vs. The state* (1976) NSCC 211.

ground. This is a conduct unbecoming of a public office holder which may not be tolerated in civilized society. In the United States of America, a district judge of New Hampshire, John Pickering, was impeached in 1803 for, among other reasons, being drunk while on the bench as a result of which he gave an unlawful and wrong judgment.[89]

In the light of the above discussions, what constitutes gross misconduct as a ground for impeachment has not been enumerated under the Nigerian constitution but left for the legislature to determine. This is unlike what obtains in other jurisdictions where the grounds are categorically provided for. Thus, Nigeria could learn a lot from these jurisdictions. For instance, under the Ugandan constitution, grounds for impeachment are explicit. They are:

> *(a) abuse of office or deliberate violation of the oath of allegiance and the presidential oath or any provision of this Constitution;*
> *(b) misconduct or misbehavior that he or she has conducted himself or herself in a manner which brings or is likely to bring the office of President into hatred, ridicule, contempt or disrepute; or*
> *(c) that he or she has dishonestly done any act or omission which is prejudicial or inimical to the economy or security of Uganda; or*
> (d) *physical or mental incapacity, namely that he or she is incapable of performing the functions of his or her office by reason of physical or mental incapacity.*[90]

Another elaborate provision on the ground for impeachment could be found in the constitution of the Philippines. It provides that impeachment should be based on "culpable violation of the Constitution, treason, bribery, graft and corruption, other high

[89] Lynn W., Turner. "The Impeachment of John Pickerings" *The American Historical Review*, 3, (1949): 487.
[90] Article 107 of the constitution of Uganda, 1995.

crimes, or betrayal of public trust".[91] In Singapore, impeachment could be conducted when the President is:

> *...permanently incapable of discharging the functions of his office by reason of mental or physical infirmity; or that the President has been guilty of intentional violation of the constitution, treason, misconduct or corruption involving the abuse of the powers of his office, or any offence involving fraud, dishonesty or moral turpitude...*[92]

Under the constitution of Czech Republic, in recognizing treason as a ground for impeachment, the constitution further explained what act could amount to treason for the purpose of impeachment. It provides in part "... by treason it is meant any conduct of the President of the Republic directed against the sovereignty and integrity of the Republic as well as against the democratic order..."[93]

3.5 The Procedure for Impeachment under the Nigerian Constitution

The procedure to be followed by the lawmakers in the impeachment of all public officers has been provided for under the constitution which is substantially the same. The only difference is the personalities and the nature of the legislative houses involved. The procedure for the impeachment of President and Vice President involves the National Assembly which is bicameral in nature comprising of two legislative houses- the Senate and the House of Representatives while the procedure for the Governor or Deputy Governor involves only one Assembly because unicameral legislature operates at the state level. Another difference is that the procedure for the impeachment of the

[91] Section 2 of the constitution of the Philippines, 1987. See also Article 117 of the constitution of Peru, 1993; Article 191 of the constitution of Panama, 1972.
[92] Article 22, constitution of Singapore. Sri Lankan constitution is almost similar to this provision in wordings and contents. See Article 38 of the constitution of Sri Lanka, 1995.
[93] Article 62 (20) of the constitution of Czech Republic, 1993.

President or Vice President involves the Senate President who is the head of the Nigerian Senate and the Chief Justice of Nigeria who heads the Nigerian judiciary. The impeachment at the state level, on the other hand, requires the input of the Speaker who heads the State House of Assembly and the Chief Judge of the State who heads the state judiciary. This procedure will be discussed and analysed in stages as follows:

3.5.1 The Notice of Allegation of Gross Misconduct

3.5.1.1 Preparation and Presentation of Notice

The very first step in impeachment proceeding is the presentation of the notice of allegation of gross misconduct which is the ground for impeachment. The constitution requires that a notice of allegation in writing signed by not less than one-third of the members of the National Assembly should be presented to the President of the Senate, in case of impeachment of the President or Vice President of Nigeria.[94] The President of the Senate shall, within a period of seven days of the receipt of the notice, cause it to be served on the office holder and on each member of the National Assembly. Within fourteen days, the National Assembly shall pass a motion, supported by two-third of members, to investigate the allegations.[95] The letter containing a notice served on a Deputy Governor could be seen below.

[94] The same notice should be prepared, signed by not less than one-third of the members of the State House of Assembly and presented to the Speaker of the House of Assembly, in case of impeachment of Governor or Deputy Governor of a State. See section 188 of the constitution.

[95] Section 143 of the constitution of Nigeria. See also section 188 for a similar provision relating to the impeachment of Governor and Deputy Governor of a state.

GOVERNMENT OF IMO STATE OF NIGERIA

OFFICE OF THE CLERK
IMO HOUSE OF ASSEMBLY
PRIVATE MAIL BAG 1599
OWERRI

Telegrams: IMO STATE
Your Ref:

Our Ref: IHA/CL/S.14/IV/577. Date: 8th March, 2013.

His Excellency
The Deputy Governor of Imo State
Government House
Owerri

Your Excellency,

NOTICE OF COMMENCEMENT OF IMPEACHMENT PROCESSES

I am directed by the Rt. Hon. Speaker of Imo State House of Assembly to serve Your Excellency, Sir Jude Agbaso, the Deputy Governor of Imo State, notice of commencement of impeachment processes and forward herewith, the attached petition captioned, "PETITION PURSUANT TO S.188 (1) 1999 CONSTITUTION (AS AMENDED) RE GROSS MISCONDUCT BY THE PERSON OF SIR JUDE AGBASO, DEPUTY GOVERNOR OF IMO STATE", signed by ten (10) Hon. Members of the House and a copy of particulars of misconduct pursuant to section 188 (1) of 1999 constitution of the Federal Republic of Nigeria as amended for Your Excellency's response

2 Please accept, Your Excellency, the assurances of our highest regards

Yours respectfully,

Barr. Chri Dùrụ KSM
PERMANENT SECRETARY / CLERK OF THE HOUSE
For: THE R HON. SPEAKER

Figure 3:1 Notice of Commencement of Impeachment Proceedings

Source: The Author got a copy from a staff of the Imo State House of Assembly.

It should be noted that the constitution is not very clear as to who should prepare the notice. It only specifies that the lawmakers are expected to sign such notice. It could, therefore, be concluded that the lawmakers and any other person or body interested and having the capacity and the proofs could do so. In some other constitutions, the persons capable of bringing the notice of allegation or charges or impeachable offences are specified. For instance, the Attorney General is responsible for such notice under the constitution of Cyprus[96] while any member of the Assembly or any member of the

[96] Section 3 of the constitution of Cyprus, 1960.

public upon the endorsement of a member of the Assembly could initiate and prepare such notice in Armenia.[97]

In the light of the above provisions, the notice so prepared must contain the detailed particulars of all the allegations against the public officer. It must also be signed by at least one-third of the total number of members of the legislative House. Thus, there is no compliance with this requirement where the notice was not signed at all or was signed by less than one-third of the members.[98] In other countries, from where Nigeria could derive a lesson, more members than one-third are required to sign the notice. For instance, two-third is required under the constitution of Sri Lanka. It provides "...such notice of resolution is signed by not less than two-thirds of the whole number of Members of Parliament..."[99] Simple majority or at least half of the members of the Assembly is required under the constitutions of Seychelles. It provides categorically "Where notice in writing signed by not less than half the number of the members of the National Assembly of a motion alleging that the President has committed a violation of this Constitution or a gross misconduct..."[100]

3.5.1.2 Service of Notice

The notice is then expected to be submitted to the substantive or acting Speaker of the House of Assembly who shall serve it, within seven days of its receipt, on all members

[97] Article 57 of the constitution of Armenia, 1995.
[98] *Alhaji Balarabe Musa vs. Auta Hamza* (1982) 3 NCLR 439-471.
[99] Article 38 of the constitution of Sri Lanka, 1978. Similar provisions could be found in the constitutions of several countries. For instance, Article 105 of the constitution of Rwanda, 2003; Article 105 of the constitution of Croatia, 1992 and Article 86 of the constitution of Malawi, 1994.
[100] Article 54 of the constitution of Seychelles, 1993. A similar provisions are made in many constitutions such as Article 52 of the constitution of Bangladesh, 1972; Article 57 of the constitution of Armenia, 1995 and Article 159 of the constitution of Egypt, 2014.

of the House of Assembly and the Governor or Deputy Governor to be subjected to the impeachment.[101] This affords an opportunity to members of the Assembly, especially those who were not part of the preparation of the allegations, to get prepared for deliberations. The Governor or Deputy Governor, as the case may be, is required to be served the notice personally.[102] The object of this personal service of the notice is to give information on the case and enable the Governor or Deputy Governor prepare for his/her defense.[103] The service of process in any proceeding affecting the rights of parties is very fundamental as it is part of fair hearing.[104] Recently, the Nigerian Supreme Court held that "...litigant must personally be served with the process in question before a decision is taken against him, failing which would amount to a breach of the legal right of fair hearing..."[105] Therefore, failure to effect personal service will constitute a ground for quashing the impeachment proceedings. This is the position taken by the courts in the cases discussed below.

In *Balonwu vs. Obi,*[106] the Anambra State House of Assembly initiated the process of impeachment against the state Governor, Mr Peter Obi, by preparing and signing the notice of allegations of misconduct leveled against him. Instead of personal service as required by the constitutional provision, the Speaker sent the notice to the office of the Secretary to the State Government. The notice was also published in two national

[101] Same applies where the President or Vice President is the subject of the impeachment.
[102] See the cases of *Nyako vs. Adamawa State House of Assembly* (2017) 6 NWLR (pt. 1560) 347-424.
[103] *Mbenwulu vs. Olumba* (2017) 5 NWLR (t. 1558) 169 SC.
[104] *Balonwu vs Obi* (2007) LPELR-CA/E/3/2007.
[105] *Darlington Eze vs. Federal Republic of Nigeria* (2017) 15 NWLR (pt. 1589) 433 at 477.
[106] (2007) LPELR-CA/E/3/2007.

newspapers. Rejecting the service of the notice in this manner for being unconstitutional, the court held that:

> *In the circumstance, it is my view that the purported notice of gross misconduct published in the Daily Sun Newspaper of 20/10/06 fell short of what is required under Section 188(2) of the 1999 Constitution of the Federal Republic of Nigeria and this is enough to set aside the entire process taken by the appellants.*[107]

In *Nyako vs. Adamawa State House of Assembly,*[108] the House could not allegedly serve the notice to the Governor personally after several attempts. Therefore, they passed a resolution to publish the notice in two national dailies- Daily Trust and Leadership. This was not only against the constitutional provisions but also contrary to order of court mandating them to serve the Governor personally. Aggrieved by the action of the House, the Governor sought a declaration that the failure of the House to effect personal service of the notice becomes unconstitutional and constitutes a violation of his rights to fair hearing. The Court of Appeal held:

> *There was clearly an infraction of the right to fair hearing of the appellant (Governor) in the impeachment proceedings when, contrary to the powers of the House of Assembly and in defiance of the court order of Hon. Justice A.D. Mammadi issued on 26/06/2014 to the effect that the appellant (Governor) must be served personally, opted to serve by substituted means. This is an infringement of the right to fair hearing of the appellant (Governor) which has vitiated the entire impeachment proceedings. I hold that the impeachment proceedings which led to the removal of the appellant (Governor) a nullity...*[109]

The case of *Inakoju vs. Adeleke*[110] is not in any way dissimilar in this respect. In this case, the notice of allegation of gross misconduct was not personally served on the

[107] Ibid,
[108] (2017) 6 NWLR (pt. 1562) 347at 375.
[109] Ibid, 375.
[110] (2007) LPELR 10354.

Governor but published on the pages of Nigerian Tribune newspaper and not addressed to the Governor. The Governor sought for a declaration that the act of publishing the notice of allegations against him in the two newspapers was not service in law as it was contrary to the provisions of the constitution. The court held that:

> *... The purported service of the notice of allegation of misconduct on His Excellency, Senator Adewolu Ladoja, the Governor of Oyo State through piece meal publication on the pages of the Nigerian Tribune Newspaper which was not addressed to Senator Rasheed Adewolu Ladoja is no service on His Excellency, it is of no effect and it is a breach of his Constitutional right to fair hearing as contained in S. 36 1999 Constitution of the Federal Republic of Nigeria.*[111]

After the service, the members of the Assembly are required to pass a resolution, by the two-third majority votes of the total number of the members of the House on whether to investigate the allegations. When the resolution is so passed, the next step is the appointment of the investigation panel.

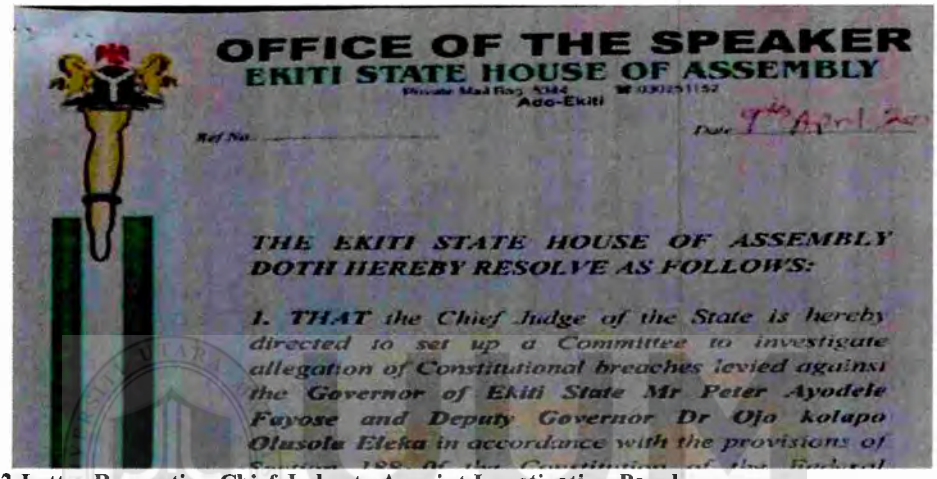
3.5.2 Appointment/Establishment of Investigation Panel

3.5.2.1 Request for Appointment of the Panel

In case of the impeachment of President or Vice President, the constitution requires that the Senate President should request the Chief Justice of the Federation to appoint the impeachment panel. For impeachment of the Governor or Deputy Governor of a state, the Speaker of the House of Assembly concerned, on the other hand, is required to request the Chief Judge of the State to set up such panel.[112] See below for a copy of the

[111] Ibid.
[112] See section 188 (5) of the constitution of Nigeria

letter requesting the Chief Judge of Ekiti State to constitute investigation panel against the State Governor.



OFFICE OF THE SPEAKER
EKITI STATE HOUSE OF ASSEMBLY
Ado-Ekiti

Ref No. _____ Date 1st April 20

THE EKITI STATE HOUSE OF ASSEMBLY DOTH HEREBY RESOLVE AS FOLLOWS:

1. THAT the Chief Judge of the State is hereby directed to set up a Committee to investigate allegation of Constitutional breaches levied against the Governor of Ekiti State Mr Peter Ayodele Fayose and Deputy Governor Dr Ojo kolapo Olusola Eleka in accordance with the provisions of

Figure 3:2 Letter Requesting Chief Judge to Appoint Investigation Panel

Source: The Author got a copy from a staff of Ekiti State House of Assembly.

The Speaker, like the Senate President, is the highest principal officer of the House of Assembly and he is so elected by the members of the House of Assembly.[113] It follows therefrom that no any member of the House of Assembly other than the Speaker, or the Senate President, could perform the function of requesting the Chief Judge or Chief Justice of the Federation to appoint the impeachment panel. In the case of *Hon. Micheal Dapialong & Ors vs. Chief Joshua Dariye & Ors*[114] the Supreme Court held that the member of the House of Assembly who was elected Speaker *pro tempore* and who requested the state Chief Judge to set up the impeachment panel was not recognized by

[113] The constitution provides "There shall be a Speaker and a Deputy Speaker of a House of Assembly who shall be elected by the members of the House from among themselves".See section 92 of the constitution of the Federal Republic of Nigeria, 1999.
[114] (2007) NWLR

the constitution. Therefore, in the absence of the Speaker, no member elected as Speaker *pro tempore* or whatever name he is called, can request the Chief Judge for the appointment of the impeachment panel. It is argumentative whether the Deputy Speaker could perform this responsibility in the absence of the Speaker. It is also not clear what happens where the Speaker, for no any just cause, refuses to request the Chief Judge to appoint the impeachment panel thereby frustrates the entire impeachment proceedings. Although the situation has never arisen in Nigeria, there may be judicial remedy when it so arises. The members of the House of Assembly aggrieved by the refusal of the Speaker may make recourse to a court of law seeking for an order of mandamus to compel the Speaker to discharge his responsibility in this regards. But where none of the members of the House of Assembly approaches the court for this judicial remedy, no member of the public could go to court because he may not have the *locus standi* (capacity to sue). In this situation, the lawmakers may be considered as having no more interest in exercising their impeachment powers.

3.5.2.2 Power of Appointment of the Panel

The power to appoint the panel is vested in the Chief Justice of Nigeria in impeachment of President or Vice President and the Chief Judge in impeachment of Governor or Deputy Governor. For them to perform this job, they should be lawfully appointed either in a substantive or acting capacity. However, a substantive or acting Chief Judge who has been illegally appointed in that capacity cannot so act. Thus, the impeachment of former Governor of Ekiti State, Ayodele Fayose, was voided by the Supreme Court[115] on the grounds, among others, that the acting Chief Judge was illegally appointed by the

[115] See the case of *All Progressive Congress vs. Peoples Democratic Party* (2015) 15 NWLR 4

State House of Assembly to act in that capacity.[116] The Ekiti State House of Assembly which appointed the acting Chief Judge of the State and who set up the impeachment panel acted *ultra vires* its powers. Therefore, the act of the acting Chief Judge in the appointment of the impeachment panel was declared invalid.[117] The duly appointed substantive or Acting Chief Judge should ensure that the request emanates from the Assembly before he obliges to set up the panel.[118]

The Chief Judge must also comply with the time frame within which to appoint the panel. A time frame of seven days is provided within which the investigation panel should be appointed by the Chief Justice or Chief Judge as the case may be.[119] Time is of essence in impeachment proceedings as the public officers are elected by the electorates for a fixed term of office. This will affect the service that they have to render to the society. Another rationale for limiting the time for the constitution of the investigation panel was explained by the Supreme Court in the following words:

> *... He should not give the slightest room for lobbying and one way of doing that is to set up the Panel with utmost speed and alacrity. Of course, 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 a period of 7 days.*[120]

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[116] This is because under the Nigerian constitution, the House of Assembly has no power to appoint the state Chief Judge or any other judge. The constitution provides in this regards: "The appointment of a person to the office of Chief Judge of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State". See Section 271 of the constitution of the Federal Republic of Nigeria, 1999.

[117] See the case of *All Progressive Congress vs. Peoples Democratic Party* (2015) 15 NWLR (pt. 1581) 1-204.

[118] *Inakoju vs Adeleke* (2007) LPELR 10354.

[119] Ibid, sections 143(5) and 188(5).

[120] *Inakoju vs. Adeleke* (2007) LPELR 10354.

In *Abiodun vs. Chief Judge, Kwara State,*[121] a plaintiff being impeached approached a court for an order restraining the Chief Judge of the state from constituting the investigation panel against him. The ground for seeking for the order was that the Chief Judge constituted the panel about 68 days after the resolution of the legislative council. This was contrary to the provisions of section 28 of the Local Government Administration Law, Kwara State which required him to constitute the panel within seven days of passing the resolution. The contention of the Chief Judge, which was upheld in the judgment of the trial High Court, was that the Chief Judge was not mandatorily required to constitute the panel within the seven days stipulated in the law. The Court of appeal, in a considered judgment, held that the Chief Judge is under a mandatory duty to constitute the panel within seven days of the resolution of the legislative council. Therefore, he had acted *ultra vires* his powers for the failure to appoint the panel within seven days but after 68 days. The panel was unconstitutional for contravention of the provision of this law. Consequently, "...whatever findings may have arisen from such a panel constituted out of the time stipulated by the statute from which the Chief Judge derives his powers, were null and void and of no effect whatsoever".[122]

Another related issue worthy of consideration on the power of appointment of the panel is whether the Chief Judge or Chief Justice could refuse to appoint the panel especially if in his opinion the legislative house concerned did not follow the constitutional requirements before requesting for appointment of the panel. Apparently, it will be *ultra*

[121] (2007) 18 NWLR (pt. 1065) 1.
[122] Ibid, 123.

vires the powers of the Chief Judge to insist that the lawmakers should comply with constitutional requirements before he appoints the panel. This is because the constitution does not expressly confer such powers on him. However, he may be encouraging impunity where he constitutes the panel on the request of the legislative house when he is fully aware that the constitutional provisions have not been complied with. The view of the Supreme Court was that the power to appoint the panel could only be invoked after compliance with the constitutional provisions by the legislature.[123] In fact, the Supreme Court suggested that "It will not be out of place for the Chief Judge to ask from the Speaker a certificate of compliance under the signature of the Speaker. I am not insisting on this because the Constitution does not so provide".[124] Even though this is not expressly provided under the constitution or any other law, as the Supreme Court rightly acknowledged, it is indirectly insisted on by the courts. The insistance may be seen in two circumstances in which Chief Judges of Ekiti, Anambra and Plateau States were suspended by the Nigerian Judicial Council[125] for their roles in the impeachment that took place in their states. In both cases, the Houses of Assembly in the states breached the constitutional provisions relating to the resolution for the appointment of the panel. Yet, the Chief Judges appointed the investigation panels.[126]

[123] *Inakoju vs. Adeleke* (2007) LPELR.
[124] Ibid.
[125] This is the body responsible for the discipline of erring judges of the superior courts of records in Nigeria. See section 153 of the Constitution; *NJC vs. Agumagu* (2015) LPELR 24503.
[126] Justice Okoli, the Chief Judge of Anambra State was suspended following his role in the impeachment of the state Governor; Yau Dangkwan of Plateau State got his suspension due to his handling of the impeachment of Governor Joshua Dariye of the state and Justice Bamishele of Ekiti State for his official conduct during the impeachment of the state Governor, Ayodele Fayose. See Victor Egojiego Okafor, *Nigeria's Tumbling Democracy and its Implications for Africa's democratic Movement* (CLIO-ABC, 2008) 93; Adeoye Akinsanya, *Introduction to political Science in Nigeria* (Rowman & Littlefield, 2013) 133.

3.5.2.3 Composition of the Panel

The third important issue on the appointment of the investigation panel is the composition of the panel. In other words, who are supposed to be members of the panel? Is the Chief Judge guided as to whom to appoint or does he have discretion and what is the level of the discretion, if any? The constitution specifies who the members of the panel should be. They should be persons of unquestionable integrity and not members of any civil service, political party or legislative house.[127] This constitutional guidance has left much discretion to the Chief Judge to determine persons with this requisite quality although it can be successfully challenged.[128] It may be easy to identify the career of the candidate to the panel. But it is problematic to identify persons of unquestionable integrity as "unquestionable integrity" is subjective. What one may consider as integrity may not be so by another. However, there is a judicial pronouncement that provides guidance in identifying such integrity. The Supreme Court stated:

> *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 correct things and not doing wrong or bad things. The character must be transparent, honest and trustworthy. He must be a person of great strength and strong principle and conviction. He must be clean, in and out, like the white ostrich. The Constitution provides for the epithet "unquestionable". This means that the person must not be one of questionable integrity. 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 egotist flare. The Chief Judge should avoid them in his*

[127] See sections 143(6) and 188(6) of the constitution.
[128] See the case of *Alamieyeseigha vs. Igoniwari* (2007) 7NWLR (pt. 1034) 524.

Panel as if they are plagues. Pompous and arrogant people are not the best Judges.[12]

From the elaboration above, the criteria of who a person of "unquestionable integrity" fit to be member of the investigation panel appear difficult to come by. The Supreme Court had gone too far in the effort to outline the criteria. The danger is that the appointment of a panel with members without these qualities as enunciated by the court may be successfully challenged by aggrieved parties and may be a ground to quash the entire proceedings of the panel.

The rationale behind the criteria which members of the panel must possess is to ensure that there is a fair investigation devoid of sentiments, emotions and other partisan considerations for or against the parties involved. Thus, the fact that a member of civil service may fear for his job; a member of political party may be sympathetic if member of his party is involved or hostile against a member of the opposing party and member of legislative house may have a sufficient interest to protect supports this assertion. However, besides this consideration, other factors which could impede a fair judgment of the panel, like blood lineage, are not taken into account. And most importantly, no reference is made to professionalism which is a fundamental oversight. This has the effect of inhibiting the panel in the discharge of its duties. Some of the Respondents interviewed like Respondents 2, 10, 15, 11, 3, 1, 14, 8, 4, 7, have expressed the need for the constitution to recognize in the panel persons with legal training. For instance, Respondent 2 categorically stated that:

[12] *Inakoju vs. Adeleke* (2007) LPELR 10354.

> *Persons trained in the legal profession like lawyers and judges will know better about the breach of the constitution by virtue of their professional calling. This is because they study the constitution in the course of their legal training and have witnessed cases of its breach. So they have better expertise to determine whether there is breach of the constitution... But having persons trained in the legal profession in the composition of the panel will be better.*[130]

To Respondent 1, the rationale behind the requirement of persons trained in law is because they are experts in the art of the breach of the constitution than none lawyers. In fact, he added that "... you have to know the intricacies of constitutional interpretation before you will be able to know whether one is in breach of the constitution or not".[131]

In the light of the above, a public officer who is subjected to impeachment could challenge the composition of the impeachment panel where the Chief Judge fails to be properly guided by this constitutional requirement. Thus, in the case of *Alamieyeiseigha vs. Igoniwari (no.2)*,[132] the appellant who was impeached and removed as Governor of Bayelsa State sought for an order of the court to declare that his impeachment and removal were void on the ground, among others, that the Chief Judge did not comply with the composition of the panel as such it was incompetent. The Chief Judge responded that his action in this respect could not be questioned in that he enjoyed judicial immunity. The court rejected this submission and held as follows:

> *The Chief Judge of a State does not carry out a strictly judicial function in exercising the powers vested in him under section 188(5) of the 1999 Constitution. Thus, his action can be challenged by a law suit if the persons appointed by him ought not to have been appointed.*[133]

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[130] Interview with Respondent 2 at his office on 9th August, 2017, at about 1450hrs.
[131] Interview with Respondent 1 at his house on 2nd October, 2017 at 1630hrs.
[132] (2007) 7 NWLR (pt. 1034) 524.
[133] In the instant case, it was held that the trial court erred when it held that the Chief Judge had constitutional immunity from suits relating to his exercise of the powers vested in him under section 188(5) of the 1999 Constitution. Ibid, 547. See also the case of *Danladi vs. Dangiri* where the issue was

In quite some instances, the noncompliance by Chief Judges had not been challenged in court, hence the absence of judicial pronouncements on them. However, the erring Chief Judges had been subjected to disciplinary measures by the National Judicial Council which is the body vested with supervisory and disciplinary powers over judges in Nigeria. For, instance, the Chief Judges of Anambra, Plateau and Ekiti States had been suspended and dismissed respectively for various acts of breach of their powers in relation to appointment of impeachment panels in their states. Prior to the dismissal of the acting Chief Judge of Ekiti State, a warning letter was sent to him from the Chief Justice of Nigeria and Chairman of the National Judicial Council. Notwithstanding the warning, the Acting Chief Judge went ahead to constitute the panel on which report the House of Assembly removed the Governor. Consequently, the National Judicial Council dismissed him from service for accepting the position of the Acting Chief Judge and constituting the investigation panel.[134] This also applied to the Acting Chief Judge of Plateau State, Hon. Justice Yau Dakwang, who had been initially suspended and later compulsorily retired for accepting his appointment as the Acting Chief Judge of the state and constituting the investigation panel for the impeachment of the state Governor.[135] The above scenarios brought out clearly the constitutional requirements for the appointment of investigation panel. The next stage in the procedure is the report of the panel.

raised before the investigation panel in the form of objection which was rejected and the Governor did not raise it again before the trial and the appellate courts, hence it was considered abandoned.

[134] See the cases of *National Judicial Council vs. Aladejana* (2011) LPELR-CA/A/50/M/2010; *PDP vs APC* (2015) 15NWLR (pt.1481) 1 at 12-13.

[135] *Hon. Justice Yau Dakwang vs. National Judicial Council* (2011) LPELR-CA/J/224/2008.

3.5.3 Report of the Investigation Panel

The investigation panel is required to prepare and submit to the Speaker of the House of Assembly or the Senate President the report of its findings within three months after its appointment. Although there is no particular format prescribed for the report, the constitution says that it should state whether the allegations of the gross misconduct as the grounds of impeachment labeled against the Governor or Deputy Governor have been proved or not. The report should not be interim but final on the findings of the impeachment panel. This means it should be prepared after the final proceedings of the impeachment panel. Where the allegations have not been proved, that ends the procedure and the matter at all. This means that no any impeachment proceedings could be instituted against the same President or Vice President and Governor or Deputy Governor in respect of the same allegations of gross misconduct again. Thus, the constitution says that where the Panel reports to the legislative assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.[136] However, he/she could still be subjected to impeachment when there are fresh allegations of gross misconduct against him/her. The next stage is adoption of the report.

3.5.3.1 Adoption of Report

Where the report of the panel is that the allegations of gross misconduct against the President or Vice President and the Governor or Deputy Governor have been proved, then such report is subject to the discretion of the members of the National Assembly or House of Assembly to adopt or refuse to adopt. The constitution makes provision for

[136] Section 143 (8) of the constitution of Nigeria. A similar provision could also be found in section188 (8) of the constitution. See also the case of *All Progressive Congress vs. Peoples Democratic Party* (2015) 15 NWLR (pt. 1581) 1-204.

numerical strength of the members eligible to adopt or approve the report of the impeachment panel. The requirement is that two-third of the total number of the members of the House of Assembly is to adopt the report which shows that the allegations of gross misconduct against the President or Vice President and Governor or Deputy Governor have been proved. The question here is does the two-third include members who are suspended or who are unavoidably absent at the House of Assembly session for the purpose of the impeachment? The judicial interpretation given to this requirement is that two-third of all members of the House of Assembly include those who are absent during the plenary session and those suspended or no longer eligible to participate in the activities of the House of Assembly for some justifiable reasons.[137] It follows that no any advantage could be derived from the manipulation of the required number of the members through unlawful suspension of members who are opposed to the impeachment. Where the report of the impeachment panel is adopted by the required two-third of the total number of the members of the House of Assembly, the Governor or Deputy Governor is removed from office starting from the date of its adoption.

The rationale behind the constitutional requirement of two-third majority of members of the Assembly to finally remove a public officer, which is higher than the one-third required for the approval of the notice of allegation of gross misconduct, is that he is elected by almost two-third of the total number of the votes cast in the state.[138] And

[137] See *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007 and *Adeleke vs Oyo state House of Assembly* (2006) 16 NWLR (pt.1006) 608 C.A.

[138] The Governor of a state is deemed duly elected if he has majority of the lawful votes cast at the election and has not less than one-quarter of all the votes cast in at least two-third of the local government areas that make up the state. See section 179 of the constitution of the Federal Republic of Nigeria, 1999. The President, on the other hand, is elected if he scored the majority or the highest number of the total and lawful votes cast at the election and has not less than 25% of the total number of the votes cast in at least

since the number of the lawmakers represents the total number of the population, then two-third of the members represents two-third of the population in the country or the state, as the case may be. This indicates that the number of the population that elected the public officer directly is the same number to remove him in the legislative house. In support of this, a learned justice of the Nigerian Supreme Court, Pius Olayiwola Aderemi JSC had this to say:

> *... The office of the Governor or of the Deputy Governor is an all important one. Any of them is in the office by the grace of the majority votes of the totality of that state. In getting him out of the office for one reason or the other, the voice of the majority of the totality of the populace of the state must be reflected on the decision even if it is now impossible to physically vote on that issue, their voices must be reflected through the majority of the total members they voted into the House....*[139]

The foregoing discussions pointed out the procedure involved in impeachment proceedings from the beginning to the end. However, there are some requirements relating to the procedure which are worth consideration for a better umderstanding. They are fair hearing before the investigation panel and venue of impeachment proceedings.

3.6 Fair Hearing before the Investigation Panel

The panel may be considered as a "court" where the office holder is "prosecuted" and 'convicted" or "acquitted".[140] It is the proceedings of the panel which determine whether the impeachment should continue or end because the House only acts on what the panel recommends in its report. In the light of this important function of the panel, the

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two-third of the states of the federation and the Federal Capital Territory, Abuja. See section 134 of the constitution of Nigeria.

[139] Per Pius Olayiwola Aderemi JSC in *Hon. Micheal Dapialong & Ors vs. Chief Joshua Dariye & Ors at*

[140] Murphy, *The Impeachment Process, &*

constitution provides: "The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the Panel by legal practitioners of his own choice."[141] In fact, this had been judicially interpreted to mean that the panel is under a duty to observe the principles of fair hearing as provided under the constitution. The Supreme Court said that a person who is facing investigation for gross misconduct has the right to fair hearing which is implicit in section 188(6) of the constitution.[142] This is the provision which deals with the right to counsel in the investigation for impeachment.[143]

Fair hearing is a fundamental component and a twin pillar of the rules of natural justice. It is expressed in the maxim *audi alteram partem* and *nemo judex in causa sua* which simply means that both parties must be heard and one cannot be a judge in one's own case respectively. The constitution recognizes fair hearing as a fundamental right of all persons whose civil rights and obligations are due to be determined. It provides that:

> *In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.*[144]

The other constituents of fair hearing under the section include trial in public, except on some recognized grounds; trial within a reasonable time; presumption of innocence;

[141] Sections 188 (6) and 143 (6) of the constitution. Right to counsel is also recognized as fundamental to an accused person in criminal trials as provided under section 36(6) of the constitution. Although specific reference is made to an accused in a criminal trial, it has also been interpreted to include a party in civil trials. See the case of *Shugaba vs. Minister of Internal Affairs* (1981) 2 NCLR 459.
[142] *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007.
[143] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 185.
[144] Section 36(1) of the constitution.

right to defense.[145] Fair hearing in Nigeria is both a common law and constitutional concept.[146] The concept of fair hearing as required under the constitution had been judicially explained in the following words:

> *This constitutional provision mainly stems from two common law principles of natural justice. These are audi alteram partem and nemo judex in causa sua. The first ... means "hear the other side; hear both sides. No man should be condemned unheard." What the doctrine postulates are that the parties must be given an equal opportunity to present their cases to the court and that no party should be given more opportunity or advantage in the presentation of his case.*[147]

Thus, the two principles of fair hearing- *nemo judex in causa sua* and *audi alteram partem* must be strictly complied with for the proceedings of the panel to stand any legal test. And of the two principles, the more relevant in impeachment is the latter which is judicially interpreted to mean that the "parties must be given equal opportunity to present their cases to the court and that no party should be given more opportunity or advantage in the presentation of his case".[148] Thus, in the context of investigation proceedings, fair hearing simply entails that the House of Assembly should be given ample opportunity to present and prove its allegations of gross misconduct against the Governor or Deputy Governor before the panel. In the like manner, the Governor or

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[145] Section 36 (6) provides Every person who is charged with a criminal offence shall be entitled to-
(a) Be informed promptly in the language that he understands the details of the nature of the offence;
(b) Be given adequate time and facility for the reparation of his defence;
(c) Defend himself in person or by a legal practitioner of his own choice;
(d) Examine in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalfbefore the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution.

[146] *Garba vs. The University of Maiduguri* (1986) 1 NWLR (Pt.18) 550 *618*

[147] *LPDC vs. Fawehinmi (1985) 2* NWLR (Pt. 7) 300; *Onwumechili vs. Akintemi* (1985) 3 NWLR (Pt. 13) 504; *Garba vs. The University of Maiduguri* (1986) 1 NWLR (Pt.18) 550 *618.* See also the case of *Senate President vs. Nzeribe* (2004) 9 NWLR (Pt. 878) 251.

[148] See generally *LPDC vs. Fawehinmi* (1985) 2 NWLR (pt. 7) 300; *Onmunmechili vs. Akinyemi* 1985) 3 NWLR (Pt. 13) 504; *Garba vs. The University of Maiduguri* (1986) 1 NWLR (pt. 18) 550.

Deputy Governor should also be given the opportunity to present his own defense. This includes the right to present evidence, call and examine all witness (es) involved.

In *Baba vs NCTC*,[149] the Supreme Court outlined the rights to be accorded the public officer under investigation for the panel to be fair in its hearing as follows:

> *(a) Be present all through the proceedings and hear all the evidence against him;*
> *(b) Cross-examine or otherwise confront or contradict all the witnesses against him;*
> *(c) Have read before him all the documents tendered in evidence at the hearing;*
> *(d) Have disclosed to him the nature of all relevant material evidence, including documentary and real evidence, prejudicial to him, save in recognized circumstances;*
> *(e) Know the case he has to meet at the hearing and have adequate opportunity to prepare for his defense;*
> (f) *Give evidence himself, call witnesses if he likes, and make oral submission either personally or through a counsel of his choice.*[150]

The position of the law has been adequately and rightly outlined by the Supreme Court in the case above. The office holder before the investigation panel must be notified of the details of the allegations against him to enable the preparation of his defence. Consequently, the panel must inform him of the date, time and place where the investigation is to be held. This is to enable him to appear personally or through a legal representative to answer the allegations, tender evidence and call his witnesses. He must also be given the opportunity to hear and challenge the witnesses and evidence against him. From these requirements, hearing notice is the first step towards achieving fair hearing. Thus, it is not acceptable to deliver the verdict of the panel without serving a

[149] (1991) 5 NWLR (Pt. 192) 388.
[150] See also *Kotoye vs. CBN*(1989) 1 NWLR (198) 419; *Mohammed vs. Kano N.A.* (19680 1 NLR 424.

hearing notice on the office holder.[151] This is similar to the service of court process in relation to which the court held:

> *Service of court processes on all the parties in a matter are (sic) really fundamental. No court should consider a matter and decide on it in the absence of any of the parties. The court is duty bound to make sure that parties are aware of pending proceedings. This accords with the principle of audi alteram partem.*[152]

Once this is done, fair hearing is observed and the parties cannot be allowed to complain about it.[153] What is most required is that the parties be given the opportunity to present their cases but they will not be allowed to hold the proceedings of the panel to ransom.[154] This had been reiterated judicially in a plethora of cases in the following words:

> *Where the issue of denial of fair hearing is raised, the relevant question is always whether a party entitled to be heard has been given the opportunity of being heard. Thus, a party who has or had every opportunity to present his case before the court and who fails to do so cannot be heard to complain of breach of his right to fair hearing. It is said that fair hearing is like a sacred cow, but it cannot be invoked where a litigant is just crying wolf where in fact, there is none...*[155]

The requirement of fair hearing before the panel also entails that its determination shall be made within a reasonable time which is in accordance with the constitutional provision which provides that "In the determination of his civil rights and obligations, a

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[151] See for instance *Mankanu vs. Salman* (2005) 4 NWLR (915) 275.
[152] *I. F. A. International Ltd. vs. Liberty Merchant Bank* (2005) 9 (pt. 878) 278.
[153] *Oyeyipo v. Oyinloye* (1987) 1 NWLR (Pt. 50) 356; (1987) 2 SCNJ 53 per Karibi- Whyte; *Alhaji Darma* vs. *Oceanic Bank International (Nig.) Ltd.* (2005) 4 NWLR (Pt. 915) 391 at 409; *Magna Maritime Services Ltd. & Anor. v. Oteju & Anor.* (2005) 5 SCNJ 100 at 117, (2005) 14 NWLR (Pt. 945) 517 - per Tobi, JSC, and 118 - 119 -per Edozie, JSC.
[154] *Kaduna Textiles Ltd vs. Umar (1994)* NWLR (Pt. 319) 143, 159 C.A.
[155] *Kotoye* vs. *Central Bank of Nigeria* (1989) 1 NWLR (Pt. 98) 419; *Oru vs. Udonwa* (2000) 13 NWLR (Pt. 683) 157; *Ekivor vs. Bomor* (1997) 9 NWLR (Pt. 519) 1.

person shall be entitled to a fair hearing within a reasonable time by a court or tribunal..."[156] And for the purpose of this provision, "within a reasonable time" means that the time within which the matter should be determined should not, depending on the nature of the facts involved, be too short nor too long. However, where it had been hastily determined, the proceedings of the panel of investigation shall be nullified. Thus, the Supreme Court summed up the effect of the hasty determination of an impeachment investigation panel in the following lengthy judgment:

> *Justice delayed is justice denied. The reverse is equally disturbing. Justice rushed is a travesty of justice and a threat to the fabric that bind a civilized society together... Here is a case where the panel has three months within which to conduct and conclude its investigation... in all, the proceedings lasted a period of about six days... The rush in this case has obviously resulted in in a breach of the right to fair hearing of the appellant which in turn nullifies the proceedings of the panel.*[157]

Fair fearing as foundation of adjudication requires that any judicial or quasi-judicial proceedings conducted without due observance of the principle will be void irrespective of the good manner in which it was conducted.[158] Thus, it was held in *Nicholas Chukwujekwu Ukachukwu vs. Peoples Democratic Party & Ors*[159] that "it is also well settled that any proceedings conducted in breach of a party's right to fair hearing, no matter how well conducted would be rendered a nullity".[160] In this light, the refusal or failure of the panel of investigation to allow the office holder to ventilate his grievance in the course of his defense vitiates the whole proceedings in that it is fundamental to the

[156] Section 36(1) of the constitution.
[157] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135-136.
[158] *Tukur vs. Government of Gongola State* (1989) 4 NWLR (pt. 117) 517; *Adigun vs. Attorney General of Oyo State* (1987) 2 NWLR (pt. 56) 197.
[159] LPER (2014) SC 589/2013.
[160] Per Kekere-ekun JSC.

entire investigation.[161] In fact, the Supreme Court held that "where a party before an investigating panel is denied fair hearing, the proceedings of the investigating panel is null and void".[162]

3.7 Venue for Impeachment Proceedings

Venue for impeachment proceedings refers to the place where the lawmakers conduct the proceedings for impeachment. The constitutional provisions on impeachment and indeed the entire sections that make provision for the legislature do not categorically prescribe the place where impeachment proceedings should be held. However, it allows the legislative assembly to regulate its own procedure[163] and some other issues which include the venue where its proceedings shall be held. The position of the law as to the place where legislative business including impeachment proceedings are supposed to be held is the legislative chamber which is within the precinct or premises of the legislative house for the public to be able to watch.[164] In *Inajoku vs Adeleke*[165] the Oyo State House of Assembly conducted impeachment proceedings at D' Rovan Hotels, Ibadan. This was based on the contention that the House of Assembly does not mean the building but the members who make up the House of Assembly. Thus, they can sit anywhere they so like to conduct legislative business of the House. This submission was rejected by the Nigerian Supreme Court and it restated the position of the law as enunciated in *Akintola*

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[161] See *Atano vs. Attorney General of Bendel State* 2 NWLR (75) 132; *Salu vs. Egheibon* (1994) 6 (348) 23

[162] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135.

[163] See section 101 of the constitution which provides that: "Subject to the provisions of this Constitution, a House of Assembly shall have power to regulate its own procedure, including the procedure for summoning and recess of the House".

[164] See *Akintola vs. Aderemi* (1962) 2 SCNLR 139.

[165] (2007) NWLR

vs. Aderemi[166] where it was held that anything done outside the House of Assembly to remove the Governor of the old Western Region was a nullity. The court went further to state the rationale behind this in the following words:

> *The Governor is elected by the people - the electorate. The procedure and the proceedings leading to his removal should be available to any willing eyes. And this, the public will see watching from the gallery. It should not be a hidden affair in a hotel room. A Legislature is not a secret organization 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 (he Legislature is emphasized by the gallery where members of the public sit to watch the proceedings. Although I concede the point that a Legislature has the right to clear the gallery in certain deliberations for security reasons. I do not think proceedings for the removal of a Governor should be hidden from the public.*[167]

In fact, the submission that the House of Assembly needs not sit at the chambers to conduct impeachment proceedings was not only rejected but utterly condemned by the Supreme Court. Justice Ogbuagu did not hide his shock and dismay with the submission as such he elaborately ventilated his grouse in the following words:

> *... It is submitted that having regard to the provisions of the Constitution, in particular, sections 90 - 96, a House of Assembly does not mean a building but the members constituting the House. Thus, we submit a House of Assembly can sit anywhere to perform its legislative duties, for otherwise, we submit respectfully can only lead lo absurdity. If anything leads to a ridiculous absurdity, it is the above submission. So, if the members of the House of Assembly sit in the learned lead counsel's house to perform its legislative duties, his house*

[166] (1962) 2 SCNLR 139.
[167] (1962) All NLR 442 a 443.

> *will be the House of Assembly of the State! That cannot be so by any stretch of imagination. Were it to be so, then a Governor, who by section 108(1) of the 1999 Constitution, can attend the meeting of the House of Assembly either to deliver an address to the members on State affairs or to make such Statement on the policy of government as he may consider to be of importance to the State, in the sitting room of the House of any of the members or in a hotel.*[168]

Similarly, in the case of *Danladi vs. Taraba State House of Assembly*[169] the lawmakers met at a private guest house and in the night during which they prepared the notice of impeachment and 19 of the lawmakers present at the meeting signed it. This was challenged by the Deputy Governor facing the impeachment. In determining the constitutionality of this act, the Supreme Court held that the signing of the impeachment notice was a legislative and constitutional act as such conducting it in a guest house was unconstitutional. The court added:

> *...conducting legislative act in a guest house becomes laughable in the eye of the public. I must say that the commencement of impeachment proceedings in a guest house is a clear move by the legislature to achieve set goals by subterranean procedure. It is wrong. The whole world saw on television the impeachment proceedings of one time U.S.A. President, 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 members of the Taraba State House of Assembly to deliberate and then prepare a notice alleging misconduct against the appellant in a guest house. The notice of allegation of gross misconduct must be prepared, signed in the House of Assembly within congressional hours and not outside the House of Assembly or in a guest house ...*[170]

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[168] Per Ogbuagu JSC in *Inakoju vs. Adeleke* (2007) LPELR 10354,
[169] (2015) 2 NWLR (pt. 1442) 103
[170] Ibid, 110.

While the above submission of the learned counsel for the appellant that the house means members constituting it and not the building is really ridiculous and embarrassing in this context, the courts in the cases pointed out above have taken the interpretation too far. Granted that the preparation and signing of the notice of impeachment is a legislative act, but to require that it must be done on the floor of the legislative house and during the legislative hours is a strict interpretation and erroneous. This is because impeachment proceedings do not commence properly at this stage. It could be understood that the proceedings commence from the presentation of the notice of impeachment to the President of the Senate or the Speaker of the House of Assembly. This is the starting point for impeachment proceedings as recognized by the constitutiona. A careful reading of the relevant constitutional provision reveals that the act of preparation and signing of the notice of impeachment is not categorically required to be performed within the precinct or at the floor of the legislative house. In fact, it is not even mentioned. The decisions of the High Court and the Court of Appeal which were rejected by the Supreme Court in the case of *Danladi vs. Taraba State House of Assembly*[171] were correct. The High Court stand was that the action of the members aggrieved by the conduct of the office holder and the House of Assembly became official only on the presentation of the notice at the floor of the House. The Court of Appeal, on its part, held as follows:

> *On this issue, therefore, it is my view that, while the act of signing of the notice of allegation is a definitive part of the legislative act of the members of the House of Assembly, it is not intended by section 188(2) of the constitution that the signature to the notice of allegations must be generated from the floor of the House. It is my view that once the*

[171] (2015) 2 NWLR (pt. 1442) 103.

> *notice of allegations is presented to the Speaker of the House, signed by one-third of the house, that aspect of section 188(2) has been satisfied, and it will not matter that the signature had been generated from outside the House of Assembly or that it was done outside parliamentary hours. The issue raised by the appellant, therefore, has no substance and it is accordingly resolved against him.*[172]

Another related requirement here is that the proceedings must be held during the official time for the conduct of legislative business. Although the constitution does not make provision for the time for conduct of legislative business, the House Rules meant to guide all its proceedings which are made pursuant to the provisions of the constitution usually make such provisions. Thus, the Supreme Court clearly explained the provisions of the law in the following words:

> *But I should say here that proceedings of a House of Assembly should be held in parliamentary hours. This is the period the Rules have provided that the House should sit. On no account should proceedings of a House be held in unparliamentarily hours, that is, during the period not provided for in the Rules. For instance, a House of Assembly has no business to perform in the odd hours of mid-night or in the early hours of the morning before the parliamentary hours prescribed by the Rules.*[173]

Many impeachment proceedings were said to have been partly conducted in the wee hours as early as 6:00am which is quite outside parliamentary hours.[174]

[172] Ibid, 120-21.
[173] *Inakoju vs. Adeleke* (2007) LPELR 10354.
[174] See for instance, *Balonwu vs Obi* (2007) LPELR-CA/E/3/2007.

3.8 The Legal Effects of Impeachment

Impeachment is a process which may or may not give rise to removal of a public office. If the impeachment succeeds, the office holder stands removed. If it does not succeed, the office holder stays put. Where it results in the removal of the office holder concerned, he leaves office for which he is found unworthy of occupying. The remaining period of his tenure is to be completed by the person recognised under the constitution. Thus, under the Nigerian constitution, where the President is removed through impeachment, the Vice President takes over to complete the unexpired tenure of the President.[175] And where the President and Vice President are removed, President of the Senate takes over pending the conduct of election within three months.[176] In case of Governor of a state, the Deputy Governor succeeds him. And where the Governor and Deputy Governor are removed, the Speaker of the House of Assembly of the State becomes the Governor pending elections within three months.[177]

Under the Nigerian constitution, the legal effect of successful impeachment is removal from office from the date of the adoption of the report of the impeachment panel.[178] Once removed, the office holder loses all the rights and privileges attached to the office. Therefore, the immunity which President, Vice President, Governor and Deputy Governor enjoy[179] while in office lapses or ceases. Thus, he/she could be arrested,

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[175] See section 146 (1) of the constitution of Nigeria.
[176] Ibid, section 146 (2).
[177] See section 191 of the constitution of Nigeria.
[178] See sections 143 (9) and 188 (9) of the constitution of Nigeria.
[179] Section 308 of the constitution provides that "notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section-
a no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;

detained, summoned, prosecuted and subjected to all legal processes like ordinary citizens.

It may be argued that where a public office holder has been removed for a misconduct which amounts to a criminal offence, as is the case with most of the impeachments in Nigeria, it will amount to double jeopardy to prosecute him which is prohibited by the constitution.[180] However, the argument may be countered in that the provision will not strictly apply in the case of impeachment. It says:

> *No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.*[181]

From the above provision, it is discernible that trial[182] for the offence must be conducted by a competent court or tribunal. In Nigeria, the trial involves arraignment, presentation of evidence, evaluation of evidence, conviction or acquittal and sentence. Not all of these are obtainable in impeachment proceedings before the Nigerian National or State

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b. a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and
c. no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:
Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office".

[180] Double jeopardy is a situation where a person who is found guilty of committing an offence is subjected to double punishment. The constitutional prohibition is provided in section 36 (6) (9) of the constitution of the Federal Republic of Nigeria, 1999.

[181] Section 36 (6) (9) of the constitution of the Federal Republic of Nigeria, 1999.

[182] The examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue. A trial is the judicial examination of the Issues between the parties, whether they are issues of law or of fact. See https://thelawdictionary.org/trial/ (accessed on November 17, 2017).

House of Assembly. On this basis, therefore, an impeachment proceeding may not constitute a ground for the invocation of this provision.

One notable effect of removal by impeachment is on eligibility to hold public office again. Thus, whether the person removed by impeachment could still hold an office of trust especially the office he was removed from under the Nigerian constitution has been a recurring decimal. For instance, Aninye Abaribe was removed as the Deputy Governor of Abia State in 2002. He contested and won election as the Senator representing Abia senatorial district at the National Assembly. His election was challenged on the ground, among others, that he was not qualified to contest because of his removal by impeachment as Deputy Governor of Imo State. In the case of *All progressive Congress vs. Peoples Democratic Party*,[183] Mr Ayodele Fayose contested and won the governorship election of Ekiti State conducted on 21st June, 2014. His victory at the polls was challenged on the ground, among others, that he was not qualified to contest at the time of the election because he was found guilty of contravention of the Code of Conduct by an investigation panel set up by the State House of Assembly consequent upon which he was removed as the State Governor in 2006. This was premised on the constitutional provision which disqualifies any person found guilty of contravention of the Code of conduct.[184] The court held that his impeachment was not a ground for his disqualification. He could only be so disqualified if he was prosecuted and convicted of the grounds which constitute an offence before a competent court of law or tribunal, the

[183](2015) 15NWLR(pt. 1481)6.

[184] Section 182 (1) (e) of the constitution provides that a person shall not be qualified for election into the office of the Governor of a State if "within a period of less than ten years before the date of election to the office of Governor of a State he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the code of Conduct..."

court added. In fact, "Impeachment is not categorized as an offence under our criminal jurisprudence. It will be unconstitutional to treat impeachment *per se* as a criminal offence..."[185] Also in the case of *Babajide Omoworare vs. Iyola Omisore & Ors,*[186] the court held that the grounds for the disqualification of a candidate for election as a member of the Senate or House of Representatives in accordance with section 66(1) of the 1999 constitution does not in any way include impeachment as it is not expressly mentioned. This is because the disqualification involves deprivation of right as a result of pronouncement of guilt over which only a court of law has power. The court added "Disqualification of a candidate to contest election into the Senate or House of Representatives in section 166 (1) (d) & (h) involves deprivation of rights and pronouncement of guilt which is within the exclusive preserve of a court".[187]

However, a contrary decision on the issue was given by some courts, when the eligibility of a person to contest election was challenged on the ground that he was removed as Deputy Governor through impeachment. The court held that the petitioner had to prove that the Deputy Governor had been removed through impeachment and that it was conducted in accordance with the provision of the constitution. The court found that the Deputy Governor "was not given fair hearing if at all any impeachment was embarked upon against him".[188] This shows that the court would have disqualified the Deputy Governor from contesting if it had found that he was given fair hearing and that the impeachment proceedings were conducted in accordance with the constitution. In *Eric*

[185] *Barrister Handel Okoli & Anor vs. Hon. (dr.) Okechukwu Udeh & Anor* (2007) LPELR-CA/A/102/07.
[186] (2010) 3 NWLR (pt. 1087) 58.
[187] Ibid.
[188] Ibid.

Acho Nwakanma vs. Abaribe[189] a trial court categorically disqualified a person from contesting an election because he was removed as a Deputy Governor. This might have triggered a lot of misunderstanding and uncertainty as to the exact effects of impeachment. For instance, Lagos State House of Assembly passed a resolution by which they reversed and forgave a Deputy Governor after his impeachment so that he "can be entrusted with political and administrative responsibilities"[190] and to enable him "live a normal life", according to the lawmakers.[191] This means that without the pardon, he would not have been eligible to hold political and administrative office again. In fact, do they even have the power to reverse or invalidate the impeachment as they did? The answer is no.

The need to address some of these post-impeachment legal issues had been pointed out by the Supreme Court. The court, per Nwuta JSC, said:

> *I think that the procedure of impeachment should be modified in a manner that would protect the mandate given by the electorate and ensure that a Governor who is impeached and removed from office does not contest the election to return to the exalted office for which he was found unworthy...*[192]

The Supreme Court in the instant case had, in another breath, cited with approval the earlier dictum of the Court of Appeal in respect of the same issue in which the

[189] (2008) LPELR-CA/PH/EPT/220/2008.
[190] "Lagos Assembly Pardons Deputy Governor 8 Years After", Premium Times, December 31, 2015, available at https//www.premiumtimesng.com/regional/south-west/196006-lagos-assembly-pardons-impeached-deputy-governor-8-years-after.html (accessed on June 17, 2016)
[191] "Impeachment of ex-Lagos Deputy Gov., Femi Pedro Invalidated", Vanguard, December 31, 2015 available at https//www.vanguardngr.com/2015/12/impeachment-of-ex-lagos-deputy-gov-femi-pedro-invalidated (accessed on June 17, 2016)
[192] Ibid, 34.

justification for the amendment was provided. The court, per Rhodes Vivour JSC, added:

> *We, however, wish to observe in passing that the essence of impeachment was to identify somebody who is not fit to hold public office, but it is rather sad and unfortunate that after finding one, the law appears reluctant to give the desired punch.*[193]

Some Respondents also expressed a similar view as the above. For instance, Respondent 11 said:

> *Sincerely if someone has been removed from office and the removal is on good ground that he has, for example, embezzled government money. So for him to come back and re-contest in election for that office I think it's not fair. There should have a law which will prohibit him from contesting.*[194]

Respondent 4 not only corroborated Respondent 11 above but also provided a rationale behind such prohibition. His words:

> *If we go by this law, it would mean that there is no much importance to the public offices whose occupants are subject to impeachment. It will be ridiculous and embarrassing for an office holder to be impeached today and come back to the same office tomorrow. What then is the purpose of impeaching him in the first place? If he is impeached then he should not be allowed to contest again for the same office or a different public office for the fact that he is not to be trusted with power. I think this is what other countries are doing and it will also be good for our democracy.*[195]

From the totality of the analysis above, it is discernible that the effect of impeachment is subject to a lot of misunderstanding. This is due to the negative impression Nigerians have on any person who had been removed through impeachment. They always feel that

[193] Ibid, 35.
[194] Interview with Respondent 11 conducted in his office on 8th August, 2017 around 16300hrs.
[195] Interview with Respondent 4 on August 1, 2017, at his residence around 1309.

he should not be trusted with power again since he had been found guilty of allegations of gross misconduct which formed the basis for his removal. This also shows the necessity for a clear cut provision on its effects as obtained under some constitutions.

Unlike in Nigeria, the effects of impeachment in some other jurisdictions have been explicitly provided. In Lebanon, for instance, the constitution enacts "Once the President of the Republic is impeached, he is suspended and the presidency stays vacant until the case is decided by the Supreme Council".[196] Under some other constitutions, the effect is that the public officer removed cannot hold any office of trust again. For instance, the United States constitution provides thus:

> *Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the united states: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.*[197]

One may be tempted to understand that the public officer who has been disqualified from the office or any other office of trust due to his removal by impeachment has been so disqualified forever. This is because the above constitutions do not specify the particular period for which the disqualification lasts. However, some constitutions are not guilty of this in that they provide for the period of such disqualification. For instance, under the constitution of Chile the disqualification is for a period of five

[196] Article 61 of the constitution of Lebanon, 1926. See also Article 97 of the constitution of Romania, 1991 which provides "From the date of the impeachment until his/her eventual removal from office, the President is suspended by law from the exercise of his/her functions".

[197] Article I, section 3 of the constitution of the United States of America, 1789. For similar provisions, see Sections 89 and 130 of the constitution of South Africa, 2012; Article 38 of the constitution of Sri Lanka, 1978; Article 60 of the constitution of Argentina, 1983.

years.[198] The constitution of Brazil provides for a period of eight years[199] while that of Haiti provides for five-fifteen years.[200] Thus, according to Kalt,"... disqualification is worthwhile. An official may have committed an offense so heinous that it is appropriate to declare to the nation that he is constitutionally unworthy of "honor, trust, or profit."[201]

It is discernible from the above that the legal effects of impeachment have been categorically provided for under these constitutions. Therefore, the uncertainty which pervades the legal effect of impeachment in Nigeria will be avoided if similar provisions are made in the Nigerian constitution.

3.9 Conclusion

It is axiomatic that when the constitution vests power to perform a particular act on a person or body, it mostly makes provision also to guide the exercise of the power by that person or body. The exercise of impeachment power is no exception to this requirement. The constitution has provided for some requirements that should be complied with in the exercise of impeachment powers. The first requirement is that the grounds for impeachment must have arisen to ignite the invocation of the impeachment power. These grounds have been specified by the constitution and further explained in judicial pronouncements. Under the constitution, the ground for impeachment is gross misconduct which is the violation of the constitution or whatever misconduct the

[198] It provides that "By the declaration of guilt the accused is removed from office, and may not hold any public function, whether or not of popular election, for the term of five years". See Article 53 of the constitution of Chile, 1980.
[199] Article 52 of the constitution of Brazil, 1988.
[200] Article 189 of the constitution of Haiti, 1987.
[201] Brain C. Kalt "The Constitutional Case for the Impeachability of Former Federal Officials: An Analysis of the Law, History and Practice of Late Impeachment" *Texas Review of Law and Politics*, 6 no. 1, (2001-2002): 126.

legislature considers as such. Thus, the legislature has discretion to label any misconduct as a ground for impeachment. However, according to Nigerian Supreme Court, the conducts that may fall within the definition include corruption, sexual harassment, diversion of public fund and forgery. This is a mere suggestion from the apex court as they are not categorically provided by the constitution.

After this requirement, the next is the impeachment proceedings. The procedure to be followed in conducting the impeachment proceedings before the legislative house and the impeachment investigation panel are also provided by the law. It starts with the presentation of the grounds for impeachment in the form of written allegations of gross misconduct to be served on the Speaker or the President of the Senate and on all members of the legislative Assembly concerned. This is followed by the establishment of the investigation panel to conduct investigation for the purpose of proving the ground for impeachment. The panel is also required to observe the rules of natural justice in the conduct of its proceedings. The next step is the presentation of the report of the investigation panel. The venue and time for such proceedings are not equally left out by the law. What comes out of successful exercise of this power is the removal of the public officer concerned. And when removed, the public officer would lose all the entitlements and privileges of the office. This includes the immunity from all civil and criminal proceedings which he enjoyed while in office. In this chapter, therefore, the research objective of the examination of the constitutional requirements for impeachment has been achieved.

CHAPTER FOUR
THE PROCEDURE FOR INVESTIGATION AND PROOF OF THE GROUNDS FOR IMPEACHMENT: A CRITICAL ANALYSIS OF THE LAW AND PRACTICE

4.1 Introduction

A cardinal judicial principle is that a court of law or tribunal forms a belief as to the existence or otherwise of facts including an allegation against any person after considering the matters presented before it. This is in essence what investigation and proof of the grounds of impeachment is aimed at. Investigation proceeding is part of impeachment proceedings but it is conducted by different set of people and governed by different law. The former is, therefore, different from the latter. Investigation is the responsibility of a panel to be appointed by the Chief Justice of Nigeria or Chief Judge of the State concerned as discussed in Chapter Three of this Thesis.[1] The constitutional provisions on impeachment require that the grounds for impeachment alleged against a public officer, like most investigations,[2] must be investigated and proved to have been committed by the office holder before he is removed. How the investigations are to be conducted has been partly provided by the constitutional provisions dealing with impeachment[3] and those dealing with the principles of natural justice applicable to

[1] See item 3.5.2 in Chapter Three.
[2] Ian Freckelton, (2004) "Paths Toward Reclamation and the Regulation of Medical Practitioners" *Journal of Law and Medicine*, 12 no. 91. See also Ian Freckelton and D List, (2004) "The Transformation of Regulation of Psychologists by Therapeutic Jurisprudence" 11(2) *Psychiatry, Psychology and Law*, 11 no. 2, 296.
[3] See sections 143 and 188 of the constitution. Items 3.5.2 and 3.5.3 of chapter three provides for appointment, responsibility and composition of the panel.

judicial and quasi-judicial proceedings generally. However, detailed provision on the conduct of the investigation are provided in the rules and regulations made to guide the investigations. It is, therefore, imperative to analyze some of them. It suffices, at this juncture, to analyze the rules used in the impeachment of the Governor of Kaduna State and that of the Deputy Governor of Taraba State, Sani Abubakar Danladi.

4.2 The Procedure for Investigation and Proof of the Grounds for Impeachment

The constitution is silent on the detailed aspects of the procedure to be adopted during the investigation and proof of the grounds for impeachment. It only makes provisions for the establishment of the panel and vests on it the task of the investigation. It also provides for the period within which the panel shall conduct and conclude its investigation. It also accords a right of counsel to any public office holder standing investigation before such impeachment panel.[4] Then power is given to the legislative houses concerned to make other rules to guide the procedure of the investigation before the panel.[5] It is these rules we are going to briefly point out here for a better understanding of the subsequent analyses of the law and practice of the investigation.

4.2.1 Rules of Procedure for the Investigation of the Deputy Governor of Taraba State

When the impeachment of the Deputy Governor of Taraba State, Sani Abubakar Danladi was commenced, the Taraba State House of Assembly passed a law on the rules of procedure for the investigation. The rules were cited as "The Panel to Investigate the

[4] See sections 143 and 188 of the constitution.
[5] Ibid.

Allegations of Gross Misconduct leveled against the Deputy Governor of Taraba State (Procedure) Rules 2012".[6] They were made pursuant to the provisions of the constitution to guide the conduct of the investigation.[7] The rules confer on the investigation panel the power to, during the course of its investigations, produce oral or documentary evidence. The panel could also procure and examine witnesses by issuance of summon. The witnesses may be compelled to attend by issuing a warrant of arrest where they refuse to obey the summon issued earlier. Such witnesses are required to take oath or affirmation, like in a court of law, before giving evidence. The panel could admit any evidence even if it is inadmissible in civil or criminal proceedings. However, evidence given during the investigation cannot be used against any person in any civil or criminal proceedings. It is an offence, liable to imprisonment for two years, to give false evidence; insult or injure a witness; and prevent a witness from giving evidence.[8] Members of the public or the press could be excluded from the proceedings of the panel.[9]

The chairman of the panel shall preside over all meetings of the panel or any person appointed from among the members. The chairman shall also determine the time and place where the investigation is to be conducted. The quorum for meeting of the panel is one-third while decisions on questions are taken by two-third. The panel shall appoint a counsel who shall act as its legal adviser.[10] The person under or affected by the

[6] See Rule 1 of the The Panel to Investigate the Allegations of Gross Misconduct leveled against the Deputy Governor of Taraba State (Procedure) Rules 2012.
[7] See section 188 of the constitution.
[8] Rule 4 of the The Panel to Investigate the Allegations of Gross Misconduct leveled against the Deputy Governor of Taraba State (Procedure) Rules 2012.
[9] Ibid, Rule 2.
[10] Ibid, Rule 14.

investigation may also be represented by a lawyer of his own choice.[11] After the proceedings, the panel shall make and furnish to the State House of Assembly a full report in writing of its proceedings. It shall also state whether the allegations have been proved or not and reasons leading to its conclusions.[12]

The Rules also provide for some schedules and forms to be used in the proceedings. Such forms include the summons and warrant of arrest forms. The former was meant to be used to invite a potential witness to appear and testify and/or produce some documents in his possession which is relevant to the subject matter of the investigation. In the event of the refusal or failure of the said potential witness to appear and testify or produce the document, the latter form provides for his arrest. The Rules empower police officers to effect such arrest. Furthermore, the Schedules to the Rules provide for oath taking or affirmation by a witness who appears before the panel. Oath is generally for one who has a particular faith which may be Islam or Christianity while the affirmation is for one who has no such religious belief or is so prevented.[13]

4.2.2 Rules of Procedure for the Investigation of Governor of Kaduna State

Pursuant to the provisions of paragraph (a) of subsection 7 of section 170 of the Constitution of the Federal Republic of Nigeria, 1979, the Kaduna State House of Assembly made the Rules to guide the investigation of Balarabe Musa, the Governor of Kaduna State, in 1981. They are cited as Rules (Powers and Procedure of the

[11] Ibid, Rule 8.
[12] Ibid, Rule 11.
[13] See sections 205 and 208 of the Evidence Act, 2011.

Investigation Committee) of the Governor of Kaduna State, 1981. The Rules are similar to those of Taraba State except for differences in wordings; hence there is no need to point them out here. However, few differences exist which will be pointed out below. First and foremost, the Rules of Taraba State were made under the Constitution of the Federal Republic of Nigeria, 1999; while those of Kaduna State were made pursuant to the Constitution of the Federal Republic of Nigeria, 1979, although the provisions are substantially similar. Under the Taraba State Rules, the investigation was conducted by a Panel while the Kaduna State Rules called it a committee. Offences relating to evidence attract a three-month imprisonment or fine which is different from that of Taraba State.[14] Unlike under the Taraba State Rules, the quorum under the Kaduna State Rules is four members while decision is taken by simple majority of members present.[15] Lastly, the Kaduna State Rules protect members from liability for their acts or ommisions in the course of investigation proceedings while the Taraba State Rules do not.[16]

The aforesaid are the provisions of the Rules made by the Taraba State House of Assembly and Kaduna State House of Assembly for the purpose of investigation of the Deputy Governor of Taraba State and the Governor of Kaduna State respectively. These are just two of the many Rules that guided the various investigation proceedings conducted in Nigeria. They are sufficient for the purpose of our discussions here. A legal analysis of the Rules is provided below.

[14] Rule 10, Rules (Powers and Procedure of the Investigation Committee) of the Governor of Kaduna State, 1981.
[15] Ibid, Rule 18.
[16] Ibid, Rule 14.

4.3 A Legal Analysis of the Rules of Procedure for Investigation of the Grounds for Impeachment in Taraba and Kaduna States

The Rules of procedure for the conduct of investigation is meant to guide the panel in the discharge of its responsibility. The Rules made so many provisions which require legal analysis due to their importance in judicial and other legal proceedings. Prominent among them are the rules on the production and examination of witnesses; protection/immunity of members; place for investigation and provisions on evidence. It is imperative, therefore, to analyze them *vis-a-vis* other statutory and judicial authorities.

4.3.1 Production and Examination of Witnesses

The production and examination of witnesses are a cardinal principle in the administration of justice and important requirement in any fact-finding mission. This is because without the production and examination of witnesses no court of law or any panel, committee or commission of inquiry will be able to know the relevant facts as to determine who is responsible for what. This is in line with the evidential provision that all facts, except the contents of documents, may be proved by oral evidence.[17] To produce a witness is simply to bring him to the court to testify. The Supreme Court had cause to interpret what the word "produce" means. It said that the ordinary and dictionary meaning of the word "produce" is "to bring forward" or "to bring out" or "to put on the stage".[18] The Rules for Investigation of the grounds for impeachment provide for the issuance of witness summons to produce any person before it and testify.[19]

[17] Section 125 of the Evidence Act, 2011.
[18] *Ogbunyiya & Ors vs. Okuda & Ors* (1979) 3 LRN 318.
[19] Rule 6 of the Rules (Powers and Procedure of the Investigation Committee) of the Governor of Kaduna State, 1981.

Witness summons includes "any subpoena or other processes for requiring the attendance of any person to give evidence before a court or to produce any document".[20]

For the purpose of investigation, it is provided that:

> *For the purpose of Rule 5 above, the committee may summon any person to appear before it in order to:*
> *(a) Give evidence; or*
> (b) *Produce any document in his possession or over which he has power.*[21]

The Rules of Practice and Procedure of the various High Courts in Nigeria make provision for issuance of writ of summon or writ of subpoena to invite a witness to testify. For instance, the Federal High Court (Civil Procedure) Rules, 2009 provide:

> *The judge may at any stage of the proceedings order the attendance of any person for the purpose of producing any writing or other documents named in the order provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.*[22]

The purpose of production of witness through the writ of subpoena is for the witness to give evidence or produce document relevant to the subject matter of the investigation. When the witness appears before the panel for the purpose which is to give evidence, the Rules provide that such evidence be given on oath. This is a cardinal principle in the administration of justice as enunciated in the following words:

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[20] See section 1 of the Ugandan Witness Summons (Reciprocal and Enforcement) Act, 1969.
[21] Rules (Powers and Procedure of the Investigation Committee) of the Governor of Kaduna State) 1981
[22] See Order 20 Rule 8 of the Federal High Court (Civil Procedure) Rules, 2009.

Save as otherwise provided in sections 208 and 209 of this Act, all oral evidence given in any proceedings must be given upon oath or affirmation administered in accordance with the Oath Act or Law as the case may be.[23]

The circumstances under which a witness may give evidence not on oath or affirmation is when he declares that he does not have religious belief or his religious belief does not permit the taking of oath.[24] A child who is below 14 years of age does not also have to take an oath before he testifies.[25]

The witness before the investigation panel is not supposed to be allowed to testify the way he wishes. He is to be guided as to what and how he testifies. This guidance is through his examination by the panel or a counsel where one is involved in the proceedings. Examination of witnesses is the art of putting questions to witness with a view to elicit facts relevant to the issues before the court, tribunal or panel. This is in the form of examination-in-chief, cross-examination and re-examination.[26] The order in which such examination is to be conducted is regulated by the law and practice,[27] discretion of the court and that of the counsel leading the examination. This means who among the list of witnesses should give evidence first is determined by the parameters just mentioned.

[23] Section 205 of the Evidence Act, 2011.
[24] Ibid, section 208.
[25] Ibid, section 209.
[26] Ibid, section 214.
[27] Ibid, section 210.

A person may also be required to appear and tender some documents in his possession but not to testify as provided in the Rules.[28] This Rule is similar to an evidential principle which states that "a person, whether a party or not in a cause, may be summoned to produce a document without being summoned to give evidence..."[29] Such a person is not considered as a witness, thefore, is not subject to any examination or cross-examination like a witness.[30]

A person on whom the summons had been issued but refuses to appear and give the evidence or produce the document as requested may be arrested through a warrant of arrest issued by the Chairman of the Panel or Committee.[31] This is because it is an offence punishable by three months' imprisonment or fine of N600 or both for a person summoned to give evidence or produce a document but fails or refuses to do so.[32]

4.3.2 Protection/Immunity of Members

Members of the panel have been given legal protection or immunity in respect of their actions and inactions in the discharge of their responsibilities. For instance, the Taraba State Rules provide that "No members of the panel shall be liable to any action or suit for any matter or thing done or omitted by him as such a member.[33] The Court of Appeal said the Rules are "...designed to prevent the members of the panel of seven persons

[28] Rule 6 of the Rules (Powers and Procedure of the Investigation Committee) of the Governor of Kaduna State, 1981.
[29] Section 218 of the Evidence Act, 2011.
[30] Ibid, section 219.
[31] See Rule 9 of the Rules (Powers and Procedure of the Investigation Committee) of the Governor of Kaduna State, 1981.
[32] Ibid, Rule 10.
[33] Rule 12 of the Rules of Procedure for the Investigation of the Deputy Governor of Taraba State, 2012. Another Rule provides "No member of the panel shall be liable to any civil or criminal proceeding or suit that may be brought against him for any act done or omitted to be done or said by him in the performance of his duties under these Rules". See Rule 6, Bayelsa State Impeachment (Procedure) Rules, 2005.

from being inhibited in the performance of their lawful functions by fear of civil or criminal litigation arising out of such performance during the tenure of their office".[34] This may be akin to an ouster clause which ousts the jurisdiction of a court. In fact, such provisions were used as the basis to question the jurisdiction of a court of law in any suit challenging the proceedings of the panel. Thus, in *Peremobowei Ebebi vs. Speaker, Bayelsa State House of Assembly,*[35] a Deputy Governor under investigation for impeachment brought an action challenging various aspects of the impeachment proceedings including the investigations conducted by the panel. The trial Bayelsa State High Court upheld the preliminary objection of the members of the panel that their activities cannot be questioned by virtue of section 6 of the Impeachment (Procedure) Rules of Bayelsa State, 2005 which seeks to protect the members of the panel. The Court of Appeal upturned the ruling of the High Court. The Court, in a considered ruling, stated the effect of such clause in its words:

> *... Section 6 of the Impeachment (Procedure) Rules, 2005 of Bayelsa State House of Assembly cannot oust the jurisdiction of court, if the "impeachment" process is defective or when the mandatory procedure in section 188 of the Constitution 1999 has not been complied with. This reasoning cannot fault. Not even section 188 (10) of the Constitution can oust the jurisdiction of the courts in the process of removing a Governor or Deputy-Governor of a state from office when the proper procedure, as provided in section 188 (1)- (9) thereof, has not been followed.*[36]

The rationale behind the clauses as contained in such subsidiary legislations above is that they derive their legitimacy from a particular law which is the parent statute. Its

[34] *Peremobowei Ebebi vs. Speaker, Bayelsa state House of Assembly* (2011) LPELR-CA/PH/296/2010
[35] (2011) LPELR-CA/PH/296/2010.
[36] *Peremobowei Ebebi vs. Speaker, Bayelsa state House of Assembly* (2011) LPELR-CA/PH/296/2010.

Thus, in *Inakoju vs. Adeleke*[40] the Supreme Court invalidated impeachment proceedings where the public had been excluded because "A Legislature is not a secret organization or a secret cult or fraternity where things are done in utmost secrecy..."[41] In yet another case, the Supreme Court while condemning a part of impeachment proceedings conducted in a Guest House said "Conducting legislative act in a Guest House becomes laughable in the eye of the public..."[42] The rationale behind this requirement is that "The Governor is elected by the people - the electorate. The procedure and the proceedings leading to his removal should be available to any willing eyes. And this, the public will see watching from the gallery".[43] However, the constitution provides some circumstances wherein such members of the public could be excluded in the interest of public safety, public order, public morality and protection of the lives and property of parties.[44]

It should be noted that some of the investigation Rules vest on the panel an absolute power to determine when to exclude the public from its proceedings. For instance, the Bayelsa State Impeachment Procedure Rules, 2005, empowers the panel to:

> *Direct where and when the panel may sit and conduct its inquiry and shall have the power in its absolute discretion, to admit or exclude the public or any member of the public or press from the venue of any sitting of the panel.*[45]

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[40] (2007) LPELR 10354.
[41] *Inakoju vs. Adeleke* (2007) LPELR 10354.
[42] *Danladi vs. Taraba State House of Assembly* (2015) 2 NWLR (pt.) 110.
[43] *Akintola vs. Aderemi* (1962) All NLR 442 at 443, (1962) 2 SCNLR 139.
[44] See section 36 (4) of the constitution.
[45] See Rule 2 (a) of the Rules. See also Rule 2 (f) of the Rules of Procedure for the Investigation of the Deputy Governor of Taraba State, 2012.

In the light of the provisions of the constitution and the decisions of the Supreme Court above, the rules of investigation which vest on the panel absolute power to exclude the public from investigation proceedings are inconsistent with the constitution. This is because even courts and tribunals have not been given such absolute powers. Thus, unless any of the exceptional circumstances in which courts could exclude the public from its proceedings as pointed out above arise, investigations must also be held in public.

4.3.4. Provisions on Admissibility of Evidence and Proof

A fundamental issue which should have been taken care of by the Rules guiding the investigation is the admissiblility of evidence and standard of proof of the allegations of gross misconduct. It is worthy to note and reiterate that the function of the panel is to make a finding as to whether the allegations have been proved or not. However, no any provision is made under the Rules as to the standard that should guide the panel in its determination of whether the allegations have been proved or not. The determination of whether allegations have been proved or not is made based on the strength of evidence presented by both parties in any judicial or quasi-judicial proceedings. However, no any provision is made on admissibility of evidence. In fact, the Rules of investigation prevent the use of the provisions of the Evidence Act which is the law that makes elaborate provisions as to who shall prove what and how. Even the constitution does not consider the issue of admissiblility of evidence and standard proof important as no provision is made to guide the panel. The implication is that the investigation Panel is not bound to admit credible and reliable evidence for proof of gross misconduct which is the ground for impeachment. This is supported by Respondent 3 as follows:

Although I may not precisely remember what the constitution says about proof and I have not seen any of the Rules which give them powers of the investigations, but I want to believe that something may be faulty from that angle. Otherwise, how comes every allegations no matter how complex have been found proved before the panel? I think one major challenge is that there is no sufficient provision in the law to guide the panel as to the better means of conducting investigations. So, the panel got some leverage to do what they feel like with a lot of impunity. Similarly, I think there is no any provision regulating how and when the allegations could be proved. With all these problems, there will hardly be any meaningful investigation and proof before the investigation panel. This is what I see.[46]

4.4 Investigation and Proof of the Grounds for Impeachment before the Panel

The purpose of investigation is to determine wether the office holder has violated the provisions of the constitution or done anything which the legislature regards as misconduct. This is an important process in the impeachment proceedings because it is the result of the investigation which will determine whether the allegations have been proved or not. It will also determine whether the office holder will be removed or not as such his fate, so to say, lies with the panel. It is important, therefore, to have a brief discussion on how the panel conducted investigations in two cases of impeachment. The investigations against Governor Murtala Nyako of Adamawa State and Sani Abubakar Danladi, the Deputy Governor of Taraba State, are discussed below.

4.4.1 Investigation against Murtala Nyako, the Governor of Adamawa State

Murtala Hammanyero Nyako was elected Governor of Adamawa State for a four-year tenure commencing from May, 2011 to May, 2015. The State House of Assembly

[46] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.

commenced impeachment proceedings against him which saw his removal from office on 16th July, 2014. The allegations of gross misconduct against the Governor and which the panel investigated are enumerated below:

1. Fraudulent diversion of N2.3bn Adamawa State Local Government workers' salary for September and October 2011.
2. Illegal deduction and diversion of the sum of N142m emoluments of Adamawa state workers in May, 214.
3. Diversion of N120m public funds to sponsor fictitious visit of General Muhammadu Buhari to Adamawa State to commiserate with the victims of insurgency in Madagali and Michika local Government Areas.
4. Extra-budgetary expenditure of N1, 740, 785, 246.00 on fictitious special assistants and another 166, 230, 536.88 on personal Assistants in 2013.
5. Fraudulent award of contract of over N8bn through SNECOU group of Companies Ltd, a company linked to one of the Governor's wives, to siphon public fund without delivering any services to the people of Adamawa State.
6. Corrupt siphoning of the sum of N3000m public fund through a company, Hydro sources Resources Ltd in the name of construction of Mubi by-pass without mobilizing to site or any construction work carried out long after collecting the sum of N300m from Adamawa State funds.
7. Gross violation of the oath of office by outrageous patronage and dominance of family and friends in the discharge of government business such as found in the MDGs, office of the SPPU and ministry of Health.
8. Gross violation of section 120 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and gross misappropriation and diversion of Internally Generated Revenue for personal use to the detriment of the people of Adamawa State.
9. Squandering the sum of N4, 8045, 216, 538.32 and N7, 114, 995, 590. 85 in 2012 and 2013 respectively, through the office of the Secretary to the State Government against budgetary approvals and not in the interest of the people of Adamawa state.
10. Expenditures of exorbitant sum of N2.5bn as "other miscellaneous expenses" through the Internal Affairs and Special Services Department.
11. Extra-budgetary procurement of fertilizer and diversion of proceeds from the sales of fertilizer from 2007 to date.
12. The MDG"s office in Adamawa State is managed by Governor Nyako's close relations and has squandered N220mN786, 457, 644.

94m unbudgeted state funds in 2013 for the implementation of MDGs programs in the state.

13. Diversion of over N400m of the N500m Federal Government Intervention Fund for flood victims in Adamawa state in 2011.

14. Diversion of government fund through the illegal importation of hospital equipment to the tune of N156m while the sate still owes the contractor and illegal acquisition of Containerized Mobile Workshop for Vocational Training centers.

15. Corruption and extra-budgetary awards of contract for the construction of Army barrack, Mayo Belwa Road, Peila-Maiha Road, Gumbi – Gaanda - Fotta Road, Rumde - Yalde-Pate Road, construction of Mubi By-pass, contrary to section 120 (2) (3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

16. Squandering N1bnAdamawa Scholarship Trust Fund.

17. Shoddy conception and operation of Adamawa German Hospital and extra-budgetary service of Adamawa German Hospital, managed by a close relation to Governor Nyako.

18. Reckless expenditure of public funds contrary to section 121 (4) (a) and (b) of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

19. Abuse of office and violation of Adamawa State Law by appointing his wife, Dr. Halima Nyako as the Chairman State Action Committee on Aids (SACA) contrary to the SACA Law. His government is popularly nicknamed "government of family and friends".

20. Overbearing strangulation of Local Government areas and extortion of the Local Government Fund in the name of joint projects and security challenges in Mubi and other parts of Adamawa State. This leaves many local government areas with nothing to pay workers' entitlements. The Governor is also known to consistently contravened section 168 (60) and (8) of the Constitution of the Federal Republic of Nigeria.[47]

As could be seen from the above, the allegations against the Governor were 20. Pursuant to section 188 (2) of the constitution, on the 18th day of June, 2014, 19 out of the 25 members of the House of Assembly signed the Notice of the allegations as quoted

[47] See the Report of the 7-Man Panel Investigating Allegations of Gross Misconduct Against Murtala Hammanyero Nyako submitted to the Adamawa State House of Assembly, 5-7; Notice of Allegations of Gross Misconduct against the Governor of Adamawa State, Murtala Hammanyero Nyako addressed to the speaker of the Adamawa State House of Assembly, Umaru Fintiri, as contained in the Order Paper 011, of proceedings of Adamawa State House of Assembly of Monday 3rd June, 2014.

above. After the service of the said Notice, the House made a resolution supported by 20 out of the 25 members requesting the State Acting Chief Judge to appoint the investigation Panel. On Friday, 4th day of July, 2014, the acting Chief Judge appointed the panel with the following members: Buba Kaigama; Joshua Abu; Alhaji Saad Lawan; Njidda kito; Esthon Gapsiso; Hajiya Laraba Hassan and Binanu R. Esthon. They swung into action immediately after taking the oath of office on 8th July, 2014. They served the Governor a hearing notice through a substituted means by pasting it at the entrance of the Government House, Yola, in accordance with the Adamawa State High court (Civil Procedure) Rules, 2013. When the case came up for hearing on the 11th day of July, 2014, the Governor did not appear nor represented by any counsel. The House of Assembly opened its case by calling one and only witness to prove all the 20 allegations against the Governor. The witness was one Hon. Wafarninyi Therman, who was one of the members of the House of Assembly and chairman of the Special Committee for Appropriation and Public account of the said House. The witness testified and tendered about 24 different documents in proof of all the 20 allegations against the Governor. He explained the contents of all the documents and linked them to all the allegations. The counsel to the House, Chief L.Z Nzadon, thereafter informed the panel that all the allegations against the Governor had been proved on the basis of the oral evidence of the sole witness and the documents he tendered. He urged the panel to conclude that the allegations have been proved. On 14th July, 2014, the panel resolved that in view of the oral evidence of the witness and the documents he tendered, the allegations against the Governor were proved and this was accordingly reported to the House.[48] After the

[48] See the Report of the Impeachment Investigation Panel against Murtala Hammanyero Nyako, the Governor of Adamawa State, 2014.

receipt of the report of the panel, the House accordingly passed a resolution adopting it. The Speaker of the House then declared that the Governor stood removed on 16th July, 2014.[49]

From the above summary of the proceedings of the investigation panel, the following issues could be discerned:

1. The panel conducted the investigations from 11th to 14th July, a period of three days.
2. The Governor did not appear nor send any counsel in his defense as he was not served the notice of the allegations and that of the hearing of the panel.
3. Only one witness, a member of the House, testified and tendered all the documents in proof of the allegations against the Governor.
4. The panel found that the allegations were proved on the basis of the oral evidence of the sole witness and the documents he tendered.

It is conspicuous from the proceedings of the panel as shown in the case above that the rule of natural justice which is enshrined in the constitution and which the panel is bound to observe was deliberately violated. The constitution says that a person shall be entitled to fair hearing within a reasonable time by a court or tribunal or a panel whenever his civil rights and obligations are being determined.[50] A component of this fair bearing is that such a person shall be given adequate time and facilities to prepare

[49] See Order Paper 019 of the Proceedings of the Adamawa State House of assembly, Wednesday 16th July, 2014, 3-4.
[50] Section 36(I) of the constitution.

for his own defense.[51] In this light, the Governor is, therefore, entitled to be given the notice of allegations of the gross misconduct made against him; be informed of the date, time and place the panel is going to sit and be given adequate time to come and answer those allegations. All these are lacking in this case as could be seen from the summary of the proceedings above. As contained in the affidavit sworn to by the Clark of the Adamawa State House of Assembly, he was not able to effect personal service of the notice of allegations on the Governor after several attempts as the Governor was nowhere to be found.

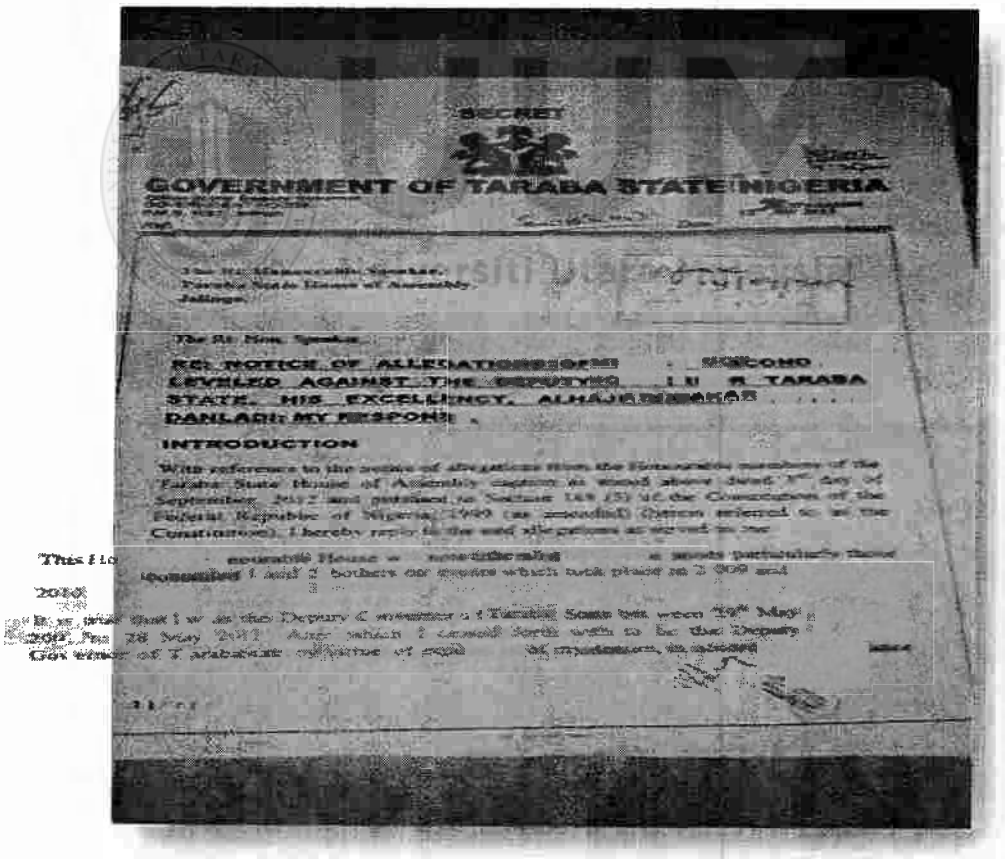
The investigation also shows that the issue of proof had been relegated to the background. How on earth could such weighty allegations, most of which are on financial mismanagement, be proved by only one witness? And the witness has no direct link with the transactions alleged? How could a witness who was neither the author nor custodian of 20 documents be allowed to produce them? In fact, how sure was the panel about the authenticity of such documents? All these are vital and germane questions that the panel ought not to have toyed with if its quest for truth of the allegations was a priority.

4.4.2 Investigation against Sani Abubakar Danladi, Deputy Governor of Taraba State

Sani Abubakar Danladi was elected as the Deputy Governor of Taraba State, alongside Danbaba Danfulani Suntai who was elected the Governor, for four years starting from

[51] Ibid, section 36 (6) (c).

29th May 2011 to 29th May, 2015. On 3rd September, 2012, the House of Assembly commenced impeachment proceedings against him by preparing and signing the notice of allegations of gross misconduct. Following the service of the notice on him, he wrote a reply to the House in which he denied the allegations. A front page of the letter he sent to the Taraba State House of Assembly could be seen in the picture below:


SECRET

GOVERNMENT OF TARABA STATE NIGERIA

INTRODUCTION

Figure 4:1 Letter of Reply to Allegations of Gross Misconduct
Source: Author got a copy from a staff of the Taraba State House of Assembly

After receiving the Deputy Governor's response to the allegations as contained in the above letter, a resolution of the House for the investigation of the allegations was passed on the 18th of September, 2012. Pursuant to the resolution, the State Acting Chief Judge appointed an investigation panel consisting of the following members: Nasiru Abdu Dangiri; Usman Binga; R.J. Ikitausai; Elder Japhet Wubon; Alhaji Mustapha Sani; Hajiya Aishatu Mohammed and Mr. Julius Dawhai kaigama.The panel was inaugurated on 24th September, 2012. The allegations against the Deputy Governor and which the panel was mandated to investigate were:

> *1. Contravention of his oath of office by diverting some Millennium Development Goals projects to a private school of which he is a Director.*
> *2. Breach of the Code of Conduct for public officers by acquisition of a vast plot of land in which he built a multimillion Naira business venture which was beyond his legitimate earnings.*
> *3. Contravention of his oath of office by creating disaffection, disharmony, favoritism and undue interference in the discharge of his duties. This was done through interference with the postings and transfers of indigenes of his Local Government area in the State and Local Government Civil Service; failure to work harmoniously with stakeholders in his Local Government and his failure, neglect or refusal to call the meeting of the State Boundary Adjustment Commission of which he was the chairman.*[52]

In the course of the investigation, which lasted for only six days, five witnesses were called and documents tendered to prove those allegations on 28th September, 2014. The Deputy Governor, through his counsel, Ustaz Usman Yunus, appeared in protest on that date. He complained that he was not fully briefed by the Deputy Governor as such he needed more time. The matter was adjourned to the 3rd day of October, 2014 on which

[52] See the Report of the Panel Constituted to Investigate Allegations of Gross Misconduct against Alhaji Sani Abubakar Danladi, the Deputy Governor of Taraba State, 9-12.

day the Deputy Governor, through his counsel, sought for an adjournment for four days on ground of ill-health to enable him appear and testify and also call two witnesses in his defense. According to the Supreme Court, the adjournment was refused and his defense closed by the panel. Its report was prepared and submitted same day. This narrative of the Supreme Court was confirmed by Respondent 13 who was one of the counsels who appeared for the Deputy Governor before the panel. He said:

> *Like in our own case, they did not even allow our client. He was ill, we asked for three days when they had three months to submit report but they refused. They concluded this thing within four days. And it is painful. But unfortunately the chairman of that panel had been recently conferred with an honor... and I called him and told him if you don't change, it will not be good for you and he apologized to me.*[53]

The report was that all the three allegations were proved, on the basis of the oral evidence of the witnesses and the documentary evidence adduced, to the satisfaction of the panel. Based on this, the House of Assembly removed the Deputy Governor the following day. From the brief proceedings of the panel as pointed out above, the following issues could be clearly noticeable:

1. The House of Assembly had presented five witnesses and tendered some documents to prove the allegations against the Deputy Governor.
2. The Deputy Governor had requested for adjournment because he was sick for him to be able to come and call two witnesses to defend himself which was refused.
3. The panel closed the case of the Deputy Governor without his consent.

[53] Interview with Respondent 13 at his office on 28th August, 2017 at 1907hrs.

4. The panel reached its findings without the evidence of the Deputy Governor or his defense but on the basis of the evidence of the House alone.

It is apparent from the above scenario that the panel did not observe the requirement of fair hearing in the proceedings. If not, how could it have shut out the Deputy Governor in a "trial" to remove him from office thereby effectively denying him the mandate freely vested in him by the electorates? He was not given the opportunity to cross examine the witnesses called by the House of Assembly to prove the allegations against him nor call his own witnesses. After all, the panel had more than two months and two weeks to the stipulated three months period. How could have the panel reached the conclusion that all the allegations were proved in this scenario? It is discernible that thorough investigation was not conducted and that credible evidence from both parties was not used in proof of the allegations.

4.5 Analysis on the Conduct of Investigation before the Panel

Investigation proceedings conducted before the panels in Nigeria have been tainted with many irregularities. In fact, there was no investigation in which any of these irregularities was not raised. Consequently, these irregularities resulted to the nullification of most of the investigations conducted so far in Nigeria. These irregularities are lack of opportunity for defence; rush in investigation and bias. How these irregularities resulted to nullification of investigations could be found below.

4.5.1. Lack of Opportunity for Defence

The first irregularity in investigations is refusal to give the public officer the opportunity to present his/her defence. Opportunity for defence is important as far as investigation is concerned as mere allegations and the evidence presented by the legislative house are not enough to prove whether the allegations are true or not. Therefore, the office holder should be given the opportunity to present his own version of the case from which the panel would judge as to who is saying the truth. This is fundamental requirement of natural justice as elaborated by the Supreme Court that "It is a fundamental principle of the administration of natural justice that a defendant and his witnesses should be heard before the case against him is determined. And, in my view, it is a denial of justice to refuse to hear a defendant's witness".[54] Thus, in *Danladi vs. Dangiri,*[55] the Taraba State House of Assembly commenced impeachment proceedings against the Deputy Governor of the State, Sani Abubakar Danladi. The House constituted the investigation panel headed by one Nasiru Audu Dangiri which conducted its investigations and submitted its report in six days. No hearing notice was given to the Deputy Governor and he sent his counsel to appear in protest. During its proceedings, the panel called five witnesses. On the other hand, the Deputy Governor called one witness, through his counsel, and requested for four days, on health ground; to enable him call the Deputy Governor and two more witnesses. The request was refused and the panel went ahead to close the Deputy Governor's case and submitted its report same day in which it found that all the allegations have been proved. The Deputy Governor was aggrieved that he was not given fair hearing as such he challenged the entire proceedings of the panel. He wanted

[54] Per Jibowu. F.J (as he then was) in *Mallam Sudan of Kunya vs. Abdul Kadir- of Fagge* (1956) SCNLR 93, (1956) 1 FSC 39 at 41.
[55] (2015) 2 NWLR (pt. 1442) 133-34.

In *Dapialong vs. Dariye*,[60] the Governor sought for a declaration that the failure or refusal of the panel to allow him to enter his defense and cross-examine Inspector Sunday Musa and Constable Peter Clark during the investigations against him constituted breach of his right to fair hearing. The Supreme Court, affirming the Court of Appeal decision, held that the Governor was not afforded the opportunity of being heard by the panel before the submission of its interim report to the House of Assembly. The court further held that "the effect or consequence was a breach of the constitutional right of fair hearing clearly enshrined in section 36(1) of the 1999 constitution".[61]

Similarly, in the impeachment of D.S.P. Alamieyeiseigha, the Governor of Bayelsa State, the panel refused to take evidence at all or call the Governor to defend himself during the investigation proceedings on the ground that the allegations were self-evident that needed no any proof. The panel said that it regarded them as "those allegations, the facts supporting which are so self-evident that they do not require any proof" because they are "axiomatic".[62] This is clearly stated by the panel in their report on the basis of which the Governor was removed.

Another closely related case is that of *Peremobowei Ebebi vs. Speaker, Bayelsa State House of Assembly*,[63] where a Deputy Governor under investigation for impeachment brought an action challenging the investigation of the allegations of gross misconduct against him for breach of his right to fair hearing in that he was not granted an

[60] (2007) LPELR-SC.39/2007.
[61] Ibid.
[62] Available at https//www.waadoo.org/nigerdelta/constitutionalmatters/impeachment/bayelsa_alamieseigha html (accessed on August 23, 2016)
[63] (2011) LPELR-CA/PH/296/2010.

adjournment before the panel to enable him fully prepare for his defense. The proceedings of the panel were declared unconstitutional and illegal on this, among other, grounds.

In case of impeachment of Garba Gadi, the Deputy Governor of Bauchi State, the trial judge; Justice Tsammani stated that the removal of Gadi on the recommendation of the defendant (the Investigation Panel) when he was not given fair hearing was unconstitutional and therefore null and void. "It is a shameful thing that the lawmaking body should breach the law of fair hearing by not giving the Deputy Governor, Garuba Gadi ample opportunity to defend himself before his removal from office".[64]

4.5.2 Rush in the Conduct of Investigation

Another irregularity which nullifies investigation proceedings is that it is usually conducted hastily. Investigation is required to be conducted within a "reasonable time".[65] This means the time for determination of a matter or the investigation should not be too short or too long depending on the nature and facts of each case.[66] The panel is given a maximum period of three months within which to conduct and conclude the investigation. However, none of the panel had utilized close to that period. The nature of the durations for the investigation proceedings could be presented in a tabular form below:

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[64] Muhammed Abubakar "Bauch Impeachment Drama: Court Reinstates Sacked Deputy Governor", *Daily Trust*, June 26, 2010, available at https//www.dailytrust.com.ng/index.php/news/11240-houses-for-civil-servants-soon (accessed on September 2, 2017).
[65] Section 36(1) of the constitution.
[66] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 1 at 134.

Table 4:1
Showing the Duration for Conduct of Investigation Proceedings

S/no.	Case of Impeachment	Period of Investigation	Duration of Investi ation	Decision of g the Panel
1.	Impeachment of Governor Peter Obi	31/10/2006 – I/11/2006	Two days	All allegations proved
2.	Impeachment of Deputy Governor Peremobowei Ebebi	22/06/2010–23/06/2010	Two days	All allegations proved
3.	Impeachment of Deputy Governor Sani Danladi	28/09/2014 – 02/10/2014	Five days	Most allegation proved
4.	Impeachment of Governor Murtala Nyako	11/07/2014–13/07/2014	Three days	All allegations proved
5.	Impeachment of Governor Alamieyeseigha	05/12/2005–07/12/2005	Three days	All allegations proved
6.	Impeachment of Deputy Governor Ali Olanusi	26/04/2015 – 26/04/2015	One day	All allegations proved
7.	Impeachment of Governor Rasheed Ladoja	04/01/2006 –06/01/2006	Two days	All allegations roved p

Source: *Peremobowei Ebebi v. Denwigwe & Ors* (2011) LPELR-CA/PH/296/2010; *Balonwu vs Obi* (2007) 5 NWLR (1028) 488; *Alamieyeseigha vs. Igoniwari & Ors* (2007) LPELR- CA/PH/124/2006; *Inakoju vs. Adeleke* (2007) LPELR 10354.

From the table above, all the investigations were conducted within a period of two to five days out of the maximum period of three months given for this purpose. In fact, an investigation was incredibly conducted and the report submitted within one day![67] This haste or rush is alarming and disheartening. So, once this issue is raised before a court, it could constitute the ground for the nullification of the entire proceedings of the panel. Therefore, in *Danladi vs. Dangiri,*[68] the proceedings which were conducted in six days were voided by the Supreme Court on this, among other, grounds. In fact, the court was very explicit in expressing its grouse with the haste or rush in the conduct of the investigation. The court stated the implication of the rush:

[67] Damisi Ojo (2015) "Mimiko Gets New Deputy as Ondo House Sacks Olanusi", available at thenationonline.net/mimiko-gets-new-deputy-as-ondo-house-sacks-deputy (accessed on 10/10/2017).
[68] Ibid.

> *Here is a case where the panel has three months within which to conduct and conclude its investigation... 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 in a breach of the right to fair hearing of the appellant which in turn nullifies the proceedings of the panel.*[69]

Ironically, even the maximum period of three months provided by the constitution may appear inadequate to actually prove some allegations considering their nature. This fact had even been admitted categorically by a panel while narrating some of the problems it faced in the course of its investigations. According to it, where an investigation requires visits to various parts of the country and calling of witnesses from across the world, "in that event the time required could well exceed the three months stipulated by the constitution".[70] While commenting on this attitude, Justice Oguntade of Nigerian Supreme Court stated:

> *The lawmakers have a reason for giving such fairly long period. It is to ensure that a thorough investigation is carried out by the Panel. Although the Panel need not take the whole of the 3 months, an investigation of the magnitude of the gross misconduct of a Governor or Deputy Governor should certainly take more than 2 to 7 days as is the trend. An investigation which takes a very short period will lead to some speculation or conjecture that the Panel made up its mind early in the day and merely worked towards the achievement of that mind... How can a Panel complete an investigation in 2 to 7 days when the Constitution provides a maximum of 3 months?*[71]

However, in an attempt to justify the rush and hasty nature of the investigation proceedings as depicted above, Respondent 6 who was one of the members of an investigation panel who concluded their investigation within three days, argued:

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[69] Ibid,131.

[70] See the reports of the investigation panel of the Governor of Bayelsa State available athttps//www.waadoo.org/nigerdelta/constitutionalmatters/impeachment/bayelsa_alamieseigha.html (accessed on August 23, 2016).

[71] *Inakoju vs. Adeleke* (2007) LPELR 10354.

> *The constitution says within 3 months so if you finish it within 1 month 7 days so be it. If those alleging the offence close their case within one day, do you have to wait for 3 months? They have only one witness, they close their case. The Governor or Deputy Governor also has one witness or has no witness, he is relying on evidence called by the prosecution and everything is concluded written address is concluded within one week. Do you have to wait until 3 months?*[72]

This argument cannot hold even a drop of water in that it had been established by the Supreme Court[73] that the panel refused to grant the office holder more time to call his only two witnesses and to appear in person to defend himself. This had also been corroborated by Respondent 13 who was one of the lawyers who appeared before the said panel to defend the office holder.[74] In fact, a Justice of the Supreme Court, Oguntade JSC had provided an answer to this Respondent as to the three months given for investigation some ten years before when he said that "It is to ensure that a thorough investigation is carried out by the panel".[75]

The implication, therefore, of such investigations conducted hastily is that it erodes greatly the quality and integrity of the result which forms the basis for the removal of the office holder. This is because of the facts "that if investigations are hasty it would not produce the desired result; it would show a bias and also self-interest...", concluded a Respondent.[76] This is quite a common conclusion among the Respondents. For instance, it finds support in the words of Respondent 5 as follows:

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[72] Interview with Respondent 6 at QuaterHotel Hotel, Kaduna, Nigeria, on 15th August, 2017 at about 1116hrs.
[73] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 142-143
[74] Interview with Respondent 13 at his office on 28th August, 2017 at 1907hrs.
[75] *Inakoju vs. Adeleke* (2007) LPELR 10354.
[76] Interview with Respondent 15 conducted in his office on 13th July, 2017 around 1500hrs.

> *Yes, if you said that something has been given to be done within a certain period and then you rushed it may be within like 7 days you finish. There is no doubt, you know every tendency that there is no fairness in the entire procedure and so definitely when they are to investigate thoroughly it will be better but if they decide to rush as you rightly observed the period is very important and even the three months might not be enough.* ***So, there is this tendency that the quality or the result of the investigation may be faulty.***[77] (Bold for emphasis)

4.5.3 Bias in Investigation

The Supreme Court had identified bias as one of the irregularities in investiagation. It is also one of the reasons why it was common for the panel to conclude the investigations within very few days. It categorically stated that the "Panel made up its mind early in the day and merely worked towards the achievement of that mind".[78] Similarly, in the case of *Danladi vs. Dangiri*, the court concluded that:

> *From the undisputed facts of the case, the inevitable impression was 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 ...*[79]

Some of the Respondents interviewed for this research also support this view. For instance, the view of Respondent 3 is in line with the observation of the Supreme Court above and he asked rhetorically: "Do you even think that there were investigations in most cases of impeachments? I am telling you that the investigations were mere formalities. Even the members of the panel knew from day one that with or without their

[77] Interview with Respondent 11 conducted in his office on 8th August, 2017 around 16300hrs.
[78] Ibid.
[79] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135-136.

investigations the Governor must be impeached".[80] Another Respondent corroborated this reason. His words:

> *Because these people are in a hurry, they will not even wait for all the evidences to be heard. In fact, as far as they are concerned, they will be doing things quick, quick, quick, quick and you see justice that is carried out in such a quick manner most of the times you have finished impeachment only to come back and say ahhhhh we shouldn't have done this...*[81]

Not only the understanding of the aforesaid Respondents as captured above, the view of most of the Respondents is in line with the Supreme Court finding as to the reason behind such prevalent habit on the part of the investigation panel. The Supreme Court in the case of *Danladi vs. Dangiri* concluded that:

> *From the undisputed facts of the case, the inevitable impression was 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...*[82] *The rush to complete the assignment within one week or less of the 90 days allowed by law seems to suggest that the panel was being teleguided.*[83]

Lending his voice in support of the Supreme Court, a Respondent asserted that "In some cases investigations are taken within 2-3 days. So this is the type of investigation that they have already prearranged but not an honest and wholeheartedly investigated matter.

[80] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.
[81] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.
[82] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135-136.
[83] Ibd, 143.

It was just prearranged and so they wanted by hook or crook to nail down the person".[84]

According to Respondent 13:

> *Let me tell you in most cases investigations were not carried out at all. They are just playing the script of the Governor who wanted the Deputy removed or playing the script of the President who wanted the Governor removed like the case of Obasanjo and Dariye and Fayose. That is all. In fact, if you ask them any question, the questions we were asking them were not recorded. And you think these people will go free? God Almighty will not leave these people. Fortunately for us, the Supreme Court vindicated us and indicted all the members of the panel ... it is shameful and very very unfortunate.*[85]

Certainly, as asserted by Respondent 13 above, the Supreme Court condemned in strongest term the proceedings of the panel which it described as a "kangaroo panel" because "the harm they deliberately perpetrated in this matter is so serious" which "must be condemned by all right thinking persons and institutions".[86] The court went further to admonish that "persons appointed to this type of panel must take it as a sacred duty which they will give account not only to man but also to God, their Maker".[87] The description of such investigation panels as "kangaroo panel" by the Supreme Court in the case above had found a place in the dictionary of many lawyers and public affairs analysts in Nigeria. For instance, Respondent 10's expression is:

> *So where the legislature for whatever reason have come to the conclusion that they want to remove the chief executive, so all they need to do is to put up a kangaroo investigation panel and they are giving three months so within three days submit their report and by the*

[84] Interview with Respondent 11 conducted in his office in Zaria, Nigeria on 8th August, 2017 around 16300hrs.
[85] Interview with Respondent 13 at his office on 28th August, 2017 at 1907hrs.
[86] *Danladi vs. Dangiri* 142-143.
[87] Ibid.

fourth day the Assembly can sit and make a vote of two-third. And then of course the president goes.[88]

The fact that the members of the panel have already made up their mind about the guilt of the office holder under investigation makes it easier to prove the ground of impeachment. One of the Respondents stated thus:

> *What I think may be the reason is that in most cases most of these grounds are predetermined and therefore those who frame the charges of the ground they have already made up their mind and therefore they can easily said that it has been proved according to their satisfaction. But otherwise definitely when you have a very weighty allegation against somebody and it involves some kind of complicated financial misconduct is not easy to easily prove it. But if they have already framed their mind that is my own understanding (sic). It is because those who frame the charges have already determined what they want and as far as they are concerned whatever you said they have already found the evidence to support the allegation.*[89]

This view found support from another Respondent who, in another breath, asserted that:

> *Because the law has made it very easy for the legislators to just sit down and draw up some fake charges, arrange everything, then they have already made up their mind. So, based on that they are just waiting for the panel to be constituted... They will just constitute a panel consisting of people that are their cronies, so those people will only find the man guilty. So it is too easy.*[90]

The response gotten from Respondent 3 is not so dissimilar from the above as he also viewed it from the same perspective. His words:

> *What do you expect when investigations are not carried out or are only carried out partially? Or when members of the panel had something in their minds as to the result of the investigation? In other words, all these revolve around one or two things. First, the members*

[88] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.
[89] Ibid.
[90] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.

> *of the panel knew that or have already concluded that the office holder is guilty of the charges against him even before the commencement of the investigation. And secondly, no good investigation had been carried out or the office holder was not even allowed to appear to defend himself. In such circumstances, is it not easy to say that all the allegations have been proved? This had always been the trend of investigations of impeachment allegations in Nigeria.*[91]

In other words, this is the cosequences of the rush. How could the proof be difficult when even the investigation itself was conducted in a rush? Thus, this is the belief of Respondent 6 when he argued:

> *Politicians are always in a hurry and time matters especially when it comes to impeachment offences because in that case the atmosphere is charged; the legislatures are ready to do what they do. That is why in Oyo they had to go to a hotel to sit and the other things that is why you see 18 members instead of 25 removing a Governor. So it's highly charged atmosphere.*[92]

Respondent 2 saw it from a constitutional and legal perspective. To him, the search light should be beamed towards the provisions of the constitution and the Rules which empower the panel and guide it in the investigation. He stated that:

> *This would revolve round issues of standard of proof set out to guide the panel. Although I may not precisely remember what the constitution says about proof and I have not seen any of the Rules which give them powers of the investigations, but I want to believe that something may be faulty from that angle. Otherwise, how comes every allegations no matter how complex have been found proved within short time before the panel?*[93]

[91] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.
[92] Interview with Respondent 6 at QuarterHouse Hotel, Kaduna on 15th August, 2017 about 1116hrs.
[93] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.

This poser from the above Respondent may find an answer from the report of the investigation panel against Governor D.S.P. Alamieyeseigha in which it acknowledged the fact that some of the allegations were so complex that even the three months provided by the constitution would not be enough to investigate and prove them. Respondent 2 corroborated the view as expressed by Respondent 3 above and he further asserted that:

> *I think this may not be unconnected with the standard of proof that guides the panel. The issue of proof is a very serious requirement in any fact finding mission. So it may be that the panel usually sets a low standard for proof If this is the case, the proof would always be easy and this is not good. It means that public office holders could be impeached on the basis of weak evidence which will not augur well for the country and our democracy.*[94]

All the aforesaid issues point to the fact that the members of the panel compromise not only the investigations but the entire proceedings due largely to the politics involved in the investigation in particular and the impeachment in general. This was the conclusion reached by Respondent 9. His words:

> *...the panels of investigators themselves are always compromised, because they are politicians and because there are always looking for political gain. Let me give an example, between 2002 and 2006 this is always our typical and best examples scenario, you have proliferation of impeachment of Governors/ Deputy Governors simply because a President met a Governor of a state and told him that you are not from my political party and I will not deal with any Governor that does not belong to my political party PDP so you must decamp to PDP or you must be impeached. And within some months the Governor was impeached. That is politics for you. So this is the problem.*[95]

[94] Interview with Respondent 2 at his office on 9th August, 2017, at about 1450hrs.
[95] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.

The problems as pointed out above may not be unconnected to the fact that the constitution does not recognize as members of the investigation panel persons with legal training. This is the view of many Respondents. For instance, Respondent 3 explained:

> *Lawyers have an important role to play here also. Fair hearing is a constitutional requirement and lawyers are trained in the art of fair hearing. In fact, they are taught when and how fair hearing could be afforded to a litigant. So, if you want a panel to give fair hearing to all the parties involved in the investigation it will be better to have lawyers among the members of the panel.*[96]

Respondent 8 further stressed this in a clear language as follows:

> *This is also going to be very difficult for none lawyers to observe fair hearing in the sense that it requires legal training to determine or to give fair hearing. Of course, none lawyers can but if you really want fair hearing to be observed the panel has to be handled by lawyers as members because they really know what it means to give fair hearing and what it requires to give fair hearing.*[97]

4.6 Legal Effect of Proof on the Grounds for Impeachment

After the conclusion of the investigation, the report of the panel should indicate whether the grounds of impeachment as alleged by the House have been proved or not. If the report of the investigation concludes that the allegations have not been proved, that puts a halt to the entire impeachment proceedings. It serves as a "discharge and acquittal" of the office holder as far as those allegations are concerned. But if the report suggests that the allegations have been proved; it will be the basis for the legislative house to remove the office holder. The removal of the office holder is the effect of the investigation and proof of those grounds of impeachment.

[96] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.
[97] Interview with Respondent 8 at his house on 20th September, 2017 at 1200hrs.

However, the report cannot form the basis for prosecution of the office holder before a competent court of law. To put it differently, where the grounds for impeachment constitute an offence under the laws of Nigeria, the fact that the allegations containing the ingredients of the offence have been proved before the panel cannot be the basis for the conviction of the office holder. It cannot also subject him to any criminal liability as if they were proved before a competent court of law. To buttress this point, it suffices to cite few instances here. In *PDP vs. APC*,[98] the Supreme Court stated that the only effect of findings of investigation panel is that the allegations against the Governor have been proved or not but not to "find him guilty of the allegations of gross misconduct".[99] The court went further to put it more vividly when Akh'as JSC stated:

> *...If the framers of the constitution intended to imbue the investigation panel, appointed by the Chief Judge of a state in accordance with the provisions of section 188(5) to investigate the altegation against the Governor or Deputy Governor, with powers to find him guilty of the criminal offence or breach of the code of conduct and convict him accordingty, there would be no need to donate such powers to a court of law or Code of Conduct tribunal whose decision are subject to appeal. The panel can only find that the allegations have been proved ...As clearly stated in section 182(1) (e) of the constitution, and the various judicial pronouncements regarding findings of a person guilty of an offence or being convicted and sentenced, it is only a court of law that can convict and sentence a person while the Code of Conduct Tribunat can find the person guilty of breach of the code of conduct.*[100]

It is discernible from the above that it is only the court of law which has the powers to convict and sentence the office holder. In fact, to consider a person guilty of any criminal act which was found proved before the investigation panel "would certainly

[98] *All progressive Congress vs. Peoples Democratic Party* (supra) 14.
[99] *Ibid*, 14.
[100] Ibid, 18.

amount to usurpation of the judicial function and power by the Legislature whose function is to legislate".[101]

Apart from the reason that only a court of law, not investigation panel, has the power to pronounce a person guilty as pointed out in the above judgment; another reason is that the decision of the panel, unlike that of a court of law, is not subject to appeal. This is because if the office holder were aggrieved by the decision of the panel in declaring him guilty, no court of law would have jurisdiction to entertain an appeal. Thus, the Supreme Court, per Okoro JSC, explained this reasoning in the following words:

> *It must be noted that a judicial commission of inquiry or an administrative panel is not the same thing as a court of law or its equivalent. The hierarchy of courts in this country makes it possible for a person wrongly convicted to appeal his conviction even to the Supreme Court. This right is protected by the constitution. It is not with administrative tribunals.*[102]

In case the office holder is arraigned for prosecution for a crime which formed part of the allegation that resulted in his removal, the documents as well as the witnesses used as evidence in proving the allegations may as well be used to prove the offence.[103] This is, however, subject to the rules of relevance and admissibility of evidence as provided under the Nigerian Evidence Act, 2011.[104]

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[101] *Babajide Omoworare vs. Iyola Omisore* (2010) 3 NWLR (pt. 1087) 58 at 71.
[102] *All progressive Congress vs Peoples Democratic Party* (supra) 33.
[103] However, some Rules of procedure for investigation Panel prevent the use of such evidence for other purposes after the investigation. See for instance, Rule 4 of the Rules of Procedure for Investigation of the Deputy Governor of Taraba State, 2012. However, this is a rule made by a State House of Assembly while the Evidence Act, which is a national law and which governs the admissibility of evidence in Nigeria, does not prevent this.
[104] The Act is the main source of the law of evidence in Nigeria. It makes elaborate provisions on the relevance and admissibility of all evidence in any judicial proceedings in courts and tribunals in Nigeria.

4.7 Conclusion

Investigation and proof of the grounds for impeachment is a requirement under the constitution. It is a responsibility which is vested on a panel to be constituted by the Chief Justice of Nigeria or the Chief Judge of a state as the case may be. The investigation is required to be conducted, concluded and the report submitted within three months. In addition to this constitutional provision, the legislative house concerned is also required to make rules to guide the procedure of the panel. For instance, such rules have been made in the impeachment of the then Governor of Kaduna State, Abdulkadir Balarabe Musa and the Deputy Governor of Taraba state, Sani Danladi by the Kaduna and Taraba State Houses of Assembly respectively. However, a critical analysis of the investigations proceedings revealed that they were fraught with such problems as lack of opportunity for defense, rush and bias as exhibited in the judicial authorities. This constitutes the hallmark of the proceedings and the grounds why most of them were nullified by courts. In fact, an analysis of the duration of the investigations reveals that most of them were conducted within two to 12 days as shown in Table 4: 1 in this Chapter. This is accounted, as had been revealed, by the fact that members of the panel most at times made up their minds that the office holder was guilty so why "wasting their time?" What, therefore, are the legal effects of such investigation and the proof of the grounds of impeachment? The effect is that the proof of the investigation only results in the removal of the office holder concerned.

The foregoing discussions in this chapter, therefore, highlights the problems associated with the law and the conduct of investigation. One of the questions for this research which is what law governs the investigations and proof of the grounds for impeachment

and how is investigation conducted had been answered. The Chapter had achieved one of the research objectives which is examination of the constitutional and legal provisions governing the investigation and proof of grounds of impeachment. This was possible through the analysis of the facts about the investigation as revealed in the judicial authorities examined and the data generated from the interview conducted on the Respondents and other sources like the YouTube.

CHAPTER FIVE
CHALLENGES TO COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS FOR IMPEACHMENT: A SOCIO-LEGAL EXPLANATION

5.1 Introduction

Laws are made to guide human conducts as such compliance with them is not only important but absolutely necessary. The exercise of the powers of impeachment has been conspicuously taken care of by both the statutory and the case laws. This is because the constitution and, in some cases, some legislative rules make provision on the exercise of this power. Some judicial pronouncements have been made on the exercise of the power in the cases in which the exercise of the power had been challenged from the High Court to the Supreme Court. The effect of this is that the exercise of the power of impeachment had been constitutionally, statutorily and judicially provided for. Therefore, any failure to strictly observe these provisions will invariably render the exercise futile. This is more so as the compliance is expected from the legislative arm of the government which has the responsibility to make law. Thus, reiterating the importance of compliance with the constitutional requirements by the legislature in the exercise of their powers, including impeachment power, the Supreme Court remarked:

> *The Legislature is the custodian of a country's Constitution in the same way that the Executive is the custodian of (the policy of Government and its execution) and also in the same way that the Judiciary is the custodian of the construction or interpretation of the Constitution. One major role of a custodian is to keep under lock and key the properly under him so that it is not desecrated or abused. The legislature is*

> *expected to pet the provisions of the constitutions like the way the mother pet her day old baby. The legislature is expected to abide by the provision of the constitution like the way the clergyman abide by the bible and the imam abide by the Koran. Also, when the legislature, the custodian, is responsible for the desecration and abuse of the provision of the constitution in terms of patent violation and breach, society and its people are the victim and the sufferers ...*[1]

Despite the importance of compliance with the constitutional requirements for impeachment as pointed out earlier, noncompliance is rampant in Nigeria. In fact, there is so far no impeachment proceeding in which the issue of compliance with the constitutional requirements was not raised in Nigeria. In this light, it could be stated boldly that there is no constitutional requirement which had not been challenged for lack of compliance in court. Consequently, most impeachment proceedings have been faulted by the courts on this ground. Most of the instances of noncompliance with constitutional requirements for impeachment by the legislature and investigation panel have been discussed in Chapter Three[2] and Four[3] respectively. Therefore, only noncompliance with the requirements for quorum will be dicussed here. There may be socio-legal explanation for this anomaly. In this chapter, the legal and social issues and challenges which could be attributed to the lack of compliance will be identified and analyzed with a view to finding a possible solution which will make the exercise better.

5.2 Noncompliance with the Quorum of Legislative House

Quorum is the number of persons who must be present for a valid deliberations or transactions of a particular business. The Nigerian Supreme Court defined quorum to mean "The number of members who must be present in a deliberative body before

[1] *Inakoju vs. Adeleke* (2007) LPELR 10354.
[2] See items 3.5; 3.6; 3.7.
[3] See item 4.5.

business may be transacted. In both houses of congress, a quorum consists of a majority of those chosen and sworn. Such a number of the members of a body as are competent to transact business in the absence of the other members".[4] Generally, the constitution makes provision on what constitutes quorum for the purpose of conducting legislative businesses, impeachment proceedings inclusive. In this respect, the constitution provides for the quorum of the National Assembly as "The quorum of the Senate or of the House of Representatives shall be one-third of all the members on of the Legislative House concerned".[5] As for the state legislative body, the constitution similarly enacts: "The quorum of a House of Assembly shall be one-third of all the members of the House".[6] From the above provisions, the quorum or the number of the legislators required for the conduct of any legislative business is one-third of the total number of the legislators that make up the house. Therefore, legislative business cannot be legally conducted with less than the number. However, the constitution makes an exception to the requirement of one-third as quorum for legislative business. It provides that the Senate or House of Representatives or House of Assembly may act notwithstanding the existence of any vacancy in their membership.[7]

In specific places, the constitution provides specific quorum for different legislative businesses. In impeachment proceedings, for instance, the constitution provides for different quorum at different stages as follows:

[4] *Saraki vs. Federal Republic of Nigeria* (2016) LPELR-40013 (SC)
[5] Section 54(1) of the constitution.
[6] Ibid, section 96(1).
[7] *Ibid*, sections 61 and 102.

1. Notice of allegations of gross misconduct: the notice will only be valid if signed by not less than one-third of the members of the legislative house.[8]
2. In support of the motion for investigation: Votes of not less than two-third majority of all members of the legislative house are the required quorum; and
3. Adoption of the report of the investigation panel: two-third of the members of the legislative house is required.[9]

Above are the specific provisions for quorum in impeachment which override the general provisions of one-third as quorum for general legislative business.[10]

In the light of the foregoing, some impeachment proceedings were conducted contrary to the required provisions on quorum as discussed above. In *Inakoju vs. Adeleke*[11] for instance, the State House of Assembly consisted of about 32 members out of whom only 18 conducted and concluded the impeachment and removal of the Governor on the premise that they suspended the remaining 14 members. The Governor instituted this action seeking for a declaration that a faction of the House consisting of only 18 members could not validly conduct impeachment particularly as the required two-third members for the passage of resolution for investigation and removal of the Governor were not met. The impeachment and removal were declared null and void by both the Court of Appeal and the Supreme Court for being unconstitutional and illegal on the basis, among others, of noncompliance with the quorum.

[8] *Ibid*, sections 143(2) and 188(2).
[9] *Ibid*, sections 143 (4) (9) and 188(4) (9)
[10] *Dapialong & Ors vs. Dariye & Ors* (2007) LPELR-SC.39/2007
[11] (2007) LPELR 10354

In the same vein, the impeachment of Governor Joshua Dariye of Plateau State was not much different from the above in terms of noncompliance with the required quorum. The facts of the case were that the House of Assembly consisted of 24 members. In July, 2006, 14 out of the 24 members, including the Speaker and Deputy Speaker, defected from the political party under whose platform they were all elected to another political party, Advance Congress of Democrats. As a result of this development, the remaining 10 members considered that the 14 members who defected to another party have vacated their seats by operation of law. The remaining 10 members commenced impeachment proceedings against the Governor after they requested the Independent National Electoral Commission to conduct bye-election in order to fill the vacant seats of the 14 members. Before the conduct of the bye-election, the remaining 10 members had concluded the impeachment proceedings against the Governor and consequently removed him. He went to court to challenge his impeachment and removal on the basis, among others, of lack of compliance with the requirement of quorum. He based his arguments on the facts that the 10 members of the House consisting of 24 members could not meet the required quorum of two-third. In upholding the decision of the Court of Appeal which vitiated the impeachment because the required quorum of the House of Assembly was not met, the Supreme Court per Walter Samuel Onnoghen JSC stated:

> *I have limited my consideration of the appeal to the question as to whether section 188 of the 1999 constitution, particularly subsection (9) thereof, had been complied with in the removal or impeachment of the 1st respondent (the Governor) primarily because there was no dispute as to the fact that only eight out of the 24 making up "all the members" of the plateau state house of Assembly initiated and carried out the impeachment process of the 1st respondent. So, on that point alone, which is a constitutional requirement; it is clear that the Court of Appeal was right in coming to the conclusion that the said*

impeachment was not in conformity with the constitutional provisions and consequently invalid.[12]

5.3 Identifying the Socio-Legal Issues and challenges to Compliance with Constitutional Requirements

5.3.1 Power of Determination of Gross Misconduct as a Challenge

The constitution vests in the legislature the power to determine what amounts to gross misconduct which is the ground for impeachment. This power had been given different interpretations by the lawmakers which results to noncompliance with the constitutional requirements for impeachment. Thus, Respondent 14 stated that "Subsection (11) makes it abundantly clear that it is the House of Assembly that decides whether or not a conduct is gross misconduct to warrant the removal of a Governor or Deputy Governor".[13] Reiterating the prism from which the lawmakers view the aforesaid provision in relation to their powers in the determination of gross misconduct, Respondent 9 asserted:

> *... what the constitution did under section 188 and 143 provided for ground of impeachment but did not define what gross misconduct means. That is where we have the problem. So which means determining what constitute gross misconduct becomes purely a political decision of the lawmakers and it therefore gives extensive power on the legislature to decide what constitute gross misconduct as a ground for impeaching the president or any of the chief executive at the federal or state level.*[14]

The view that the above provision gives "extensive power on the legislature to decide what constitutes gross misconduct" as stated by Respondent 9 above is what carries

[12] *Dapialong & Ors vs. Dariye & Ors* (2007) LPELR-SC.39/2007.
[13] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.
[14] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.

them away to hold the belief that whatever they consider as gross misconduct from the office holders becomes so. Respondent 10 went to the extreme and laughable conclusion when he said that:

> *... the problem is that it has to do with the constitution. Because the constitution says somebody could be removed from the office for gross misconduct and went to define what gross misconduct means by saying that whatever in the opinion of the legislature. So whatever the legislature feels is gross misconduct is gross misconduct* ***including if they don't like the face of the chief executive or they don't want the way he smiles or even he laughs.***[15] (Bold for emphasis)

This means, as Respondent 6 added that if "they feel you are not smiling at them and they feel that is an impeachable offence, so be it".[16] He took the power to a stretch beyond imagination when he further stressed that:

> *... If they said that a Governor that is a Muslim they feel he should marry four wives and he has one wife and they said "Oga Governor why not take second or third wife" and he says "am not going to do it" and they think that is an impeachable offence, so be it. Because the constitution gave them the power (sic). So it's a subjective this thing. Yes.*[17]

In this light, many Respondents have expressed the need for divesting the legislature of this unchecked power by clearly enumerating the grounds for impeachment. For instance, Respondent 10 stated that "... the constitution should try to give a proper definition or should provide a guide on the issues rather should create impeachable

[15] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.
[16] Interview with Respondent 6 at QuaterHotel Hotel, Kaduna, Nigeria, on 15th August, 2017 at about 1116hrs.
[17] Interview with Respondent 6 at QuaterHotel Hotel, Kaduna, Nigeria, on 15th August, 2017 at about 1116hrs.

offences but it should not be left to whims and caprices of the legislature".[18] Another Respondent stressed "There is a need for a specific definition within the constitutional framework or any other legislation or any other regulations to define what amounts to misconduct than to leave it open..."[19] To Respondent 9, the provisions of the constitution which empower the lawmakers to determine what amounts to gross misconduct had turned them to be "unruly horses".[20] The implication of the description of the lawmakers as "unruly horses" by Respondent 9 is that they become uncontrollable as "unruly horse" cannot be controlled to abide by instructions from its rider.[21] This finds support in the dictum of Burrough J. in the case of *Richardson vs. Mellish*[22] where he used the expression to describe public policy. He stated thus "public policy is a very unruly horse, and when you get astride, you never know where it will carry you".[23] Furthermore, this had been viewed as a challenge to compliance with the requirements for impeachment.

> *Well when the constitution fails under section 188 and 143 to define what gross misconduct is, why should the lawmakers waste time in determining for themselves (sic) what is a gross misconduct? And that is why they gave flimsy excuses for noncompliance.*[24]

Similarly, while expressing his view on the power of the legislature to determine what amounts to gross misconduct in impeachment proceedings, a Respondent concluded that

[18] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.
[19] Interview with Respondent 11 conducted in his office on 8th August, 2017 around 16300hrs.
[20] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.
[21] This expression was used to describe public policy by Burrough J. in the case of Richardson vs. Mellish. He said "public policy is a very unruly horse, and when you get astride, you never know where it will carry you".
[22] (1824) 130 ER 294.
[23] Ibid, 299-300.
[24] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.

the law has given the legislature so much power which could affect compliance.[25] Thus, Respondent 2 asserted in this direction:

> *To me, there is problem with this provision. This is because to allow the legislature to decide on whatever they feel like to be misconduct on the basis of which they could impeach is liable to abuse. The legislators could not be vested with such powers and expect things to work well.*[26]

5.3.2 The Notion of Political Question as a Challenge to Compliance

The choice of the phrase "the notion of political question" as the title above is informed by the fact that the Nigerian courts have come to jettison their earlier interpretation of impeachment as a political question.[27] However, the relics of the interpretation still leave a wrong impression that it is still a political question. For instance, while justifying the noncompliance with constitutional requirements for impeachment, Respondent 6 asserted that "You see. Impeachment is a political weapon whether we like it or not because the person standing trial is a politician, a political office holder".[28] In this light, it is apt to briefly point out what political question entails at this juncture. Political question simply means an issue over which jurisdiction is conferred on the other organs of the government by the constitution or it could be so implied from the doctrine of separation of powers.[29] To put it in other words, it is a doctrine which attributes final determination of an issue, omission or commission to the political department of the

[25] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.
[26] Interview with Respondent 2 at his office on 9th August, 2017, at about 1450hrs.
[27] The meaning of political question and how it constituted a constitutional limitation to judicial review of impeachment is provided under 6.6.2 in Chapter Six of this Thesis.
[28] Interview with Respondent 6 at QuaterHotel Hotel, Kaduna, Nigeria, on 15th August, 2017 at about 1116hrs.
[29] Oba Popoola, "The Courts and the Democratic Process in Nigeria: An Appraisal of the application of some American Judicial Doctrines" in Ajibade Bello (ed) *Law, Democratic Governance and Justice Administration in Nigeria*, (Ibadan: Life Gate Publishing Co. Ltd., 2009) 275.

government and political party as enshrined under the constitution and the system of government in Nigeria.[30] Therefore, in the determination of what question is regarded as political, the attribution of "finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations".[31] In Nigeria, the constitution was interpreted to mean that the acts of legislature in impeachment proceedings is a political question in that their determination is final as it cannot be questioned in any court.[32] For instance, the Court in *Adeleke vs. Oyo State House of Assembly*[33] held that:

> *Impeachment and related proceedings are purely political matters over which this court cannot intervene. The action is not justifiable ... it is not part of the duty of the court to forage into areas that ought to vest either directly or impliedly in the legislature such as the issue of impeachment which is a matter that comes within the purely internal affairs of the House of Assembly.*[34]

Similarly, in *Enyi Abaribe vs. The Speaker, Abia State House of Assembly,*[35] the Court of Appeal, while affirming the decision of the trial Abia State High Court which refused to review the impeachment of the appellant, said categorically:

> *... In so far as it concerns the issue of impeachment, it is a political matter... The court should not, however, attempt to assume for itself power it is never given by the constitution to brazenly enter into the*

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[30] *Onuoha vs. Okafor* (1983) NSCC 494. See also the case of *Attorney General of Eastern Nigeria vs. Attorney General of the Federation* (1964) All NLR 218;
[31] Bakerv. Carr, 369 U.S. 186, 210 (1962)
[32] See the cases of *Balarabe Musa vs. Auta Hamza* (1982) 3 NCLR 439; *Balarabe Musa vs. Speaker, Kaduna State House of Assembly & Anorther* (1982) 3 NCLR 450; *Abaribe vs. Speaker, Abia State House of Assembly* (2002) 14 NWLR (788) 466.
[33] (2006) 11 NWLR (pt. 990) 136.
[34] See the ruling of Ige J. of the High Court of Oyo State in *Adeleke vs. Oyo state house of Assembly* delivered on 28th December, 2005.
[35] (2002) 14 NWLR (pt. 788) 466.

> *miasma of the political cauldron and have itself bloodied and thereby losing respect in its quest to play the legendary Don Quixote De La Manche.*[36]

The practical effect of this interpretation is that it had already created an impression that impeachment proceeding is exclusively a legislative business quite beyond the jurisdiction of the court. It had been relied upon by stakeholders in impeachment proceedings, particularly the members of the legislative houses and investigation panel, to act contrary to the provisions of the constitution. Thus, for instance, in refusing to obey a lawful court order compelling personal service of impeachment notice on a Governor under impeachment, the Adamawa State House of Assembly, thorough its Speaker said:

> *The issue of impeachment is constitutional responsibility of the lawmakers and the House of Assembly will not allow the judiciary to intervene in it because there is no going back over the impeachment exercise which the court lacks the constitutional power to intervene.*[37]

This is the impression some of the lawmakers and members of the investigation panel do have as far as impeachment proceedings are concerned. Although the Speaker of the House of Assembly did not make any reference to the ouster clause as the basis for the decision in the quotation above, one is right to conclude that he impliedly based the argument on it. This is because it is a general misconception that impeachment is a political question which a court of law cannot interfere with especially during its pendency. In the same vein, a renowned Adamawa-based politician, Dr. Umar Ardo;

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[36] *Ibid*, at 478-79.

[37] "Nyako: "No Court Can Stop Us- Adamawa Lawmakers", *African Spotlight Newspaper*, June 30, 2014, available at africanspotlight.com (accessed on February 12, 2017).

when asked about the alleged violations of some constitutional provisions and disrespect for court order in the impeachment of the state Governor said:

> *If you look at section 188(10) it stated very clearly that in the proceedings and determination of the panel or the proceedings and determination of the house of Assembly or any matter relating to it in whatsoever way that no court can determine it or question it. So, the things are very clear. They are unequivocal and they don't need you to have a legal mind to interpret. So, the House did not violate any court order.*[38]

This provision "would appear to have given a carte blanche to members of the Legislature to behave as they please when it comes to question of impeachment" as the Court of Appeal rightly put it in the case of *Hon. Adedotun Akinmade & Ors vs. Hon. Donaldson Abioudun Ajayi & Ors.*[39] In view of the finality of determination of the legislature in impeachment proceedings, Respondent 14 concluded that the law has given the legislature so much power which could affect compliance.[40] In fact, this had contributed immensely to the challenges to compliance by the legislature as pointed out earlier.

Another issue which is closely related to ouster clause which also accounts for noncompliance with constitutional requirement is the immunity and privileges accorded to the legislature. For instance, a legislator cannot be questioned on anything he does or says in the course of deliberations during the proceedings of the legislative house. With this provision at the back of their minds, the lawmakers tend to exercise the power of

[38] Available at www.channelstvnews.com (accessed on October 12, 2017)
[39] (2008) LPELR-CA/I/273/2006.
[40] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.

impeachment without recourse to constitutionality as any challenge on them may meet a legal brick wall due to this privilege/immunity. For instance, this privilege was sought to be relied upon by the members of the Anambra State House of Assembly when the impeachment of Governor Peter Obi of the State was challenged. Rejecting this argument, the Court of Appeal said:

> *Consequently the provisions of Sections 3, 23 and 30 of the Legislative Houses (Powers and privileges) Act are inconsistent with Section 4(8) of the 1999 Constitution as well as Sections 6(2), (3) and (6)(a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria which vests judicial powers in Anambra State High Court and other Courts over all persons and authority including the Appellants. Therefore by virtue of Section 1(3) of the 1999 constitution, the Legislative Houses (powers and Privileges) Act is null and void being inconsistent with 1999 Constitution of the Federal Republic of Nigeria.*[41]

Describing how such provisions could pose a challenge to compliance, Respondent 10 said that:

> *Now, there are certain people in some quarters who believe that all the processes of section 143 including also the report of the proceedings should not be entertained by the court. Now for those who take this view, most especially also the legislature themselves. So they will go and breach the law, bypass the law and then of course do as they like.*[42]

The Anambra State lawmakers had violated the constitution with impunity in the impeachment of the State Governor thinking that they could hide under the façade of this immunity/privilege until they were exposed by the court. Therefore, the existence of this provision lays the foundation for noncompliance with the constitution.

[41] *Balonwu vs Obi* (2007) LPELR-CA/E/3/2007.
[42] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.

5.3.3 Lack of Access to Public Officers for Personal Service

There have been several cases of noncompliance with the requirement of personal service of the notice of allegations of gross misconduct against the public officers. Lack of access to the office holders accounts for the noncompliance in most cases. In Nigeria, it is not easy to meet the office holders considering their caliber in the society. In fact, those who are responsible for effecting the service may not even know the whereabouts of the office holders either because they are deliberately evading such service or due to the secretive nature of their engagements. For instance, officials of the Adamawa State House of Assembly who went to personally serve the State Governor with the notice of allegations of impeachment against him were frustrated for their inability to meet him at his office and official residence. The Clark of the House of Assembly, Francis Richard Gbansenso, specifically testified under oath that:

> *I personally at about 3pm along with some other senior secretariat staff of the assembly went to the government house situate at Dougirei, Jimeta-Yola with the aim of serving the notice concerning the governor of Adamawa State on him but he was not at the Government House wherefore, along with my other staff proceeded to his personal residence at Grant Terrace, Jimeta-Yola, but he was also not there as the place was under lock and key.*
> *That from the Governor's personal residence, I along with the other senior officials with me moved to the office of the Deputy Governor situated at Kashim Ibrahim Road, Jimeta-Yola with copy of the notice concerning him and with the intention of serving him but the whole premises was under lock and key.*
> *That early on 16/06/14/ again set out with the director legal services to the Assembly with the intention of serving them.*
> *That we went to both their offices and personal residence at the various addresses indicated in paragraph 8 above but the situation remained the same as they could not be located.*[43]

[43] See the affidavit sworn to on 23rd June, 2014, before the High Court of Adamawa State, Yola Judicial Division.

The facts as stated in the affidavit quoted above were confirmed by even the Director of Press and Public Affairs to the Governor, Ahmed Sajo. He explained, in an interview with newsmen, that the Governor was in Abuja, the Capital Territory, attending a meeting and could not come back to the State Capital until after seven days.[44] This had been considered as a deliberate ploy on the part of the Governor to ensure that the panel could not meet this requirement. This had been pointed out by a writer who said that "Nyako had already tried some tactics to ward off the impeachment. He travelled out of the State to avoid personal service of the charges".[45] In fact, the Governor succeeded in this ploy in that they could not serve him personally and his impeachment was invalidated on this ground. Thus, commenting on the order issued by a court that the Governor should be personally served and the failure of the House of Assembly to effect the service, Dr. Umar Ardo said that "This is an impossible order because he is a person who is surrounded by armed security men. You can see him only if he wants to see you".[46] This shows the difficulty in effecting personal service on the office holders especially during impeachment proceedings.

5.3.4 Impossibility of Accessing Legislative House/Chamber

In Nigeria, it is not unusual to prevent lawmakers from having access to the legislative chambers when some important political issues are being considered. For instance, the former Speaker of the House of Representatives, Hon. Aminu Waziri Tambuwal, was

[44] Channels TV news, available at www.channelstvnews.com (accessed on October 10, 2017).
[45] Mahmud Jega "Impeachment is a Dangerous Game" *Daily Trust Newspaper*, July 7, 2014, available at https//www.dailytrust.com.ng/news/Monday-column/impeachment-is-a-dangerous-game50606.html (accessed on 4th November, 2017).
[46] Channels TV news, available at www.channelstvnews.com (accessed on October 14, 2017).

once prevented from gaining access to the legislative chambers of which he was the figure head. He, and his co-lawmakers, had to forcefully gain access into the chambers by jumping over the barricaded fence.[47] See the pictures below:

[47] In other cases the chaotic and violent nature of impeachment proceedings led to the closure of the legislative chambers. For instance, the attempt to change the leadership of the Rivers state House of Assembly as a prelude to the impeachment of the State Governor led to bloody clashes among members of the state House of Assembly

Figure 5:1 Speaker Jumping over the fence to the National Assembly
Source: Channels TV available at www.channelstv.com/ng (accessed on 12/05/2017).

Figure 5:2 Members of the House of Representatives Jumping the Gate of the Assembly Complex
Source: Western Post Report (2015) "Impeachment: Fayose's Supporters Besiege Assembly", available at http://westernpostnigeria.com/fayoses-impeachment-supporters-invade-assembly-over-threat-in-ekiti-state (accessed on 01/10/2017).

Similar incidences occurred during some impeachment proceedings. Thus, when impeachment proceedings were initiated against Governor Tanko Al-makura of Nasarawa State, the lawmakers had to move from the legislative chambers in Lafia, the State Capital; to Karu, a different place, to sit as a House for their safety following the pocket of violence which erupted as a result of the impeachment proceedings. This was based on the fact that "pro-Al-Makura protesters had on Wednesday stormed the Assembly complex around 8am and chased out the clerk, Mr. Ego Mai-Keffi, and other

staffers. The protesters later chased a legislative aide to Akurba, few kilometers away from Lafia, and set his car on fire".[48] Thus, complaining of inaccessibility of the legislative chambers during the impeachment proceedings in Oyo State, the Speaker of the State House of Assembly stated "due to security breaches by some hoodlums at the Parliament Buildings yesterday the 22nd December, 2005, there was no any legislative business ..."[49]

In Ekiti State, a similar scenario played out during the impeachment of the State Governor, Ayodele Fayose. The supporters of the State Governor and thugs believed to be hired by him invaded the House of Assembly and blocked the road leading to the House of Assembly complex so that no lawmaker could access the complex and continue the proceedings. All these were in a bid to stop any impeachment proceedings against him. It was reported that "the Governor's loyalists besieged the Assembly complex on Monday, April 20, 2015, and blocked the road leading to the complex so that no lawmaker could have access to it and continue the impeachment proceedings".[50] The picture below shows the road blockage.

[48] Musa Abdullahi Krishi (2014) "New Twist in Al-makura Impeachment Saga", available at https://www.dailytrust.com.ng/daily/politics/30627-new-twists-in-al-makura-impeachment-saga, (accessed on October 12, 2017).

[49] See the letter written by the Speaker of Oyo State House of Assembly, Hon. Muyiwa Inakoju to the Acting Chief Judge of the State.

[50] Western Post Report (2015) "Impeachment: Fayose's Supporters Besiege Assembly", available at http://westernpostnigeria.com/fayoses-impeachment-supporters-invade-assembly-over-threat-in-ekiti-state (accessed on 01/10/2017).

Figure 5:3 Road Leading to Ekiti House of Assembly Complex Blocked
Source: Western Post Report (2015) available at http://westernpostnigeria.com/fayoses-impeachment-supporters-invade-assembly-over-threat-in-ekiti-state (accessed on 01/10/2017).

Reacting to the disruption of the impeachment proceedings and blockage of the road leading to the legislative Assembly, the special adviser to the Governor, Lere Olayinka, impliedly corroborated the facts that the thugs were sponsored to disrupt the impeachment proceedings by the Governor facing the impeachment. He said: "... are they going to sit in Osun or Lagos state? Or are they going to gather themselves along Lagos-Ibadan Express Way and conduct the House business? Ayo Fayose cannot be impeached".[51] The reference to Osun or Lagos State here by the Governor's Special Adviser is because the places are far away from the legislative chambers. Such instances posed a serious challenge to the lawmakers to access the legislative chambers and conduct legislative business including impeachment. Consequently, compliance with constitutional requirement is jeopardized. This had found support from some of our Respondents. For instance, Respondent 3 stated:

> *The issue of blocking the lawmakers from gaining entry into the legislative chamber or house is also something worth considering. What happened was that after presenting the notice of allegations to the Speaker and the house adjourned to another day. On the day we*

[51] Channels TV news of 08/04/2015 available at www.channelstvnews.com (accessed on October 14, 2017).

> *were supposed to return and continue, we just saw some youths barricaded all roads leading to the assembly burning tyres and what have you. Every lawmaker had to turn back for fear of his life. You see, once you have started, there is time limit within which to do every step. You see, we have (sic) to go somewhere to continue the proceedings.*[52]

Responding on the issue, Respondent 4 queried "how do you want the lawmakers to do having been denied access to the chambers? He continued to buttress further:

> *The governor who did not want to be impeached by the lawmakers resorted to use political thugs with the implied conspiracy of the security apparatus at his disposal, to obstruct the lawmakers from the lawful exercise of their powers to impeach him. We are in trouble and if the issue is allowed to continue unchecked we all have to bear the consequences.*[53]

The aforesaid scenario as depicted by factual evidence and responses from some Respondents, constitute challenge that could account for noncompliance with the requirement that the venue for the exercise of impeachment powers is nowhere than the chambers of the Assembly concerned. This had, in fact, constituted the ground for the nullification of impeachment proceedings in some cases discussed in Chapter Three.[54]

5.3.5 Omissions from Third Party

There are some circumstances wherein the lawmakers were rendered helpless because the conditions precedents for compliance with the constitutional requirements were beyond their powers. In other words, some persons or authorities have to perform their constitutional responsibilities before the lawmakers could have the basis to comply with

[52] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.
[53] Interview with Respondent 4 at his residence on 7th July, 2017 at 1940hrs.
[54] See the for instance the cases of *Dariye vs. Dapialong; Inakoju vs. Adeleke; Danladi vs. Dangiri.*

constitutional requirement in the conduct of impeachment. For instance, vacancy may arise in the membership of the legislative house as a result of death, defection/carpet crossing of members to another political party, nullification of election or any other constitutional ground. This requires the Nigerian electoral body- Independent National Electoral Commission (INEC) to conduct a bye-election to fill such vacancies. Failure or omission on the part of INEC to conduct the bye-election may hinder the lawmakers in the exercise of impeachment power since the quorum required to conduct this legislative business may not be available. Hence, any attempt to initiate impeachment may not comply with the constitutional requirement due to the vacancy. This was the challenge faced by lawmakers during the impeachment proceedings of Joshua Dariye, the Governor of Plateau State. The Plateau State House of Assembly consisted of 24 members out of which 14 defected from the People Democratic Party to Action Congress. As a result of this development, the House requested the electoral body to conduct a fresh election to fill the vacancies. The electoral body did not conduct the bye-election up to the time the impeachment of the Governor was concluded. After he was removed, he went to court to challenge the conduct of the impeachment for lack of quorum. In voiding the impeachment proceedings on this ground, the Supreme Court, per Walter Samuel Onnoghen stated thus:

> *It is my view that until the vacancies created by the carpet crossing members are filled by the process of bye-election, the Plateau State House of Assembly can only transact such legislative duties that require the participation of less than two-third majority of all the members of that House, which duties definitely exclude impeachment proceedings.*[55]

[55] *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007.

In view of this, "... a bye-election should have been held to fill the said seats before any impeachment proceedings could validly be commenced and concluded..."[56] From the above scenario, it's glaring that the failure of the electoral body to conduct bye-election to fill the vacancies created in the membership of the House of Assembly constituted a great threat to compliance with constitutional requirement not only for impeachment proceedings but also other legislative business. If there was no omission from the electoral body, the noncompliance might not have arisen.

5.3.6 Conflict of Interest of the Lawmakers

The Nigerian legislators have created a niche for themselves in disobedience to the constitutional and legal provisions in the exercise of their legislative responsibilities due to conflict of interest and selfishness. Thus, a writer described their general attitude to legislative business thus:

> *They often throw overboard all the finest of legislative rules and procedures in the constitution and those established by them for the conduct of their own affairs... usually not about defending the interest of the people or disagreement on government policies but about personal selfish interests hence the appellation given to the legislative house in Nigeria is "Ghana Must Go Assembly" (this is used to describe the act of stuffing bribe money in a polythene bag popularly named "Ghana Must Go"). The money sharing mentality has often compromised commitment to one of their statutory functions of oversight of the activities of government.*[57]

Thus, scaling down the legislative attitude depicted above *vis-à-vis* the impeachment of the then Governor of Osun State, Chief Bisi Akande, it was stated that "the

[56] Ibid,
[57] Bolaji Omoyola and Olusola Ogunnubi (2016) "Subnational Legislature and democratic Consolidation in Nigeria's Fourth Republic: Lessons from Osun State House of Assembly" *Jounal of Social Sciences*, 12 no. 4, 164.

impeachment process was clearly arm twisting means of forcing government of Bisi Akande to do the bidding of the legislators".[58] Whereas impeachment is meant to protect the interest of the public,[59] the attitude of the legislature shows an aberration in that most impeachment proceedings were based on personal interest of the lawmakers. Certainly the above assertion had found factual support in many cases of impeachment across the country. For instance, a Respondent said:

> *Although I had wanted to avoid this question but it is important that I don't. Every impeachment will only succeed if the principal officers of the House fully cooperate. So the cooperation of the speaker is very vital particularly. What sometimes happens is that the Speakers are the direct beneficiaries of impeachment because when a Deputy Governor is impeached, for instance, the governor nominates another Deputy and in most cases he nominates the Speaker to replace the impeached Deputy Governor. Or he nominates someone at the instance of the Speaker in particular or the House in general. This makes the House to pursue the impeachment vigorously with a view to ensuring that it succeeds by all means.*[60]

Similarly, under oath, a witness told a court what the driving force of a particular impeachment was. He stated, "The said members are working to achieve the ambition of the 2nd defendant to become the acting Governor of Adamawa State".[61] The 2nd defendant being referred to above was the Speaker of the Adamawa State House of Assembly who, by law, was to become the acting Governor of the State after the removal of the Governor at the material time because the Deputy Governor was forced to resign from his office. In fact, the said Speaker actually became the acting Governor

[58] Ibid.
[59] Ponnle Solomon Lawson (2014) "Immunity Clause in Nigeria's 1999 Constitution: Its Implications on Executive Capacity", *American Journal of Social Science*, 26 no. 2, 133.
[60] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.
[61] See the affidavit sworn to by one Fatima Mohammed in support of the originating summons filed in the case of *Nyako vs Adamawa State House of Assembly & Ors* (2017) 6 NWLR (pt. 1562) 347at 375.

following the removal of the Governor and compulsory resignation of the Deputy Governor.[62] This explained the vigor and impunity with which the lawmakers conducted the impeachment. The witness continued in these words "the defendants are now fully determined to impeach the plaintiff without complying with the requirements of the Constitution of the Federal Republic of Nigeria, 1999 as amended".[63] The witness was vindicated because all he had said in his testimony had come to pass as established in the case of the impeachment of the Governor. A columnist described the impeachment in the following words "It was Speaker Fintiri's 'greed, malice, envy, revenge and inordinate ambition' that was driving the process".[64] In fact, the Speaker himself impliedly confirmed what the columnist said in bis address to newsmen after he became the acting Governor. He stated that "I have to say that I have brought back to my party the stolen mandate by the former Governor Nyako".[65] By this statement, he showed that he spearheaded the impeachment because he felt that the former Governor had taken away the mandate given to him as a member of the People Democratic Party in that he defected to another party, All Progressive Congress.

There are many more of such factual cases in which members of the legislature are the direct beneficiaries of the impeachment. In Bauchi State, the Speaker of the House, Babayo Garba Gamawa, became the Deputy Governor after the wrongful impeachment

[62] See *Ngilari vs Speaker Adamawa State House of Assembly & 5 Ors* suit no: FHC/CS/545/2014.
[63] See the affidavit sworn to by one Fatima Mohammed in support of the Originating Summons filed in the case of *Nyako vs Adamawa State House of Assembly & Ors* (2017) 6 NWLR (pt. 1562) 347at 375.
[64] Mahmud Jega "Impeachment is a Dangerous Game" Daily Trust Newspaper, July 7, 2014, available at https//www.dailytrust.com.ng/news/Monday-column/impeachment-is-a-dangerous-game50606.html (accessed on 4th November, 2017).
[65] See the address of the Acting Governor to newsmen as broadcast by Nigerian Television Authority on July 22, 2014, available at https://www.youtube.com/watch?v=fNYEsEOHCqI (accessed on November 17, 2017).

and removal of the Deputy Governor, Garba Mohammed Gadi on 13th November, 2009. The case of Taraba State was not much different because the Deputy Governor's unlawful impeachment paved way for the Speaker of the State House of Assembly, Hon. Garba Umar, to become the new Deputy Governor until he was ordered to vacate the seat by the Supreme Court. In fact, the list is endless as the same trend played out in the impeachment of Ayodele Fayose and Bioudun Olujimi as the Governor and Deputy Governor of Ekiti State respectively. The Speaker of the State House of Assembly, Hon. Friday Aderemi, who spearheaded the impeachment, was sworn in as the acting Governor on 16th October, 2006. In Bayelsa State, Governor D.S.P. Alamieyeseigha was removed and his Deputy, Goodluck Ebele Jonathan, was sworn in as the Governor while the Speaker of the State House of Assembly, Hon. Peremebowei Ebebi; became the Deputy Governor.

In view of these facts, Respondent 10 stated that the personal interest of the legislature usually outweighs the national interest.[66] This had further been confirmed by another Respondent when he asserted "one of the most important reasons why constitutional requirements cannot be complied with is because of personal aggression against the person to be impeached by those who want to impeach him".[67] He went further to explain what he meant by this "personal aggression" in the following words:

> *May be the Speaker will look into a situation whereby both Governor and Deputy Governor are removed he will now become the Governor or acting governor and therefore this is personal. It is not because actually he want serve in the interest of the state or nation but because*

[66] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.
[67] Interview with Respondent 11 conducted in his office in Zaria, Nigeria on 8th August, 2017 around 16300hrs.

of his personal gain out of it, and so in most cases when it is said that it is for personal interest.[68]

With such personal interest as the prime motive behind impeachment proceedings, due compliance with all the constitutional requirements for the exercise will be threatened. Consequently, it will be difficult for the legislature to comply with the constitutional requirements. As Respondent 4 had rightly put it "this selfish interest of the legislators will never allow them to strictly observe the provisions of the constitution especially when such provisions threatens (sic) to slow down the process".[69]

5.3.7 Corruption

First and foremost, it is better to point out what corruption generally entails and the context in which it is intended to be used here. There are various attempts by scholars to define or at least explain what corruption means. To United State Agency for International Development (USAID), corruption, broadly, means "the abuse of entrusted authority for private gain".[70] It is also "efforts to secure power, wealth through illegal means for private gain at public expense; or misusing public power for private benefit".[71] Some other scholars put it in different words to mean "efforts to secure wealth or power through illegal means-private gain at public expense; or a misuse of public power for private benefit".[72] It is also "The act of doing something with intent to

[68] Ibid.
[69] Interview with Respondent 4 on August I, 2017, at his residence around 1309.
[70] United State Agency for International Development (2005) "USAID Anti-corruption Strategy, Washington DC".
[71] Ogundiya I. S. (2010) "Corruption: The Base of Domestic Stability in Nigeria", *Current Research Journal of Social Science*, 2, no.4, 235.
[72] Lipset, S.M. and Lenz, G.M "Corruptions, Culture, and Markets" in: Lawrence, E. Harrison and Samuel P. Huntington (eds.), In Culture Matter (New York: Basic Book, 2000). See also Odey, O.J. *Democracy,*

give some advantage inconsistent with official duty..."[73] From all the above postulations, it is discernible that corruption is any use or abuse of power or authority in order to get benefit of whatever nature. The benefit envisaged above could be in cash, kind or otherwise. In this light, corruption could take various dimensions one of which is bribery[74] which may involve financial benefit. This is the restrictive sense intended to be used for our discussion here.

Corruption had been a cankerworm that has eaten deep into the fabrics of the Nigerian society in that it permeates all sectors of human endeavors.[75] Corruption in the exercise of legislative business is a recurring decimal in Nigeria which earns the lawmakers the insulting name of **"legislooters"** for legislators and **"representathieves"** instead of representatives[76] because they see their business as "money sharing".[77] This is because they do not come to lead but to loot[78] and thus lawmaking became synonymous to money making.[79] Instances too numerous to mention abound where lawmakers were involved in the demand or actual collection of bribe for one favor or the other in the exercise of legislative business with the connivance of the Assembly leadership. Suffice

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Our Lofty Dreams and Crazy Ambitions (Enugu: Snap Press Ltd., 2002); Harsh, H.C. (1993) "Accumulators and Democrats: Challenging State Corruption", *African Journal of Modern African Studies*, 31 no.134; Tolu Lawal and Abegunde Oladunjoye, (2012) "Local Government, Corruption and Democracy in Nigeria" *Journal of Sustainable Development in Africa*, 12 no. 5, 229.

[73] B. A. Garner, *Black's Law Dictionary*(Thomson West, 1999) 371.

[74] See Section 2 of the Economic and Financial Crime Commission Act which defines corruption to include bribery and other related offences.

[75] For instance, it had been reported that Nigeria had lost about 11 trillion Naira (equivalent to $36bn) to corruption from 1999 to 2017 in just one sector of the Nigerian economy which is electricity. See the report of Socio-Economic Rights and Accountability Project available at https/www.macfound.org/press/publications/reporting-corruption-nigerian-electricity-sector (accessed on November 12, 2017).

[76] Oluokun, Y and Desmond, U. "Crazy Cost of Running Nigeria" *The News*, June 27, 2011, 15.

[77] Suleiman, T (2011) "This House Has Failed" *Tell*, June 6, 2011, 22.

[78] Nmeribeh, M. (2010) "Nigeria is in a Mess", *The News Magazine*, 18-23.

[79] Mbah G. (2002) "Valley of Corruption", *Insider Weekly Magazine*, December, page 19.

it to state here that most of the leadership of the National and State Assembly had been changed due to corrupt practices from 1999-date.[80] This has greatly eroded the moral value of the lawmakers in the discharge of legislative business[81] including impeachment. In fact, this may not be unconnected to the antecedent of some of them who had been involved in one form of corruption or the other. The table below shows some of the lawmakers facing corruption-related or criminal charges in courts:

[80] Umaru Usman (2017) "Corruption and the legislative Function", *Journal of Economics and Finance*, 8 no. 1, 3-4.

[81] Joshua Segun (2014) "The Nigerian House of Representatives and Corruption, (1999-2011)" *Mediterranean Journal of Social Sciences, 5 no. 2, 565.*

Table 5:1
Some lawmakers facing corruption-related or criminal charges

S/no.	Name ofLawmaker	Corruption Related Charges
1.	Senator David Mark	Court papers in London showed that in the early 2000s, He operated foreign accounts with six million pounds: three at the Northern Bank, Isle of Man, and one at the Allied Irish Bank, Jersey.
2.	Hon. Iorwase Hembe and Hon. Ifeanyi Azubuogu	The duo were accused by the former Director-General of the Security and Exchange Commission of demanding N39 million bribes and an additional N5 million, during the probe of the near collapse of capital market in 201 2.
3.	Senator Bukola Saraki	He was alleged to have violated Nigeria's Money Laundering laws as a result of the consistent stealing of public funds through his personal assistant, Abdul Adama and other staff who helped him in laundering the monies in bits.
4.	Senator Theodore Orji	The Senator was linked to the withdrawal of N5.6 billion in cash from Ahia State accounts in the Guarantee Trust Bank, against the regulation of the Central Bank.
5.	Senator Danjuma Goje	He was alleged to have stolen the sum of N52 billion Gombe State funds.
6.	Senator Goodhope Uzodimma	He allegedly transferred funds from the account of the National Maritime Authority to the former Head of State, General Abdulsalami Abubakar. He also collected N250 million mobilization fee, which he made a refund.
7.	Senator Adamu Aliero	He was alleged to have stolen N10.2 billion funds from Kebbi State when he was the Governor.
8.	Senator AbdulAzeez Murtala Nyako	He was accused of stealing, abuse of office and money laundering to the tune of N15 billion by the EFCC.
9.	Senator Ali N dume	Nigerian government had alleged that he has links with the insurgent group, Boko Haram, and that he furnished the sect with information that aided their operations in the country.
10.	Senator Stella Odua	Allegation of certificate forgery i.e. forged MBA and Ph.D certificates and was also indicted for corruption by the House ofRepresentatives when she approved the illegal purchase of two armored BMW cars for a whopping sum of N255 million.
11.	Senator Sam Egwu	He was accused of stealing billions of funds belonging to Ebonyi State when he was the Governor. He gave false declaration of asset.
12.	Senator Buruji Kashamu	He is wanted by the United States government for alleged drug related offences. Also the National Drug Law Enforcement Agency placed him under house arrest in an attempt to extradite him to the US.
13.	Senator Joshua Dariye	He was arrested by the Metropolitan Police on 20th January 2004 in London with over $9 million. While on bail, he escaped to Nigeria and has since not gone back to clear himself of the money laundering charges the British Government brought against him. On July 13, 2007, he was arraigned on a 23 count charge of money laundering and theft of billions of naira by the EFCC.
14.	Senator Abdullahi Adamu	He was arrested and arraigned by the EFCC in 2010 over allegation of udulent award of contracts and stealing of ublic funds es ted at N5billion.

Source: Politico Magazine, 29th June, 2015, pages 21-28

Many instances of corruption in the exercise of legislative power of impeachment had been established against Nigerian lawmakers. For instance, the then Speaker of the House of Representatives, Ghali umar Na'abba, accused the then President Olusegun Obasanjo of bribing lawmakers to impeach him. "The bundles of the money meant for the impeachment bribe was displayed on the floor of the House of Representative for Nigerians to see."[82] In fact, the author also saw them on the television. In another case, the then Governor of Kaduna State, Ahmed Mohammed Makarfi, also came under accusation of bribing the state lawmakers to the tune of #15m (equivalent to $49,170) to impeach the Speaker and Deputy Speaker of the State House of Assembly. The money was also displayed on the floor of the Assembly chambers as exhibit.[83] Senators had allegedly also collected #3m (equivalent to $9,836) each to drop impeachment proceedings against the then President Olusegun Obasanjo.[84] In fact, Senator Arthur Nzeribe confessed to have played a role in bribing the lawmakers to stop the impeachment.[85] It may be argued that this is what made the President to allege that "rogues and armed robbers were in the National and State Houses of Assembly".[86]

Several factual bases and responses from our Respondents point to the fact that corruption is one of the factors that account for challenge to compliance with constitutional requirement for impeachment. For instance, Respondent 13 said that "the

[82] Mbah G. (2002) "Valley of Corruption", *Insider Weekly Magazine*, 19.
[83] Umaru Usman (2017) "Corruption and the Legislative Function", *Journal of Economics and Finance*, 8 no. 1, 2.
[84] Mbah G. (2002) "Valley of Corruption", *Insider Weekly Magazine*, December, 19.
[85] Oyelowo Oyewo (2007) "Constitutionalism and the Oversight Functions of the Legislature in Nigeria", being a Paper presented at the African Network of Constitutional Law Conference for Fostering Constitutionalism in Africa held in Nairobi, Kenya in April, 2007, 20.
[86] Williams, D. "What Manner of Senate"? *The Politico Magazine*, May, 2016, 17-18.

moment somebody is corrupt, his eyes, his mind are blinded... quote me anywhere, none of the impeachments is not blinded by corruption"[87]

To Respondent 9, lack of compliance with constitutional requirement is also as a result of constitutional crises created by the constitution itself. "You don't empower unruly horses like lawmakers who are known to be greedy and corrupt themselves as the ones to remove chief executive on the basis of corruption or some maladministration. So, you know, it's a very dicey situation..."[88] Supporting Respondent 9 above, Respondent 10 expressed a similar view on the issue when he said:

> *Once maybe somebody from outside is powerful whether the President or some powerful political interest who could make certain promises to the members of the House and then this members of the House felt that they could be better off with those promises, then they will not even try to know or follow due process. They will be too eager to serve their political masters...*[89]

Reiterating the issue of benefits and promises which affect compliance in impeachment proceedings, Respondent 3 stated:

> *Look! I want to tell you authoritatively that corruption in impeachment proceedings is very prevalent. I am a living witness of the impeachment proceedings that are conducted in which each member of the assembly was given a plot of land at choice area in the state. We were also given brand new cars apart from some promises of other benefits and privileges. All these were done in order to ensure that we carry out impeachment proceedings to its "successful" conclusion. Now tell me, with all these benefits, who would care to follow any constitution?*[90]

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[87] Interview with Respondent 13 at his office on 28th August, 2017 at 1907hrs.
[88] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.
[89] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.
[90] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.

In some cases you will find out that the lawmakers do not even wait for such bribe or the promises of the bribe to come but they would also look for them impliedly or explicitly. Thus, Respondent 14 gave a clear picture of the scenario in his words:

> *They will always arrange for... in fact, they will use this constitutional provision to intimidate the executive to be releasing moneys to them and bribing them in the night... if they are hungry, they will just go and throw up impeachment then in the night the Governor will have to be sending people with "Ghana-Must-Go" bags of money to he settling them.*[91]

This made another Respondent to bare it all when he concluded that

> *Look so many people just don't want to tell you much about the corruption that always characterize the issue of impeachment in this country. Before most of the impeachments you see, there are material benefits for the lawmakers either from the governor who wanted to remove his deputy or from the presidency to remove a governor. Money is sometimes shared secretly and promises of other things like contracts, chairmanship or membership of "juicy committees" are sometimes made. These motivations make the legislators to he very active in the pursuit of the impeachment and to see that the Governor or Deputy Governor is removed. What do you think is the reason why most of the lawmakers don't bother with any rule of law in impeachment? Because so much water normally pass under the bridge. Simple! The legislators are contracted to do it and they do it irrespective of the way in which it is done in order to fulfill their own part of the contract. Period!*[92]

Reiterating the above situation as described by Respondent 3, another Respondent said that the lawmakers sometimes negotiated with their paymasters on the "price" to be paid to impeach the office holder. He buttressed this further with facts when he stated "this man put his phone on speaker they didn't know we were hearing. They were negotiating

[91] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.
[92] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.

the amount with the members, it is most unfortunate.."[93] This description was buttressed by Roy Chikwem when he said "It is apparent that these corrupt and unlawful legislators are more interested in mortgaging our democracy to the highest bidder willing to replace an impeached official".[94]

Thus, a Governor who refuses to wine and dance with the lawmakers may face the dire consequences of his refusal. Respondent 14 stated that "a Governor who refused to release enough money to them, or a Governor that choose to do the right thing, or a Governor that is refusing to give them contract, or Governor that refused to favor them in one way or the other", the lawmakers could just gang up to impeach him. [95]

The situation sometimes takes an unimaginable and dangerous dimension where threat of death is common. For instance, a Respondent who resisted the bribe of #50million Naira (equivalent to $164,000) in relation to the impeachment of a Deputy Governor recalled his dreadful experience. He stated "When the then Governor send #50 million Naira to me when I rejected it they send people to assassinate me. Yes it is as bad as that, quote me anywhere."[96]

Narrating his ordeal before the investigation panel and how corruption influenced their breach of the constitutional procedure, Respondent 13 stated that:

[93] Interview with Respondent 13 at his office on 28th August, 2017 at 1907hrs.
[94] Roy Chikwem (2009) "Broken Government: The Threshold of Constitutional Crisis in the Impeachment Process in Nigeria", available at http://nigeriaworld.com/articles/2009/feb/091.html (accessed on September 16, 2017).
[95] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.
[96] Interview with Respondent 13 at his office on 28th August, 2017 at 1907hrs.

I have always say (sic) so. Before they were inaugurated the day has been selected and bribed so they just come to play a script. In fact, in most cases they don't even record you, they don't appreciate what you are saying even when they knew because money have blinded them. They no longer listen."[97]

The issue of corruption to facilitate or avoid impeachment may also be found in some jurisdictions. In Kenya, for instance, the Governor ofKericho County, Paul Chepkwony, explained before the County Assembly that some members of the Assembly had demanded huge amount of money to save him from impeachment. His words "... very serious was the request that the value of the project about 30,000 Kenyan Shillings be diverted to the MCAs to save me from impeachment".[98] This is adumbrated by the Nigerian situation as rightly stated by Respondent 9 that "money meant for public service and provision of social welfare and project were used unnecessarily to actually settle lawmakers".[99]

Taking into account the view as expressed that "corruption erodes or lowers respect for constituted authorities",[100] how on earth wouldn't one expect the corruption as shown above to erode and lower respect for constitutional requirements? This, indeed, is an understatement. In this light, corruption affects compliance with the requirements for impeachment and consequently tarnishes the legitimacy of the proceedings.

[97] Interview with Respondent 13 at his office on 28th August, 2017 at 1907hrs.
[98] See the address of the Kericho County Governor, Paul Chepkwony, broadcast by Kenya Citizen TV on May 29, 2014 available at https://www.youtube.com/watch?v=juOwYqOsZXY (accessed on November 18, 2017).
[99] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.
[100] Ogboru, I. (2009) "Reflection on External Debt, Corruption and Nigerian Economy", (Jos University Press, Jos Ltd) 17.

5.3.8 External Influence/Pressures

The exercise of the powers of impeachment is a serious constitutional legislative responsibility. Therefore, it presupposes that the lawmakers should exercise it in good faith without fear or favor affection or ill will as the oath of office they subscribed to dictates. Any exercise of the powers of impeachment for a reason not recognized by the constitution is illegal. Lending credence to the need for good faith and have the interest of the country at heart by the legislature in the exercise of impeachment powers, the Supreme Court said that:

> *Impeachment proceedings provided by section 188 of the constitution is purely a legislative constitutional affair, and in exercising their powers, good faith must always be at the fore front of their considerations... legislative business especially for impeachment of a high official is a very serious matter that demands the highest standard from honorable members. Their legislative act should be seen at all times as in the best interest of the country...*[101]

However, this has not been the case with many impeachment proceedings as the lawmakers do not embark on it out of the sheer discharge of their constitutional responsibility but were influenced by some considerations. Such considerations hardly allowed them to observe the constitutional provisions guiding the exercise. Respondent 9 said in this respect:

> *From 2002-2006 we have had proliferation of impeachment processes simply because the lawmakers were greedy and corrupt and therefore they allowed themselves to be used by corrupt enrichment and largely sponsored impeachment process...So eventually most of the*

[101] *Danladi vs. Taraba State House of Assembly* (2015) 2 NWLR (pt. 1442) 103.

impeachment processes that we saw in the last 10 years were sponsored impeachment.[102]

The use of the term "sponsored impeachment" by the Respondent above shows that the lawmakers were influenced to carry out the impeachment by external forces. For instance, prior to the commencement of the impeachment proceedings against Governor Joshua Dariye of Plateau State, the lawmakers were arrested by the Nigerian anti-graft agency, the Economic and Financial Crimes Commission. They were taken and detained at the commission's office in Abuja for days. From there they were returned to the state capital upon which they drafted the notice of impeachment after which they were taken away again. They only came back the following day to announce the removal of the State Governor. In effect, they conducted the impeachment and removal in the custody of the anti-graft commission. This made the Governor, in challenging the impeachment, to request the court for a declaration that:

> *...the 2nd-7th defendants (members of the Plateau State House of Assembly) who had at all material times been arrested, captured and detained and/or held hostage by the EFCC and/or its servants, operatives or agents and forcefully brought to Jos from Abuja on each occasion and forced them to sit vie te armis on 05/10/06, 13/10/06 and 13/11/06 as the plateau state house of assembly never sat or acted willingly, independently or voluntarily but did so under grievous threats, intimidation, duress and coercion all of which have rendered their purported sittings and any decision or resolutions thereof absolutely null and void and of no legal effect whatsoever.*[103]

The court had accordingly made declaration as requested and the impeachment and the subsequent removal of the Governor was declared null and void for this, among other,

[102] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.
[103] *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007.

reasons. A similar scenario played out in Anambra State where the lawmakers were threatened by party leaders that whoever refused to support the impeachment of the State Governor would be prosecuted by the anti-graft agency, the EFCC. In fact, a lawmaker who succumbed to the threat and supported the impeachment said "The way we see it, the EFCC, it had nothing to do with whether you have committed any offence or not... they will come and arrest a person for any reason and keep him behind bars until he succumbs to what they want him to do".[104] True to this threat, the lawmakers who opposed the impeachment were included in the list of corrupt politicians targeted for prosecution by the commission.[105]

In the same vein, a Respondent recounted how they were influenced in the impeachment of a Deputy Governor in these words:

> *So many influences are brought to bear on the legislature in their exercise of impeachment proceedings. I know cases where impeachment of Deputy Governors had been carried out at the behest of the State governors because the deputy governors are no longer in the good books of the Governors. Or the Governors are not in the good books of the presidency or some officials at the presidency. So, when the Governor directs that his Deputy should be impeached, who has the guts not to obey? And in this situation strict requirement of the law may not necessarily be followed. In fact, in the impeachment we conducted we were assured to do "whatever it takes" to impeach the Deputy Governor and nothing will happen thereafter. We did as instructed and nothing really happened apart from the court cases which were concluded only after we finished our tenure.*[106]

[104] Interview conducted by Human Rights Watch in Awka on February 12, 2007.
[105] See the Report of the Administrative Panel of inquiry on Alleged Corrupt Practices of Some Public Officers and other Persons available at www.saharareporters.com (accessed on June 13, 2016).
[106] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.

It is a fact that some impeachments of Deputy Governors had been orchestrated by Governors when the former fell out with the latter. This was confirmed by Respondent 13 when he recalled how this was revealed by a Governor to his Deputy. He said:

> *Like the case of Taraba, quote me anywhere let them take me to court I will prove it. In the case of Taraba the issue was that the Governor felt that the Deputy Governor who was my client was hobnobbing with Senator Aisha Al-hassan who was trying to contest for the governorship of the State. So he called him one night and said "I don't have your loyalty again I can no longer work with you" The man swore he said, "Look whether you like it or not I have concluded with the House to remove you" and he was removed.*[107]

This is a good testimony that the impeachment in question was not conducted for a good cause and in the interest of the public but on the order of the Governor. In this light, another Respondent said "So, when the Governor directs that his Deputy should be impeached, who has the guts not to obey? And in this situation strict requirement of the law may not necessarily be followed".[108] This Respondent had really been vindicated as the Supreme Court held that the requirement of the law was not followed in the impeachment they conducted.

Another Respondent had attributed the impeachment of the former Governor of Adamawa State, Murtala Nyako, to influence from the Presidency. He asserted that:

> *So actually the pressure to remove Nyako did not come within. It is not that the legislature felt like he was doing something wrong. And this is just one example; there are many other cases that it is as a result of pressure coming from outside the House of Assembly. And this also*

[107] Interview with Respondent 13 at his office on 28th August, 2017 at 1907hrs
[108] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.

somebody could add that maybe responsible for the way and manner the legislatures are going... They will be too eager to serve their political masters or those who are putting pressure on them.[109]

Reiterating the influence of the President in some cases of impeachment and its negative effect on compliance, Respondent 9 corroborated the above assertion in the following words:

If you have any strong ambitious President who can always bend the law, bend the rules, manipulate the process, who will not take "No" for an answer and he must do what he likes as Obasanjo did, there is surely no reason why lawmakers can be fair judges in impeachment process. It's very sad.[110]

Respondent 14 agreed with Respondent 9 above that external influence and pressure exerted on lawmakers from the former President, Olusegun Obasanjo, greatly affected compliance in the impeachment proceedings during his time. He stated:

This thing is common in Nigeria. We have seen it during Obasanjo's time. He would just simply call the House of Assembly members to Abuja, give them money and instruct them I want so so Governor to be impeached. So, they will just go and start impeaching the Governor. So, the influence is there.[111]

The statement of the Speaker of a House of Assembly that conducted impeachment proceedings in the State is corroborative of the above Respondent. He recounted his impeachment experience in the light of the pressure he was subjected to tilt the course of the impeachment towards a particular direction. His words:

I had to preside over the matter, exhibit as much of neutrality as I could and even defend the position of the House to go ahead with the

[109] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.
[110] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.
[111] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.

> *impeachment. And when the impeachment proceedings failed, still justify why we couldn't proceed in the face of clear provisions of the law when indeed some felt I could have pronounced the Governor impeached even when we didn't have the required two-thirds majority... Even then, some people still turn around and blame you for allowing the proceedings to commence in the first instance, including some of those who signed the notices... It was a most challenging period when you had to make a choice between political expediency and what was right.*[112]

All these influences as depicted in the foregoing discussions were brought about by the lawmakers due to their defiance to heed to the message contained in a letter sent by 430 eminent professors of law to the then Speaker of the United States House of Representatives, Newt Gingrich. The message reads:

> *The House's power to impeach, like a prosecutor's power to indict, is discretionary. This power must be exercised not for partisan advantage, but only when circumstances genuinely justify the enormous price the nation will pay in governance and stature if its President is put through a long, public, voyeuristic trial.*[113]

The impact of the pressures and other undue influences in the exercise of impeachment powers is that they affect strict compliance with the procedure and other constitutional and legal safeguards meant to guide the proceedings.

5.3.9 A "Must-Win" Syndrome

Impeachment is regarded as a battle which must be fought and won once it is commenced.[114] In other words, once the lawmakers embark on the exercise of

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[112] Popoola Naomi "I borrowed money to buy my G.C.E form in 1979" – Hon. Mojeed Alabi, *Encomium*, October 2, 2014, 49.

[113] See the letter signed by 430 eminent professors of law in the United States including Susan Low Bloch of Georgetown University, Jed Rubenfeld Yale's Bruce Ackerman and Akil Reed Amar, Miami's John Ely, Chicago's Cass Sunstein and Havard's Laurence Tribe available at http://jurist.law.pitt.edu/petitl.htm (accessed on July 24, 2017).

[114] This is confirmed by the fact that in all, except one, the impeachments conducted in Nigeria, the office holders were removed.

impeachment powers, the removal of the office holder is a foregone conclusion. Their aim is the removal of the office holder by "hook or crook". This is reflected in the attitude of the lawmakers in the impeachment proceedings before the legislative Assembly and that of the members of the panel in the investigation proceedings. The legislative House resorts to all manner of desperate and unconstitutional acts to ensure that it succeeds in the impeachment. Thus, they "deal with" any person or authority that tries to stand on their way. For instance, the Ekiti State House of Assembly suspended the State Chief Judge for his refusal to constitute another panel after the first one he constituted exonerated the State Governor who was being impeached. The reason for their request that another panel should be constituted was because they accused the Chief Judge of appointing the Governor's allies and people with dubious characters into the panel as a result of which they exonerated him. They regarded this act of the Chief Judge as a gross abuse of office and an embarrassment to the judiciary. A lawmaker warned that another panel should be set up or there will be constitutional crisis in the State and that the crisis already rocking the State cannot stop until the Governor and the Chief Judge were removed.[115] Indeed, they made real their threat as they unconstitutionally removed the Chief Judge who refused to do their biddings and appointed another who accepted the scripts by constituting another panel which found the Governor "guilty" of the allegations on the basis of which they also illegally removed the Governor.

This same attitude had been exhibited by the Kaduna State House of Assembly when they wanted to impeach the then Governor, Abdulkadir Balarabe Musa. This had been

[115] Saharareporters.com/2006/10/10/ekiti-cj-supended (accessed on September 14, 2017).

confirmed by Respondent 10 who recalled some of the happenings on the heels of the impeachment crisis. He stated that:

> *And then I do remember the Speaker of the House at that period was on the air that is on the radio and television saying that even if the heavens and the earth were to come together and collapse together they must remove this man. So you can see that they have already made up their mind. It was not the question of whether there was an offence or not offence, but that they were not ready to work with him and the man had to go.*[116]

The Nassarawa State House of Assembly towed the same path of the Ekiti State House of Assembly only that they were not as lucky as the latter in that they could not remove the Governor. But at the commencement of the impeachment proceedings, they had already indicated their anxiety to ensure the removal of the Governor by all means. Evidence to this was the fact that the Speaker of the State House of Assembly, while fielding questions from newsmen, asked whether the lawmakers would cave in the impeachment proceeding, they all chorused "no retreat, no surrender".[117] This is a clear indication of what we termed as "Must-Win" syndrome. In fact, they made good their "no retreat, no surrender" promise because having received the report of the panel that the allegations against the Governor were not proved, they not only rejected it but tried to compel the Chief Judge of the State to constitute another panel. The Chief Judge resisted this vehemently and refused to oblige as it was an illegality. Expressing their disappointment with and rejection of the verdict of the investigation panel, the spokesman of the House of Assembly, Hon. Baba Ibaku said:

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[116] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.

[117] See the Channelstv Programme "Politics Today" 21st July, 2014, available at https://www.youtube.com/watch?v=LldzfgUETU4 (accessed on November 19, 2017).

We want to bring to the notice of Nigerians that the Nassarawa State House of Assembly totally dissociates itself from the decision reached by the panel set up by the Chief Judge of the State which has cleared the Governor of the allegations leveled against him by the House. As far as the constitution of the Federal Republic of Nigeria is concerned, the Governor is yet to be exonerated of the charges leveled against him; we are not going to go to court because the matter is a constitutional matter that cannot be resolved by any court...[118]

What on earth could have made the lawmakers to "dissociate" themselves from the report of the panel? After all, the panel was appointed by the Chief Judge based on their request. Must the panel find the Governor "guilty" before the Assembly accepts the report? This and some other questions beg for answers from the lawmakers. Below is the picture of the Governor after he was exonerated by the investigation panel in question.

Figure 5:4 Governor Almakura after Escaping Impeachment

Source: http://www.nigerreporters.com/nasarawa-impeachment-saga-gov-al-makura-escapes-impeachment-analysis/nasarawa-al-makura-celebrates-after-escaping-impeachment/saga (accessed on October 17, 2017).

Another point is that Nigerian politicians are always known for acts of desperation especially where possession of power is involved as the case of impeachment. An incident which lends credence to this assertion is the case where a Governor-elect led an army of political thugs to disrupt a court proceedings and manhandle a presiding judge

[118] Abel Daniel (2014) "Impeachment: the Dilemma of Nassarawa Assembly over Gov. Almakura" available at https//www.vanguardngr.com/2014/08/impeachment-dilemma-nassarwa-assembly-almakura-over-gov-almakura (accessed October 17, 2017).

and judicial workers on sight. The incident was described in the petition written by the Chief Judge of Ekiti State to the Chief Justice of Nigeria in the following words:

> *... Mr Ayodele Fayose, the Governor-elect, again led thousands of people and thugs into the premises of the High Court beating and maiming members of staff. The thugs invaded my court where I was to deliver a judgment in a land matter, tore the record books, beat court officials and vandalized the furniture ... The political thugs descended on Hon. Justice J.A. Adeyeye, the presiding judge in Court No. 3, beat and dragged him on the ground. The judge's suit was also torn into shreds. I could not gain entrance into the premises of the court and had to hurriedly turn back on being alerted that I was the prime target of the hooligans ...* [119]

As for the panel, the fact that the investigations are always conducted within a very short period of time and without giving the office holders the opportunity to be heard at all or properly and adequately heard supports this position. To lend more credence in this direction, the Supreme Court chided a panel for its attitude in handling the investigation of a Deputy Governor in the following words:

> *From the undisputed fact, the inevitable impression was that the panel consisting of the respondents was a mere sham and that the removal of the appellant from office was a done deal as it were. The respondents, in their purported investigation of the allegations made against the appellant merely played out a script previously prepared and handed over to the panel.* [120]

The position as expressed above by the court was based on the facts that the office holder under impeachment investigation above was not given adequate opportunity to defend himself by refusing to grant him four more days to appear for his defense and call other witnesses. Worse still, the investigation was conducted within six days only out of the ninety days maximum period provided by the constitution. Thus, the natural and the only fair conclusion to be drawn from the facts of the investigation as pointed

[119] Wadup.com.ng/fayose-led-thugs-to-beat-jugdes-ekiti-state-chief-judge-tells-njc
[120] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 136.

out above is that the panel was merely "acting out a predetermined script to achieve a predetermined end".[121] Armed with this at the back of their mind, their only mission would be to accomplish this task comes rain or sun shine. And when this is the case, what regards to any constitutional provision do you expect from them? The discussions and analyses so far in this chapter had shown that the issues pointed out had constituted challenges to effectively and strictly comply with the constitutional requirements for impeachment on the part of the lawmakers, or the investigation panel in the conduct of impeachment proceedings.

5.4 Conclusion

The power of impeachment vested in the Nigerian legislature at the federal and state levels had been exercised which resulted to the removal of the office holders concerned. However, there is much concern about the compliance with the constitutional requirements for the exercise of the power. This is due to the fact that the exercise had always been challenged in court on ground of noncompliance with constitutional provisions. In fact, most of the aspects of the impeachment proceedings had been challenged in court.

There were socio-legal issues and challenges which account for such noncompliance. These include empowering the lawmakers to determine what amounts to gross misconduct; the notion of political question doctrine; personal service of allegations of gross misconduct; impossibility of accessing the legislative chambers; corruption; external influence; selfish interest; omission from third party and "must win" syndrome.

[121] Ibid, 140.

These issues and challenges had greatly affected compliance with the constitutional requirements for impeachment. In the light of the above, this Chapter answers the research question on compliance with constitutional requirements and achieved the objective of identifying the areas of noncompliance and the challenges therewith. This was done by way of critical analysis of the facts surrounding the impeachment proceedings as revealed in judicial authorities, information obtained from respondents and other stakeholders obtained from the YouTube and other secondary sources.

CHAPTER SIX
JUDICIAL REVIEW OF IMPEACHMENT UNDER THE NIGERIAN CONSTITUTION: AN ANALYSIS OF THE SOCIO-LEGAL ISSUES AND CHALLENGES

6.1 Introduction

The doctrine of separation of powers ensures that all the organs of government act within their statutorily prescribed limits so that one organ does not encroach on the powers of the other organs. This may be achieved through the instrumentality or mechanism of checks and balances. To be more precise, the judicial organ of government checks the excesses of the executive and legislature in the exercise of their powers. This is what the judiciary does through the judicial review of both the executive and legislative acts. The exercise of legislative power of impeachment, being an act of the legislature, is subject to judicial review. This is derived from the inherent judicial powers as vested by the Nigerian constitution on the Nigerian courts. Thus, in this Chapter, some important aspects of judicial review of impeachment will be discussed. This includes the basis, conditions precedent, social and legal issues and challenges surrounding judicial review of impeachment.

6.2 Judicial Power as the Basis for Judicial Review of Impeachment

The Nigerian constitution recognizes three arms of government- the executive, legislature and judiciary and vests on each a separate and distinct power which arrangement is in tandem with the principle of separation of power. In accordance with

this arrangement, judicial power is vested in the judiciary which comprises of the federal and state courts established under the constitution or any other law duly made by a competent legislative assembly.[1] This judicial power encompasses the competence of the courts to interpret the laws made by the legislative organ of the government.[2] In view of the above, adjudication on disputes between parties through the interpretation and application of the law is the major role of the judiciary.[3] Accordingly, it has been the responsibility of the courts to ensure that constitutional provisions are always complied with.[4] Therefore, the judiciary acts as the watchdog over the other organs of government and ensures their fidelity to the doctrine of separation of powers and respect for the supremacy of the Constitution.[5] This makes it an essential organ which balances the exercise of powers in the political entity of any nation among its organs of the government.[6] It also provides hope against autocracy of the executive body in that courts

[1] These courts are The Supreme Court; the Court of Appeal; the Federal High Court; the High Court of the Federal Capital Territory, Abuja; a High Court of a State; the Sharia Court of Appeal of the Federal Capital Territory, Abuja; a Sharia Court of Appeal of a State; the Customary Court of Appeal of the Federal Capital Territory, Abuja; a Customary Court of Appeal of a State. See sections 230-285of the constitution.

[2] *Marbury vs.USA* 5 U.S. 1 (Cranch) at 176. See also Richard H. Fallon, *The Dynamic Constitution: An Introduction to American Constitutional Law* (New York: Cambridge University Press, 2004) 1.

[3] Dahiru Mustapher, (2011). *The Nigerian Judiciary: Towards Reform of Bastion of Constitutional Democracy*, Nigerian Institute of Advanced Legal Studies, Abuja, 7. Similarly, on the duty of the courts in relation to the interpretation of the law, Lord Denning once asserted that "the English Language is not an instrument of mathematical precision. Consequently, a judge should not be a mere mechanic in the power house of semantics. He should be the man in charge of it". See Lord Denning in *Seaford Court Estates Limited vs. Asher* (1949) 2 K.B. 481 at 489-499; Lord Denning, *The Discipline of Law* (London: Butterworth, 1979) 56-57. See also *Brown vs.Alten*, 344 U.S. 443, 540 (1953).

[4] I.T. Mohammad (2012) "Judicialism and Electoral Processes in Nigeria: What the Supreme Court Did; What the Supreme Court May Do", being a paper presented at the 2012 Felix Okoye Memorial Lecture, Organized by Nigerian Institute of Advanced Legal Studies, University of Lagos, held at the Nigerian Institute of Advanced Legal Studies, University of Lagos, on 18th September 2012.

[5] Imo J. Udofa, (2015) "The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects",*Journal of Law, Policy and Globalization*, 40, 192-205.

[6] Egbewole O. W. (2008) "Nigerian Judiciary and Consolidation of Democracy: Analysis of Election Petitions" in Olarinde O. N and Wale Akinlabi Jr. (eds), *Essays and Selected Judgment in Honour of an Incorruptible Judge, Hon. Justice John Otagoke Ige* , (Ibadan: Crown Goldmine Communication Ltd, 2008) 67.

adjudicate between the populace *inter se* and between the populace and the state.[7] Therefore, it is not only "hope of the common man" but it is also "hope of the hopeful and hopeless".[8]

6.3 The Power of Judicial Review in Nigeria

Judicial review has been described as the "power of the court to declare a legislative or executive act as either contrary to, or in accordance with, the Constitution, with the effect of rendering the act invalid or vindicating its validity and so putting it beyond challenge in future".[9] In other words, judicial review "entails judicial intervention in the exercise of powers by the other institutions of government and those who have been charged with the duties and authorities of those institutions..."[10] In Nigeria, judicial review entails that the courts should oversee that every arm of government plays its role in the true spirit of the principles of separation of powers as provided for in the Constitution.[11] Therefore, many scholars assert that judicial review is a mechanism which enables the judiciary to check the excesses of the executive and legislative powers.[12] By and large, judicial review is a powerful instrument in this regards.[13] In this

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[7] Oputa Chukwudifu (2003). "Understanding the Place and Role of the Judiciary in Our Society" in Amucheazi E. and Olatawura O. (eds), *The Judiciary and Democracy in Nigeria*, cited in Yakubu J.A., *Constitutionat Law in Nigeria*, (Demyaxs Law Books) 317.

[8] Egbewole O. W., (2013). *Judex: Hope for The Hopeful and The Hopeless*, The One Hundred and Thirty-Ninth (139th) Inaugural Lecture, (The Library and Publications Committee University of Ilorin, Ilorin, Nigeria) 56.

[9] B.O. Nwabueze, *The Presidential Constitution of Nigeria* (London: C.Hurst & Company (Publishers) Ltd in Association with Nwamife Publishers Ltd., 1982) 309.

[10] A. T. Shehu (2010) "The True Foundation of Judicial Review: A View from Nigeria", 2 *Jindal Global Law Review*, 212.

[11] *Abdulkarim vs.Incar Nigeria Ltd.* (1992) 7 NWLR (Pt. 251) 1.

[12] T.R.S. Allan (2002) "The Constitutional Foundation of Judicial Review: Conceptual Conundrum or Interpretative Inquiry" 61 *California Law Journal* 87; Kainec, Lisa A., "Judicial Review of Senate Impeachment Proceedings: Is a Hands off Approach Appropriate?" *Case Western Reserve Law Review*, 43 1499; Xuehua Zhang and Leonard Ortolano (2010) "Judicial Review of Environmental Administrative Decisions: Has It Changed the Behavior of Government Agencies?" *The China Journal*, no. 64, 97- 199; T.R.S Allan (2010) "Deference, Defiance and the Doctrine of Defining the Limits of Judicial Review" *University of Toronto Law Journal*, no. 60, 42-59.

respect, therefore, the judicial organ of government exercises some level of control and check over the other arms of the government.[14] Judicial review of both administrative and legislative acts is an important component of rule of law[15] and constitutionalism not only in Nigeria but in most constitutional democracies across the globe.[16] Judicial review should be traced to the organic law of the country.[17] Hence, by virtue of the provision of section 6 of the constitution, which is the organic law in Nigeria, the judiciary has the prime duty to inquiry on whether the executive has acted *intra vires* or *ultra vires* or has conformed strictly to the procedure, mode or form set by law.[18] The constitution also subjects the exercise of legislative power to judicial scrutiny.[19] By this provision, the official acts of the legislature could be subjected to judicial review by challenging its constitutionality before a competent court of law. This is because history has shown that if legislative power is left unchecked, the result could be tyranny against

[13] Imo J. Udofa, (2015) "The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects",*Journal of Law, Policy and Globalization*, 203.

[14] S.I. Nchi, *Separation of powers under the Nigeria Constitution* (Jos: Greenworld Publishing Co. Ltd., 2000) 148.

[15] P.A. Oluyede and D.O. Aihe, *Cases and Materials on Constitutional Law in Nigeria*, 2nd Edition (Ibadan: University of Ibadan Press Plc, 2003) 65; D.O. Odeleye (2008) "The Theory and Practice of Separation of Powers in a Presidential Constitution: The Nigerian Experience", *Frontiers of Nigeria Law Journal*, 157; K.M. Mowoe, *Constitutional Law in Nigeria*, (Lagos: Malthouse Press Ltd, 2008) 23; O. Abifarin, *Essays on Constitutional and Administrative Law under the 1999 Constitution*, (Kaduna: Mofolayomi Press, 2000) 15; Adebayo Ojo (1981) "Separation of Powers in a Presidential Government". *Public Law Journal* 105;

[16] S. N. Ray, *Modern Comparative Politics: Approaches, Methods and Issues* (India: Princeton-Hall of India Press, 1999) 111-112; Michel Rosenfeld (2001) "The Rule of Law and the Legitimacy of Constitutional Democracy" *Southern California Law Review*, no. 74 1307; Neil Walker (2008) "Taking Constitutionalism beyond the State", *Political Studies*, no.56, 519, 520-521. See also Jon Elster (1991)"Constitutionalism in Eastern Europe: An Introduction" *University of Chicago Law Review* no. 58, 447, 465; Robert Barros, *Constitutionalism and Dictatorship: Pinochet, the Junta and the 1980 Constitution* (London: Cambridge University Press, 2004) 18; Larry Catá Backer (2009) "From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems" *Penn State Law Review* 113, no.3, 101, 112, 167; Dieter Grimm, "The Achievement of Constitutionalism and its Prospects in a Changed World" in P. Dobner & M. Loughlin (eds) *The Twilight of Constitutionalism* (Oxford University Press 2010) 3.

[17] Ajepe TAiwo Shehu (2011) "Judicial Review and Judicial Supremacy: A Paradigm of Constitutionalism in Nigeria", *International and Comparative Law Review*, 11, no. 1, 43–72, 70.

[18] Y.B. Hassan (2015) "The Role of Law in Checkmating Executive Lawlessness in Nigeria from 1999-2014" *Journal of Law, Policy and Globalization*, 37 no. 8 217.

[19] Section 4(8) of the constitution

the populace.[20] Accordingly, the courts have exercised this power in many cases.[21] For instance, the Nigerian Supreme Court struck down the Local Government Area Law (N0. 5) 2002, made by the Lagos State House of Assembly for being *ultra vires*[22] and another for being inconsistent with section 7 of the constitution.[23]

Another component of judicial review[24] is that courts could review executive or administrative acts to determine their conformity or otherwise with the constitution or law.[25] This review helps check the excesses of the exequtive in the exercise of executive powers[26] and ensures that some limits are imposed in the way they exercise such

[20] Alec Walen, (2009) "Judicial Review in Review: A Four -part Defense of Legal Constitutionalism" *International Journal of Constitutional Law*, 7 no.2, 329, 332.

[21] See alsofor instance the cases of *Okiti Pupa Oil Palm Company Limited vs. Hon. J.E Jegede and Other* (1983) 3 NCLR 494; See the case of *Attorney General, Abia State vs.Attorney General Federation* (2006) 16 NWLR (Pt. 1005) 265 at 381 – 382; see also the earlier case of *Attorney General of Bendel State vs.Attorney General of the Federal* (1982) 10 SC 11, where the Supreme Court of Nigeria declared null and void the Revenue Allocation Act 1981 for non-compliance with the procedure laid down in the Constitution for the making of law relating to money and other revenue matters.

[21] *Attorney General, Abia State vs.Attorney General Federation* (2006) 16 NWLR (Pt. 1005) 265 at 381 – 382.

[22] The constitution requires that in the case of creation of local government, the National Assembly should make law to effect an amendment in the constitutional provisions on the names and headquarters of local government as listed in the constitution. It says: An Act of the National Assembly passed in accordance with this section shall make consequential provisions with respect to the names and headquarters of State or Local government areas as provided in section 3 of this Constitution and in Parts I and II of the First Schedule to this Constitution. See section 8 (5) of the constitution.

[23] See *Attorney General of Plateau State vs.Goyol & Ors* (2007) NWLR (pt. 1059) 57. Furthermore, the Supreme Court had declared void and unconstitutional section 3(2) of the Chiefs (Appointment and Deposition) Law of Northern Nigeria, 1963 which sought to limit the unlimited jurisdiction of State High Court. See *Kayili vs.Yilbuk* (2015) 7 NWLR (pt. 1457) 26 SC. The court also declared void and unconstitutional the act of the National Assembly in awarding damages between parties as part of its resolution to arbitrate between them. See *Shell Petroleum Development Company Nigeria Ltd vs.Ajuwa* (2015) 14 NWLR (1480) 403. This was for being against the concept of separation of powers as deeply entrenched in the constitution. See sections 4, 5 and 6 of the constitution; Aka-Basorun, A., (1993) "The Supreme Court and the Challenges of the 1990s", in Akinseye George (ed) *in Law, Justice and stability in Nigeria: Essays in Honor of Justice Kayoed Eso*, 11.

[24] Ajepe TAiwo Shehu (2011) "Judicial Review and Judicial Supremacy: A Paradigm of Constitutionalism in Nigeria", *International and Comparative Law Review*, 11, no. 1, 43–72, 70.

[25] Thomas Sargentich (1997) "The Critique of Active Judicial Review of Administrative Agencies: A Reevaluation", *Administrative Law Review* 49 no. 9, 599, 601.

[26] A.H. Hammond(1998) "Judicial Review: The Continuing Interplay between Law and Policy", *Public Law* 34, 35-36.

powers.[27] Thus, any issue or question on whether the executive has acted within or outside its constitutionally prescribed powers or has conformed rigorously to the procedure, manner or form provided by law is determined by the Court.[28] In Nigeria, this had arisen in many instances.[29]

6.4 Judicial Review of Impeachment

In the light of the preceding discussion, judicial review of impeachment is the exercise of the power of judicial review over impeachment disputes. This is where the courts, pursuant to this power, come in to check the excesses of the legislature in the exercise of impeachment power. However, courts cannot commence such exercise until some conditions recognized by law have been satisfied. They must co-exist in order to trigger the commencement of judicial review. The conditions are jurisdiction which the court must possess before it assumes the responsibility of judicial review and *locus standi* known as standing to sue which a party must possess. Jurisdiction is the power of the

[27] Simon Halliday (2000) "The Influence of Judicial Review on Bureaucratic Decision Making" *Public Law* 110. See also *Garba vs. University of Maiduguri* (1986) 1 NWLR (Pt 18) 550.

[28] Y.B. Hassan (2015) "The Role of Law in Checkmating Executive Lawlessness in Nigeria from 1999-2014" *Journal of Law, Policy and Globalization*, 37 no. 8 217.

[29] For instance, the action of the Federal Government in withholding the statutory allocations due to States; see See the case of *Attorney General of Lagos State vs. Attorney General of the Federation* (2004) 20 NSCQR 99. The attempt by the President to declare vacant the seat of the Vice President; see *Attorney General of the Federation vs.Atiku Abubakar* (2007) 6 NWLR (Pt. 1031) 626; (2009) All FWLR (Pt. 456) 1. The act of the President in deporting the Minister of External Affairs on the basis that he was not a Nigerian; see *Alhaji Abdulrahman Darman Shugaba vs. Minister of Internal Affairs* (1986) 1 NWLR (Part 18) 550 at 590. The powers conferred on the Governor of a State to appoint commissioners as members of the state executive; see *Governor of Kaduna State vs. House of Assembly of Kaduna State* (1981) 2 NCLR 529. The action of the Benue State Government of dissolving the democratically elected Local Government before the expiry of their statutorily provided tenure; see *Attorney General of Benue State vsUmar & Ors* 1 NWLR (pt. 1068) 311. Other similar cases include *The Registered Trustees of Women & Youth Empowerment Foundation vs. The Minister for Federal Capital Territory& 3 Ors* Suit No. FCT/HC/CV/2591/2011, where the actions of the Minister of the Federal Capital Territory, Abuja, in illegally revoking the lot of land duly allocated to the plaintiff was reviewed. It was held unconstitutional for being inconsistent with the provision of the laws. And *Sun Trust Savings & Loans Limited vs. Hon. Minister, Federal Capital Territory &3 Ors* Suit No: FCT/HC/CV/1116/2012 where the action of the Minister of the Capital Territory, Abuja of introducing the "Park and Pay" scheme was held ultra vires his powers and therefore unconstitutional, null, void and of no effect whatsoever.

court to decide a case or issue a decree. It is the authority the court has to decide matters before it or take cognizance of a matter presented in a formal way for its decision.[30] In other words, "Jurisdiction is the authority, which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision".[31] A trial conducted without jurisdiction is a nullity notwithstanding the fact that it was properly carried out[32] and "no matter the quantum of industry, artistry, dexterity, or objectivity invested in it..."[33] *Locus standi*,[34] on the other hand, is a condition which a party must satisfy before court assumes jurisdiction. There is, therefore, a strong relationship between *locus standi* and jurisdiction. Whenever a party who has no *locus* institutes an action, the court would lack jurisdiction to entertain the action.[35] In this light, the Nigerian constitution creates courts and confers on them jurisdictions to entertain some cases and issues.[36] Of these courts, it is the Federal High Court[37] and the High Court of the States[38] which have jurisdiction to entertain cases on impeachment disputes. This is because the courts have the jurisdictions to hear and determine civil proceedings involving the legal rights, obligations or claims of parties.

[30] *Attorney General of the Federation vs Attorney General of Abia State* (2001) 11 NWLR (pt. 725) 689.
[31] *Erugwu vsOkefi* (2000) 3 NWLR (Pt. 650) 620 at 639.
[32] *Attorney General of Benue State vsUmar & Ors* 1 NWLR (pt. 1068) 311. See also *Arewa Paper Converters Nig. Ltd vs.N.D.I.C (Nig.) Universal Bank Ltd.* (2006) 15 (pt. 1002) 404, 432; *Douglas vs. Shell Petroleum Development Company Ltd.* (1999) 2 NWLR (pt. 591) 466.
[33] *National Judicial Council vs. Agumagu* (2015) 10 NWLR (pt. 1467) 338 at 380.
[34] The meaning and related issues on this requirement had been discussed in Chapter Six of this Thesis.
[35] *Independent National Electoral Commission vs. Daniel* (2015) 9 NWLR (pt. 1463) 119 SC. See also the case of *Pacers Multi-Dynamics Ltd., M. vs. Dancing Sisters* (2012) 4 NWLR (pt. 1289) 169.
[36] Theses courts are generaly refered to as superior courts of records. They are These are Supreme Court, the Court of Appeal, the Federal High Court, the State High Court, the High Court of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the states, the Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of the states, the Customary Court of Appeal of the Federal Capital Territory, Abuja and the National Industrial Court. See section 6 of the constitution.
[37] Sections 251 and 252 of the constitution.
[38] Section 272 of the constitution.

And where, in addition to these, the dispute involves the Federal Government or any of its agencies, the Federal High Court shall have jurisdiction.[39]

6.5 Ouster Clause as Constitutional Limitation to Judicial Review of Impeachment

Ouster clauses are provisions in the laws that purportedly seek to take away the jurisdiction of a competent court of law. It negates the court the capacity to make any meaningful contribution with respect to a particular problem taken before it. In fact, it seeks to deny the party of any judicial intervention in relation to the matter. To put it more simply, the legislature has, by the ouster clause provision; taken away from the court the power of judicial review in relation to the issues over which its authority has been ousted. This is because ouster clauses are odious, legislative judgment which usurp the roles of the court and thereby stultify the doctrines of the separation of powers and the rule of law. They equally impede on the rights of citizens to seek for justice where their rights are violated.

> *Ouster clauses remove protection of law from the citizen. They silence the law, particularly when no independent tribunal has been set up in place of the court to adjudicate on their rights. Such clauses tend to expose the citizens to the exercise of naked power.*[40]

Thus, any clause, however short or long it may be, in a statute which is meant to protect the executive or the legislative arm of government from the power of the courts is basically an ouster clause.[41] This was reiterated in the English case of *Pyx Granit Co Ltd vs. Minister of Housing*[42] that such clause, unarguably, means exclusion of the

[39] See *NEPA vs. Adegbenro* (2003) FWLR (pt. 139) 1556.
[40] *Williams vs. Akintunde* (1995) 2 NWLR (pt. 375) 1.
[41] Curzon, L. B., *Dictionary of Law*, (5th ed) (London: Financial Times Pitman Publishing, 1998). 179.
[42] (1966) AC 260

jurisdiction of the courts.[43] As it is obtainable in some jurisdictions, ouster clause is a common sight in the Nigerian constitutional and statutory provisions. All over the world, the clause exists to restrict the judicial powers of the courts from entertaining the issues covered by it.[44] Thus, ouster clause creates an exception to the judicial powers of the courts to review acts of the executive and the legislature. The attitude of the Nigerian courts to ouster clauses has been both positive and negative in that in some cases they have exhibited rare courage in rendering ineffective ouster clauses as contained in statutes, Decrees and other enactments while in others they just gave in as could be seen in a plethora of judicial pronouncements.[45]

The most notable ouster clause in the Nigerian constitution is the one contained in the impeachment provisions. It provides that "No proceedings or determination of the Panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court".[46] This clause had for quite a long time served as clog in the wheels of judicial review of impeachment disputes in Nigeria. Thus, disputes on impeachment of Governors and Deputy Governors were denied

[43] Ibid.

[44] Sudha CKG Pillay (2001) "The Emerging Doctrine of Substantive Fairness - A Permissible Challenge to the Exercise of Administrative Discretion?" 3 *MLJA* 1-21; *V* Anantaraman (2006) "The Extended Powers of Judicial Review in Malaysian Industrial Relations: A Review", 4 *MLJA* 114, Wan Azlan Ahmad and Nik Ahmad Kamal Nik Mahmod, *Administrative Law in Malaysia*, (Malaysia, Singapore & Hongkong: Sweet & Maxwell, 2006) 27-52 and 207-259; Krishnan Arjunan (2000) "Judicial Review and Appellate Powers: Recent Trends in Hong Kong and Malaysia" 2, *MLJA*; Sudha CKG Pillay (1998), "The Ruling In Ramachandran - A Quantum Leap In Administrative Law?" 3, *MLJA* 62; Anwarul Yaqin & Nik Ahmad Kamal Nik Mahmod (2004) "Review and Appellate Powers: An Elusive Quest For Maintaining the Dividing Line" 3 *MLJA* 66.

[45] See for instance, the cases of *Salami Olaniyi vs. Gbadamosi Aroyehun and others* (1991) 1 SCNJ 25; *Senator Chief T. Adebayo Doherty vs. Sir Abubakar Tafawa Balewa and Others* (1961) NSCC 248; *J.S. Olawoyin vs. Commissioner of Police* (1961) ALL NLR 203; *Council of University of Ibadan vs. N.K. Adamalekun* (1967) NSCC 210; *Lakanmi and Anor vs. Attorney General of the West and Another* (1970) NSCC 143; *Chief Adejumo vs. Colonel Mobolaji Johnson, Military Governor of Lagos State* (1972) All NLR 164; *Barclays Bank of Nigeria Ltd vs. Central Bank of Nigeria* (1976) 6 SC 175/188.

[46] Section 188 (10) of the Constitution of Nigeria. See also section 143 (10) for a similar provision.

review by the courts on this basis. Prominent among these were the impeachments of Balarabe Musa and Aninye Abaribe, the Governor of Kaduna and Deputy Governor of Abia States respectively. Thus, in *Balarabe Musa vs. The Speaker, Kaduna State House of Assembly*, the plaintiff, the Governor of Kaduna State instituted an action at the Kaduna State High Court of justice challenging the procedure followed in removing him from office through impeachment. The court declined jurisdiction and the decision was further affirmed by the Court of Appeal. In the same vein, the Port Harcourt Division of the Court of Appeal, in *Chief Enyi Abaribe vs. The Speaker, Abia State House of Assembly*[47] explained the effect of the ouster clause in these words:

> *Section 188(10) of the 1999 constitution forbids all courts from allowing any proceedings or determination of a House of assembly or its panel with respect to proceedings under section 188 to be challenged before it. It also forbids all courts from allowing any matter relating to such proceedings and determination to be entertained before it. In the instant case, the trial court is justified in concluding that by virtue of section 188(10) it had no jurisdiction to entertain the suit.*[48]

6.6 A Paradigm Shift in the Judicial Review of Impeachment

The judicial review of impeachment proceedings had assumed a different legal status in 2007 not as a result of any constitutional amendment but following a paradigm shift in the interpretation of ouster clause in the impeachment provisions and the doctrine of political question. Tbis was courtesy of the celebrated case of *Inakoju vs. Adeleke*[49] in wbich the two issues were dealt a heavy judicial blow by the Supreme Court. On the

[47] (2002) 14 NWLR (pt. 788) 466.
[48] *Ibid*, 474-75.
[49] (2007) LPELR 10354.

position of the ouster clause, the Supreme Court decision was informed by the fact that such clauses seek to erode the constitutional powers vested in the courts to adjudicate on disputes. Thus, "they are regarded as an aberration, outrageous provision and one that should be treated with extreme caution since they are an unwarranted affront and unnecessary challenge to the jurisdiction of the courts which the courts guard jealously".[50] The court then came down specifically on the effect of the ouster clause when it hit the nail on the head and held:

> *... The entire section 188 sub-sections 1-11 must be read together. And a proper reading of the whole section will reveal that the ouster clause in subsection (10) can only be properly resorted to and invoked after due compliance with sub-sections (1)-(9) that preceded it... Failure to comply with any of the provisions of subsections (1)-(9) will mean that the ouster clause of subsection (10) cannot be invoked in favor of the House of Assembly.*[51]

Another reason for the paradigm shift in the attitude of the courts to impeachment disputes is the judicial principle which enables the courts to checkmate the ways and manner legislative powers are exercised. This was established in the celebrated case of *Attorney-General, Bendel State vs. Attorney-General of the Federation & Ors*[52] where it was held "It is the duty of the courts to see to it that there is no infraction of the exercise of legislative power whether substantive or procedural as laid down in the relevant

[50] See also the cases of *Barclays Bank (Nig.) Ltd vs. Central Bank of Nigeria* (1976) 1 All NLR 409; *Agwuna vs. Attorney General of the Federation* (1995) 5 NWLR (Pt. 396) 418; *Osadebay vs. Attorney General of Bendel State* (1991) 1 NWLR (Pt. 169) 525; *Attorney General of Bendel State vs. Agbofodoh* (1999) 2 NWLR (Pt. 592) 476; *Attorney General of the federation vs. Sode* (1990) 1 NWLR (Pt. 128) 500.
[51] Ibid. See also the cases of *Attorney General of Bendel State vs. Attorney General of the Federation* (1982) 3 NCLR 1; *Jimoh vs. Olawoye* (2003) 10 NWLR (Pt. 828) 307; *Okoya vs. Santilli* (1990) 2 NWLR (Pt. 131) 172.
[52] (1981) All NLR 86 at 127, 133; (1982) 3 NCLR 1.

provisions of the Constitution".[53] On the other question whether impeachment proceeding is a political issue; the court said:

> *...where the Constitution has made a specific provision as to any particular procedure or mode of exercising any legislative function, if there is breach of such provisions, the courts will assume jurisdiction as the guardians of the Constitution, to intervene and to ensure compliance with the provisions of the Constitution...*[54]

By this interpretation, the political question doctrine had now been given a strict interpretation as not to accommodate judicial intervention in such cases as impeachment.[55] The Nigerian courts have now been able to describe properly and categorically what political question is and what it is not. Thus, the internal affair of political parties is political question while impeachment is not.[56]

In the same vein, the change in judicial approach to the ouster clause in the impeachment provision was also attributed to the need to check the excesses of the legislature in impeachment. The frequency and observance of rule of law in impeachment were a source for concern as the legislature was becoming unruly at the time because the courts watched helplessly. In fact, just within a period of eleven months between December 2005 and November 2006, five State Governors were impeached and removed from office as shown below.

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[53] Ibid, 71.
[54] *Inakoju vs. Adeleke* (2007) LPELR 10354.
[55] See Enyinna Nwauche, (2007) "Is the End Near for Political Question Doctrine? A Paper Presented at African Network for Constitutional Law Conference on Fostering Constitutionalism in Africa, Nairobi, Kenya, 3.
[56] *Ezigbo vs Peoples Democratic Party* (2010) 9 NWLR (pt. 1200) 601. See also *Ugwu vs. Ararume* (2007) 12 NWLR (1048) 367; *Onuoha vs. Okafor* (1983) 2 SCNLR 22

Table 6:1
Frequency of Impeachment Proceedings in Nigeria

S/no.	Name of Governor	State	Date of Impeachment
1.	D.S. P Alamieyeseigha	Bayelsa	12th Dec., 2005.
2.	Rashid Ladoja	Oyo	12th Jan., 2006.
3.	Ayodele Fayose	Ekiti	15th Oct., 2006.
4.	Peter obi	Anambra	2nd Nov., 2006.
5.	Josuah Dariye	Plateau	13th Nov., 2006.

Source: Author's compilation from judicial authorities.

The necessity for the paradigm shift in the courts' approach to judicial review of impeachment was expressed by a prominent law lord:

> *The plethora of removal proceedings in respect of Governors is not only frightening but is capable of affecting the stability of Nigeria. It is almost like a child's play as some State Legislatures indulge in it with all the 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 where their country is. That should worry every good Nigerian. It does not only worry me; the idea frightens me so much.*[57]

The judiciary, as the only hope of the common and every Nigerian at the time, did not rest on its oars and it took the bull by the horn by stepping in to curb the menace. This means that the law changed in order to meet the change in the attitude of the legislature towards impeachment proceedings.

6.7 Socio-legal Issues and Challenges to Judicial Review of Impeachment

As earlier discussed, judicial review is one of the inherent powers of the courts of law in various legal systems across the jurisdictions. Through the mechanism of judicial review, other arms of government are kept within their constitutional limits and cordial working relationship among them maintained. This, in turn, reiterates the mechanism of

[57] *Inakoju vs Adeleke* (2007) LPELR 10354.

checks and balances which ensures the principle of separation of powers. This makes judicial review an indispensable principle in a constitutional democracy. However, despite the importance of judicial review in these lands, it is bedeviled by some social and legal issues and challenges which erode its effectiveness. These include delays usually encountered in the course of judicial review, lack of respect for court orders made for effective judicial review, the requirement of *locus standi* otherwise known as the standing to sue and the remedies available for successful judicial review of impeachment. These will be discussed *seriatim* below.

6.7.1 Delay in Judicial Review of Impeachment

Crucial to the effective dispensation of justice is public confidence in a legal system and the ability of the judges to discharge their obligations promptly and efficiently.[58] Delay in the administration of justice is of great concern.[59] It had become the hallmark of the Nigerian legal system as admittedly pointed out by Nigerian court: "The administration of justice is dotted with unwarranted delays... The slow speed at which proceedings move in courts had been decried as a dent on the administration of justice in the legal system..."[60] Judicial review is a mechanism to right the wrong done to litigants through the award of judicial reliefs/remedies. It is appropriate that the reliefs come timely so that it will benefit the litigant by compensating him of the wrong he suffered. Any delay in the award of the reliefs will definitely prove fatal to the litigant.[61] In fact, such delay will sometimes render the reliefs nugatory or meaningless as they will not be able to

[58] *Ibid.*
[59] Rilwan Bello, "Corruption: CJN upholds 13 Reforms as Judges get Travel Guide", *The Nation*, Feb 28, 2018,43.
[60] *Adejumo vs. Agumagu* (2015) 15 NWLR (pt. 1472) 1.
[61] See the case of *Kigen vs. SSHD* (2015) EWCA Civ 1286.

address the wrong they are meant to address. It is a popular legal maxim that "justice delayed is justice denied". Thus, the delay in the judicial review of impeachment cases could be illustrated in a tabular form below:

Table 6.2
Trend of Delay in Judicial Review of Impeachment Cases

S/no.	Case of Impeachment	Date Instituted	Date of Ruling/Judgment	Period Spent in Court	Final Court
1.	Nyako vs Adamawa State House of Assembly	13/11/2014	16/12/2016	25 months	Supreme court
2.	Danladi vs. Dangiri	24/09/2012	21/11/2014	26 months	Supreme Court
3.	Ekpenyong vs. Umana	05/05/2006	10/12/2008	31 months	Court of Appeal
4.	Ali Onanusi's Impeachment	24/04/2015	21/03/2017	23 months	Court of Appeal
5.	Sunday Onyebuchi's Impeachment	26/08/2014	19/12/2015	16 months	High Court
6.	Abiodun vs. CJ Kwara State	23/01/2006	12/03/2007	14months	Court of Appeal
7.	Danladi vs. Taraba State House of Assembly	24/09/2012	21/11/2014	26 months	Supreme Court
8.	Alamieyeseigha vs. Igoniwari & Ors	16/12/2005	08/03/2007	15 months	Court of Appeal
9.	Akinmade vs. Donaldson & Ors	10/01/2006	04/02/2008	25 months	Court of Appeal
10.	Inakoju vs. Adeleke	23/12/2005	12/01/2007	13 months	Supreme Court
11.	Gadi vs. Male	12/08/2009	Still pending at the time of death of the Deputy Governor on31/07/2017	Eight years	Supreme Court

Source: The author's analysis of the courts' decisions in the cases.[62]

The delay in the cases as pointed out in the table above could be discussed below. Following the impeachment of the Deputy Governor of Bauchi State, Garba Gadi, he went to court to challenge the procedure and seek for injunction to stop the panel's proceedings and that of the House of Assembly only to be told by the Court of Appeal to go back to the High Court and commence the trial proper after spending about four

[62] *Nyako vs Adamawa State House of Assembly* (2017) 6 NWLR (pt. 1562) 347 at 352; *Danladi vs Dangiri* (2015) 2 NWLR (pt. 1442) 135-136; *Ekpenyong vs. Umana* (2010) All FWLR 1387; Ali Onanusi's Impeachment Peter Dada (2017) Appeal Court Nullifies Ondo Ex-deputy Governor's Impeachment", available at punchng.com/appeal-court-nullifies-ondo-exdeputy-govs-impeachment (Accessed on September 29, 2017).; Sunday Onyebuchi's Impeachment Lawrence Njoku (2015) Court Quashes Impeachment of Former Enugu Deputy Governor, Sunday Onyebuchi, available at https://guardian.ng/news/court-quashes-impeachment-of-former-enugu-deputy-governor-sunday-onyebuchi/ (accessed on 20th September, 2017); *Abiodun vs. CJ Kwara State* (2007) 18 NWLR (pt. 1065) 122-23; *Danladi vs. Taraba State House of Assembly* (2015) 2 NWLR (pt. 1442) 1; *Alamieyeseigha vs. Igoniwari & Ors* (2007) LPELR- CA/PH/124/2006; *Inakoju vs. Adeleke* (2007) LPELR 10354.

months. And that was after the injunction he sought had been over taken by events as the panel had already concluded and submitted its report and the House removed him and even a new Deputy Governor sworn in. The delay in this case has cost the destruction of the *res* (subject matter of the suit) as the office of the Deputy Governor which he sought to protect in the suit had already been taken over by someone else.[63] The worst part of it is that the case was still pending before the Supreme Court when the Deputy Governor died in August, 2017, 8 years after it was instituted and 6 years after his tenure as Deputy Governor had expired.[64]

This is similar to the misfortune which befell the Governor of Bayelsa State, D.S.P. Alamieyeseigha. He went to court to challenge the process of his impeachment which resulted in his removal on 16th December, 2005 which case was decided by the Court of Appeal on 8th March, 2007, 15 months thereafter. The most worrying aspect is not only the delay but that the Court of Appeal asked him to return to the High Court for trial *denovo* (afresh) by a different judge. Worse still, at the time of the ruling, there was less than three months to the expiry of his tenure which he sought to protect. There was no way he could have his case determined by even the trial court before the end of his tenure.[65]

[63] See *Gadi vs. Male* (2010) 7 NWLR (pt. 1193) 225.
[64] See Table 6.2 in this Chapter.
[65] See *Alamieyeseigha vs. Igoniwari* (2007) LPELR- CA/PH/124/2006.

In fact, it was such situation of helplessness that the Supreme Court predicted in *Inakoju vs. Adeleke*.[66] The Court, in refusing to send a case back for fresh trial at the High Court, stated its justification in the following words:

> *... As at the time the lower court gave its judgment in the case on 1st November, 2005, the remaining term of the elected Government was about seven months. It follows therefore that sending the case back to the High Court for hearing on the merit would have amounted to nothing but judicial scandal. It would have exposed our entire judicial system to complete ridicule, odium and disgrace. It would also have amounted to crowning the illegal and unconstitutional acts of a gang of rascals or 'area boys' with the success they totally did not deserve. This is so because, from the way our judicial system now operates, the trial de novo could be probably not commenced at the High Court by the time the term of the elected Governor runs out in May, 2007.*[67]

Governor Murtala Hammanyero Nyako of Adamawa State cannot be missing on the list of the office holders who lost their seats through impeachment but greatly and irreparably lost out as a result of delay in the judicial review. He was removed through impeachment conducted by the State House of Assembly on 15th July, 2014. He instituted an action at the Federal High Court, Yola, seeking for the invalidation of the impeachment and his reinstatement as Governor. He was not satisfied with the decision of the trial court hence he appealed through to the Court of Appeal and the Supreme Court which finally decided in his favor in December, 2016. Thus, it could be seen from the above that it took the case 25 months to finally dispose of. Although, the impeachment and removal were finally declared null and void, his prayer for his reinstatement could not be granted because his tenure had expired and someone already elected into the office at the time of the judgment. In fact, the judgment of the Court of

[66] (2007) LPELR 10354.
[67] *Inakoju vs. Adeleke* (2007) LPELR 10354.

Appeal nullifying the impeachment came a week after the expiry of his tenure and ten months later the final judgment came from the apex court. The court, in refusing to grant his relief of reinstatement as the Governor, stated: "Appellant's tenure has long expired. Not only has his successor been elected, the successor is now in his second year of four year term. These facts underline the impossibility nay the absurdity of the grant of the appellant's 6th relief..."[68] One cannot agree less with the reasoning of the Supreme Court for refusing to reinstate the Governor even though wrongly and illegally removed no matter how sympathetic to his course one may be.

Another instance is the case of the impeachment of the Deputy Governor of Taraba State, Sani Abubakar Danladi. He was elected Deputy Governor of Taraba State for four years starting from 29th May 2011. The impeachment proceedings commenced against him were allegedly marred by various procedural and other irregularities as a result of which he instituted an action against the investigation panel and the House of Assembly. He was aggrieved with the decisions of both the trial High Court and the Court of Appeal as such be proceeded to the Supreme Court. The apex court finally declared his impeachment and removal null and void for being inconsistent with the provision of the constitution. The court, therefore, ordered for his immediate reinstatement as the Deputy Governor of Taraba State. It took him a legal battle from 24th September, 2012 to 21st November, 2014, a period of 26 months, to recover his mandate. His case is only a bit better off than those discussed above because the final decision came barely six months to the expiry of his tenure.

[68] *Nyako vs. Adamawa State House of Assembly* (2017) 6 NWLR (pt. 1562) 347 at 352.

Olanusi Ali, Deputy Governor of Ondo State, was not all that lucky in his impeachment. He was in court to challenge the procedure for his impeachment immediately after his removal in April, 2015 which was few days to the end of his tenure till March, 2017 when the Court of Appeal voided his impeachment. Thus, he spent virtually two years in a legal battle to restore his mandate. And this came 21 months after the expiry of the mandate he sought to restore by the legal battle.[69] This is similar a case to the impeachment of the Deputy Governor of Enugu State, Sunday Onyebuchi. He was removed on the report of an investigation panel which found proved all the allegations against him. He took an originating summons against the State House of Assembly to question the proceedings immediately after his removal on 26th August, 2014. However, about 16 months later the impeachment and removal were upturned by a High Court sitting in Enugu on 19th December, 2015.[70]

As could be seen from Table 6.2, none of the cases took less than a year to conclude. In fact, the shortest time was 14 months while the longest took 31 months. The period was taken out of the tenure of the office holders. In fact, the worst of them all is the case which had not been concluded at the time of the death of the Deputy Governor which was eight years after its commencement. This may not be the end of the tragedy for some of the litigants because the decision given after the delay was not final. Thus, in

[69] Peter Dada (2017) Appeal Court Nullifies Ondo Ex-deputy Governor's Impeachment", available at punchng.com/appeal-court-nullifies-ondo-exdeputy-govs-impeachment (Accessed on September 29, 2017).

[70] Lawrence Njoku (2015) Court Quashes Impeachment of Former Enugu Deputy Governor, Sunday Onyebuchi, available at https://guardian.ng/news/court-quashes-impeachment-of-former-enugu-deputy-governor-sunday-onyebuchi/ (accessed on 20th September, 2017).

Alamieyeseigha vs. Igoniwari & Ors (no. 2)[71], after the 15 months delay, the case was remitted to the High Court for retrial by another judge. The effect of this judgment is that the Governor was asked to go back to the High Court to start the trial afresh. This came at the time when his tenure had only two months to expire! The worse had not been heard yet on this issue until after a brief overview of the case of *Ekpenyong vs. Umana*[72]. The case was instituted at the trial High Court on 05/05/2006 and the Court of Appeal gave its ruling on 10/12/2008 which was 37 months later. At that time the tenure of the Deputy Governor had expired 19 months earlier. Worse still, the ruling of the Court of Appeal also required him to go back to the High Court for fresh trial! One wonders what the Deputy Governor will go back to do at the High Court again. In these cases, the office holders were lucky that they knew their fate no matter how long the cases took to dispose of. The Deputy Governor of Bauchi State, Hon. Garba Mohammed Gadi, was not all that lucky as he died while his appeal was still pending at the Supreme Court.[73] What a pity!

Yet, another aspect of the delay is that in all the cases the impeachments and removal of the office holders were nullified by the courts at the time when the tenure of most of them had already expired. For instance, the impeachment and removal of Murtala Nyako was nullified on 16th December, 2016 while his tenure expired on 7th February, 2015 which was about 10 months later. The impeachment and removal of Obong Ekpenyong

[71] (2007) LPELR- CA/PH/124/2006.
[72] (2010) AllFWLR 1387
[73] "But, till date, the appeal is yet to be heard because of adjournments, the last of which was on May 18, this year (2017), when the court, again, adjourned to January 16, next year (2018)". Alhaji Gadi, however, died on August 1, 2017 without having his case resolved. See Eric Ikhilae, (2017) "How to End Appeal Delays, By Lawyers", *The Nation Newspaper*, September 19, 2017, available at http://thenationonlineng.net/end-appeal-delays-lawyers (accessed on 01/10/2017).

was upturned by the Court of Appeal 19 months after his tenure expired. For Ali Olanusi and Sunday Onyebuchi, they had their impeachments annulled by the courts about 22 and 7 months respectively after the expiry of their tenure. Dele Abiodun's case is a little blt better off because his impeachment was vltlated by the Court of Appeal just 19 days to the expiry of the said tenure. The office holders in these cases have found themselves in the pathetic sltuatlons which tbe Supreme Court described "... This often results in the loser in a civil case taking home all the laurels while the supposed winner goes home in a worse situatlon than he approached the court".[74] Therefore, to them, "justice delayed, is justice denied". Such delay in the dispensation of justice *per se* is percelved as inimical to the attainment of substantial justice in Nlgeria[75] and beyond.[76]

Some of the reasons which account for such delay are the rules of practice and procedure in civil cases which are being taken advantage of by some lawyers. The consequence is that every interlocutory motlon ls fought to the Supreme Court level because the rules allow it.[77] In the same vein, Respondent 11 attributed the delay to the rules. His words: "One is our judicial system whereby you will go file your action at the court of first instance, you go on appeal, and you go again up to Supreme Court. This procedure and the technicalities involved are the major reason".[78] According to Respondent 2, lawyers

[74] [75] *Amaechi vs. Independent National Electoral Commission* (2007) 7-10 S.C. 172

[75] Agbonika John Musa (2014) "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint" *Journal of Law, Policy and Globalization* 26 no.4, 130.

[76] This similar problem could as well be found in other jurisdictions like India as described in these words: "The judicial process wrapped in a mystery inside an enigma, what with its baffling legalese, lottery techniques, habitual somnolence, extensive proclivities, and multi-decked inconsistencies, tyranny of technicalities and interference in everything with a touch of authoritarian incompetency". Justice Sunil Ambwani, "Justice Administration: Case and Court Management", A Paper Revised and Delivered at IJTR, India on 31st January, 2009.

[77] "Judicial Efficacy in Nigeria: Issues and Solutions", Sahara reporters April, 19, 2009 available at www.saharareorters.com visited on July 20, 2017.

[78] Interview with Respondent 11 conducted in his office in Zaria, Nigeria on 8th August, 2017 around 16300hrs.

too have to blame and even judges in some cases. He stated that "The lawyers could employ every tactics to delay the cases up to the time the tenure of the Governor facing the impeachment expires when nothing good could be done to compensate him".[79] Agbonika's view is not far from this as he heaped the blame for delay in judicial proceedings generally on lawyers.[80] Onozure Dania reported that it could be attributed to both lawyers and judges. He said that:

> *Another contributory factor to these delays is the unscrupulous nature of some legal practitioners who engage in filing of unnecessary motions aimed at delaying proceedings. Sadly, judges are blamed for these delays. So, I think the time has come to condemn lawyers who bring frivolous and time-wasting applications to court. I think it is unfortunate for a lawyer who knows he has a bad case to be using the process of appeal to deny the justice of the case.*[81]

Niki Tobi observed that "There is so much delay in the administration of justice in Nigeria that one wonders whether the parties get value justice at the end. A situation, for instance, where litigation at times takes some six years or more to be completed in the High Court is not good enough".[82] Former President of Nigeria, Olusegun Obasanjo, decried the ugly trend of delay in our justice delivery system. He lamented that the painful delay in our administration of justice system is a great cause for worry. He made bold to state that "Concern, as perhaps a euphemistic description, can find for a most

[79] Interview with Respondent 2 at his residence on 12th August, 2017 around 1745hrs.
[80] Agbonika John Musa (2014) "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint" *Journal of Law, Policy and Globalization* 26 no.4, 135.
[81] Onozure Dania, "Judges not the Cause of Cases Delay- Adedipe" Vanguard News, October 12, 2017 available at https://www.vanguardngr.com/2017/10/judges-not-cause-cases-delay-adedipe (accessed on November 13, 2017).
[82] Tobi N.,(1995) "Law, Judiciary and Nigerian Democracy" in Ayua I,A. (ed): Law Justice and the Nigerian Society – Essays in Honour of Hon Justice Mohammed Bellow (Lagos: Nigerian Institute of Advance Legal Studies.) at Pp.135-136.

scandalously embarrassing situation where a simple case of breach of contract will endure for five or more years in the court of first instance, and, last for 15 years before the final determination in our Apex Court".[83] Respondent 9 stated "In a situation where the regular judicial court who handle all manner of cases and even at that our judiciary has not become very efficient in the quick dispensation of justice. So when you add all this political cases to it would also take time to disposal".[84] Another factor which could explain the delay is lack of constitutional provision on the time frame within which impeachment cases should be heard and determined. Thus, there is unlimited time for judicial review of impeachment cases as a result of which the cases take too long a time.[85] In this line, a Respondent opined that:

> *The issue of delay has sometimes to do with the fact that no provision is made for a particular time within which all impeachment disputes must be finally decided you just allow the lawyers and courts to drag the cases for so long that even the aim of justice may be defeated.*[86]

6.7.2 Lack of Respect for Court Order in Judicial Review of Impeachment

An order of court is a written direction or command delivered by a court or judge. By its very nature, the order may be final or interlocutory.[87] The courts in the exercise of their power of judicial review issue out orders to the parties involved and sometimes to the inferior courts as well. Such orders may be made during or after the judicial proceedings to ensure that justice is done to whom it is due among the parties involved. "It is trite

[83] Agbonika John Musa (2014) "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint" *Journal of Law, Policy and Globalization* 26 no.4, 133.
[84] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.
[85] This had been shown in Table 6.2 earlier.
[86] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.
[87] *National Judicial Institute vs. Agumagu* (2015) 10 NWLR (pt. 1467) 365 at 390.

law that a court will not make an order or give judgment that could affect the interest or right of a person or body that is not a party to the case or who was never heard in the matter".[88]

When such orders are given by the courts, they are meant to be obeyed and complied with by all the parties against whom it is given.[89] The rationale for this is that "Orders of a court must be obeyed if the authority and administration of the court is not to be brought into disrepute, scorn or disrespect".[90] In some other cases, court orders are given when it appears necessary and incidental for a better and final determination of a case. It could be made in order to give effect to the decision of the court or obviate or avert further dispute that may arise between or among the same parties.[91] Although it is part of the inherent powers of the courts of law to issue out orders in order to ensure efficient administration of justice and give effect to their judgments, such powers could also be expressly conferred by the rules of courts. For instance, the Nigerian Supreme Court held in *Kayili vs. Yilbuk*[92] that:

> *By order 47 Rule 1 of the High Court of Plateau State (Civil Procedure) Rules 1987, it is open to the court in all causes and matters to make any orders which it considers necessary for doing justice, whether or not such order has been expressly asked for by the person entitled to the benefit there from. The making of such order is to do justice in the circumstances of the case which is the foundation and cornerstone of the Nigerian judicial system and the constitution.*[93]

[88] *Bashir vs. Audu & Ors* (1999) 5 NWLR (pt.633) 456.
[89] *Ngo vs. Green* (2015) 7 NWLR (1459) 598.
[90] *Ibhade Nigeria Ltd vs. Akware* (2015) 13 NWLR (1477) 507.
[91] *Laminu vs. Maidugu* (2015) 7 NWLR (pt. 1458) 259.
[92] (2015) 7 NWLR (pt. 1457) 26 SC.
[93] *Ibid*, 41.

Despite this all-encompassing importance of court orders in the administration of justice, the disobedience to such orders is becoming a recurrent decimal in Nigeria. In this light, some lamentations were expressed over the menace in the following words:

> *The disobedience of court orders in Nigeria in recent times has taken another dimension. The court is gradually beginning to lose its integrity as a result of flagrant disregard of its orders and judgments especially from other arms ... Disregard for the orders and a judgment of courts surely does no good to the rule of law and democratic process ...*[94]

Any lack of respect for court order undermines not only the court's powers but also its integrity and dignity. Consequently, the court will be rendered helpless as no sufficient remedy could be granted to the other party. Thus, a court had this to say on the effect of disrespecting consequential orders:

> *The power is designed for the maintenance of the dignity and integrity of the courts. Unless the court exercises disciplinary jurisdiction in appropriate circumstances, it will lose its dignity and integrity in the judicial process. The institution of the court which the law has placed in exalted and sacred place, surrounded by all aura of legalism and sanctity, will be reduced to a toothless bull dog that can bark but cannot bite.*[95]

In view of the above, court orders had been issued against legislative Houses on various occasions in the course of handling impeachment disputes. However, such orders have also variously met stiff resistance and disobedience from the legislators. For instance, when the Governor of Adamawa State was being impeached by the State House of

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[94] Onyesi chukwudi kingsley, (2017) "Knitting Contempt of the Law to the Administration of Justice in Nigeria: No Longer at Ease", available at https//:www.researchgate.net/publication/317640076 (accessed on 12 August, 2017).

[95]

Assembly, he went to court to challenge some of the procedure adopted in the impeachment process. Such included lack of personal service of the notice of allegations of gross misconduct as required by the constitution. The trial High Court gave an order that he should be served personally. However, the House passed a resolution asking the impeachment panel to serve the Governor in any of the two most circulated newspapers in the country. On the basis of this resolution, which was not even a law of the House of Assembly and even if it was, it could not supersede the constitutional provisions; the panel continued with the investigation. In this light, the Speaker of the House of Assembly, Umaru Fintiri, disclosed that no court order could stop them from impeaching the Governor and his Deputy. He described as unacceptable the ruling of the State High Court which ordered the Assembly to serve the Governor and his Deputy personally. He added thus:

> *The issue of impeachment is constitutional responsibility of the lawmakers and the House of Assembly will not allow the judiciary to intervene in it because there is no going back over the impeachment exercise which the court lack the constitutional power to intervene.*[96]

The Assembly went ahead to publish in the National Television Authority and two select national dailies the notice of gross misconduct against the Governor and his Deputy in contravention of the court order. Although the Governor had later appeared in protest that he was not served the allegations against him, the panel and the House of Assembly turned deaf ears to his protest and the court order.

[96] "Nyako: No court can't Stop us- Adamawa law makers", *African Spotlight Newspaper*, June 30, 2014, available at africanspotlight.com (accessed on February 12, 2017).

In some cases, lack of respect for such court order arises even before it is actually issued out but when the parties anticipate that it may be granted. The legislature in their usual characteristics of lack of respect for entire court rulings and orders relating to impeachment proceedings take some measures that would render nugatory whatever order or ruling the court would give. This they do when they go ahead with the proceedings knowing fully well that there is a pending motion for an order against them. By so doing, the court from which the order is sought may not even have the courage to make the order as the act will be considered as having been completed as such any order will be ineffective and unenforceable.[97] The settled principle in the United States and England, which was cited with approval by the Nigerian Supreme Court as also applicable in Nigeria, was stated thus:

> *The rule is well settled both by the courts in England and of this country, that where a suit is brought to enjoin certain activities for example, the erection of a building or other structures, of which suit the defendant has notice, the hands of the defendant are effectually tied pending a hearing and determination even though no restraining order or preliminary injunction be issued.*[98]

Therefore, any measure taken during a pending action will be regarded null and void as its effect will render ineffective the outcome of the proceedings.[99] Thus, this was exactly what transpired when an action was instituted against the impeachment of the Deputy Governor of Bauchi State, Garba Mohammed Gadi. Immediately after the commencement of the proceedings, he went to court challenging the proceedings of both

[97] See for instance, the case of the *Governor of Lagos State vs. Ojukwu* (1986) All NLR 233.
[98] *Governor of Lagos State vs. Ojukwu* (1986) 3 NWLR (pt. 18) 621.
[99] *Saidu Garba vs. Federal Civil service Commission* (1988) INWLR (pt. 71) 449; *Sofekun vs. Akinyemi* (1980) 5-7 SC 1.

the investigation panel and the House of Assembly and seeking for a restraining order against them and/or his restoration to the office. While the case was pending, the House went ahead to remove and replace him with the Speaker of the House of Assembly. This act had rendered nugatory whatever order or ruling the court could have made in the circumstance. Consequently, the order was not granted as the subject matter had already been destroyed at the time the case came up for consideration. In refusing the order and justifying the refusal, the court held that:

> *An injunction normally lies regarding live issues. Thus, an injunction will not lie in respect of a dead issue, in the sense that where an act (or action) complained of is completed; it cannot in law be resuscitated. Indeed it is a legal impossibility to resurrect a dead matter to attract or take advantage of an injunction... thus to grant the order at this crucial stage in time, would tantamount to making an order in vain. The result of such contemplated order of restoration of the status quo ante bellum of the applicant at this crucial interregnum would undoubtedly bring confusion, chaos and anarchy. By embarking on such inglorious misadventure, possibly the court would have undoubtedly succeeded in subjecting itself, nay the entire Nigerian judiciary, to a state of odium, contempt and a spineless laughing stock.*[100]

The act of disrespect to the court in this case rendered it seemingly helpless. It was so because the court in the case did not tow the appropriate judicial path so as to avoid the "confusion, chaos and anarchy" which it feared. The best thing the court would have done in order not to "... subject itself, nay the entire Nigerian judiciary, to a state of odium, contempt, and a spineless laughing stock" as it feared; was to invalidate whatever had been done by the erring parties during the pendency of the suit. Thus, it

[100] *Gadi vs. Male* (2010) 7 NWLR (pt. 1193) 238.

was suggested that any building erected in the circumstance should be pulled down.[101] This suggestion was fully utilized by the Court of Appeal in *Abiodun vs. The Chief Judge of Kwara State.*[102] In the case, a Local Government Chairman sought to be removed through impeachment approached the State High Court for an order of injunction against the State Chief Judge restraining him from appointing the panel for investigation against him pending the determination of his suit. Notwithstanding the pendency of the suit, the Chief Judge went ahead to constitute and inaugurate the said panel which investigated and found the plaintiff liable for removal and was accordingly removed. Thus, in voiding the proceedings of the panel which was inaugurated by the Chief Judge in order to circumvent any court order that may be issued against him, the court held:

> *... When there were indications that the honorable Chief Judge may take steps to have the effect of rendering the suit useless, counsel to the appellant wrote to respectfully caution against the appointment of the panel while the case was pending. His lordship the Chief Judge ignored this letter and gave no regards to the consequences of his action on the judiciary. In the light of that have been said, I am of the firm view that this court should and ought to pull down every edifice built on the panel.*[103]

However, it is unfortunate that despite the fact that the "edifice" was pulled down in this case, it only came at the time when the damage had already been done. This had denied the office holder the right to return to his office and complete his tenure due to the act of disrespect for anticipated court order.

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[101] *F.A.T.B. vs. Ezeugwu* (1992) 9 NWLR (pt. 264) 132 at 147; *Daniel vs. Ferguson*(1891) 2 Ch. 27.
[102] (2007) 18 NWLR (pt. 1065) 109.
[103] Ibid, per Abdullahi JCA 116.

In *Balonwu vs. Obi,*[104] the Anambra State House of Assembly proceeded with their purported impeachment proceedings wherein they called for a resolution of the House to set up the impeachment panel to investigate the allegations of gross misconduct against the Governor. This was done in the face of a subsisting court order issued against members of the House "restraining them, their servants, privies or any person claiming to act for them from taking any steps or continuing to take any steps on the impeachment notice pending the determination of the motion on notice for interlocutory injunction", which was duly served on them on 25th October, 2006.[105]

The Court of Appeal had cause to vividly explain how acts of an Investigation Panel in impeachment proceedings undermined an anticipated court order in the following words:

> *... While this suit was pending at the court below, the 1st-7th Defendants/Respondent (members of the investigation panel), undeterred by the pending motions for interim and interlocutory injunctions against them, commenced their proceedings (on 22nd June, 2010), continued with the same and submitted their report on 23rd June, 2010 to the Bayelsa State House of Assembly (the 10th Defendant/Respondent), presided by the 9th Defendant/Respondent as the Speaker of the House of Assembly. Both the 9th and 10th Defendant/Respondents were respondents in the two motion for interim and interlocutory injunctions in the suit no YHC/206/2010. The Bayelsa House of Assembly (10th Defendant/Respondent), presided by the 9th Defendant/Respondent, on 24th June, 2010 sat, adopted the report of the 1st-7th Defendants/Respondents and resolved that the 1st Claimant/Appellant, as the incumbent Deputy Governor of Bayelsa State, had been removed from office. The suit no YHC/206/2010 and all the motions for interim and interlocutory injunctions were still pending at the lower court and in fact until 29th June, 2010 ...*[106]

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[104] (2007) LPELR-CA/E/3/2007.
[105] *Hon. Sylvester Okeke vs. Hon. Mike Balonwu & Ors* (Unreported) suit No. HID/207/2006.
[106] *Peremobowei Ebebi vs. Denwigwe (SAN) & Ors* (2011) LPELR-CA/PH/296/2010.

In this case also, the only course taken by the court as a consequence of the disrespect for the court order was the nullification of the entire proceedings of the investigation panel on the basis of which the Deputy Governor was removed. The cases of the impeachment of Governor Rasheed Ladoja and Joshua Dariye of Oyo and Plateau States respectively were not much different from the above. In both cases, the impeachment and removal of the Governors were carried out despite the pendency of actions in courts challenging some of the steps taken in the proceedings.[107]

Lack of respect for court order against the legislature is not a peculiar challenge to judicial review in Nigeria alone as it could be found in other jurisdictions. For instance, Anthony Wesaka reported that the Speaker of the Ugandan Parliament, Rebecca Kadaga, expressly stated that the parliament would only respect a court order which they considered as "rationale". This came following a call by the Attorney General on the parliament due to the latter's refusal to obey an order of court. The Speaker said categorically "The Attorney General had talked about respect for court orders, we shall respect them when they deserve the respect..."[108] Such a scenario is what had been described as a rivalry between the legislature and the judiciary.[109] It provides the breeding grounds for battle of supremacy[110] and the consequent lack of respect for court

[107] See *Inakoju vs. Adeleke* (2007) LPELR 10354 and *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007.
[108] Anthony Wesaka "I will Respect only Sensible Court Orders, says Kadaga", Monitor News, January 31, 2017 available at www.monitor.co.ug/news/National/i-will-respect-only-sensible-court-orders-says-kadaga/688334-3794282-v6rim6/index.html (accessed on November 12, 2017).
[109] Anthony Bradley, "The Sovereignty of Parliament- Form or Substance?" in Jowell and Oliver (eds) *The Changing Constitution* (Oxford University Press, 2011) 34, 37.
[110] Alon Harel and Adam Shinar (2012) "Between Judicial and Legislative Supremacy: A Cautious Defense of Constrained Judicial Review", *International Journal of constitutional Law*, 10, no. 4 950-957; Yuval Eylon & Alon Harel (2006) "The Right to Judicial Review", 92 *Virginia Law Review*, 991; Alon Harel & Tsvi Kahana (2010) "The Easy Core Case for Judicial Review", 2 *Journal of Legal Analysis* 227; James E. Fleming (2005) "Judicial Review without Judicial Supremacy: Taking the Constitution Seriously Outside the Courts", 73 *Fordham Law Review*, 1377, 1378–1379; Scott E. Gant (1997) "Judicial

order. However, Robert French stressed that this requires the understanding of the rationale behind the distribution of powers and the relationship among the organs of government.[111] To him:

> *To work that relationship also requires the respect of each for the limits of its own function and the proper functions of the other. It requires courtesy and civil discourse between the institutions. These are necessary aspects of any working relationship however tightly defined by law.*[112]

All such conflict that results in the disobedience to the court order may be connected to the effort by the legislature to assert their independence from the judiciary. They do this without recourse to the limitations to their legislative powers as pointed out by a prominent Lord Justice Law in his words:

> *As a matter of fundamental principle, it is my opinion that the survival and flourishing of a democracy in which basic rights (of which freedom of expression may be taken as a paradigm) are not only respected but enshrined requires that those who exercise democratic, political power must have limits set to what they may do: limits which they are not allowed to overstep. If this is right, it is a function of democratic power itself that it be not absolute.*[113]

Reiterating the importance of this limitation, the South African Supreme Court of Appeal held that "Courts are required by the Constitution to ensure that all branches of

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Supremacy and Nonjudicial Interpretation of the Constitution", 24 *Hastings Constitutional Law Quarterly*, 359, 366–389; Robert C. Post & Reva Siegel (2007) "Roe Rage: Democratic Constitutionalism and Backlash", 42 *Harvard Constitutional Review*, 373.

[111] Robert French AC (2013) 'The Courts and Parliament' 87 *Australian Law Journal* 820 (at 830); Robert French AC "The Courts and the Parliament", a paper presented at the Queensland Supreme Court Seminar on 4th August 2012, at Brisbane, 1.

[112] Ibid,3.

[113] John Laws (1996) "Law and Democracy" *Public Law* 72.

government act within the law and fulfill their constitutional obligations".[114] This is to ensure that, for instance, disputes are not subjected to political influence.[115] In fact, Wayne Martin described this as one of the areas in which the responsibility of the judicial power is thought to be contestable.[116] In such legislative-judicial impasse, it will be practically difficult to enforce the court order.[117] In fact, none of such court orders disrespected by the legislature had been enforced in all the impeachment cases in which they were issued in Nigeria. Respondent 2 gave a clear picture of how the lawmakers view the court orders. He queried: "How do you expect the legislators to respect court order which is seen as a threat to their resolve to impeach a Governor? We see any such court order as an unnecessary distraction or even a conspiracy to save the Governor facing the impeachment."[118] This provides a good justification to the assertion of Jeffery Jowell that "No-one who exercises power is pleased when that power is challenged".[119] Thus, according to the Chief Justice of Nigeria, disobedience to court orders from the part of the legislature and even the executive is an act of impunity. He added that "The problems created by disobedience of court orders were a matter for the legislature and

[114] See sections 2 and 44 of the constitution of the Republic of South Africa (1996); *President of the Republic of South Africa and Others v United Democratic Movement (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another as* Amici Curiae*) ("UDM")* 2003 (1) SA 472 (CC); 2002 (11) BCLR 1164 (CC) at para 25.

[115] Peter A Gerangelos (2008) "The Separation of Powers and Legislative Interference in Pending Cases", Sydney law review, 30, no. 61, 60-94.

[116] Wayne Martin (2015) "Parliament and the Courts: A Contemporary Assessment of the Ethic of Mutual Respect" *Australasian Parliamentary Review*, 30 no. 2, 80-98.

[117] Down Oliver (2012) "Parliamentary Sovereignty: A Pragmatic or Principled Doctrine?" available at https://ukconstitutionallaw.org/2012/05/03/dawn-oliver-parliamentary-sovereignty-a-pragmatic-or-principled-doctrine/ (accessed on October 12, 2017). The author is an Emeritus Professor of Constitutional Law at University College London.

[118] Interview with Respondent 2 at his residence on 12th August, 2017 around 1745hrs.

[119] Jeffrey Jowell QC "Managing Conflict between parliament and the court", being an opening remarks at the Joint IPU-ASGP Conference held in Geneva on October 10, 2013.

of the long period of military regime. He stated that "The military have no respect for the court... And government is the number one culprit of disobeying court orders. Government itself has no respect for court order. So, how do you expect the ordinary citizen to have respect for court order?"[124] He queried. Such act of disobedience to court orders has a trait for jeopardizing the integrity of the judiciary and democracy in Nigeria".[125] Another attributed it to impunity on the part of the lawmakers which thrives frequently as opined by some Respondents. For instance, Respondent 3 queried:

> *Have you ever seen or heard that a legislative house or members of either the National Assembly or State Assembly has been punished for flouting any court order? The answer is no. They are just left with their conscience to decide whether to respect the court or not. So, even the courts are becoming helpless.*[126]

However, in an attempt to provide a justification for such disobedience, Respondent 9 expressed the view that it may be in order to maintain the doctrine of separation of powers. To him, the legislature may just be trying to avoid unnecessary interference in the discharge of their constitutional responsibility due the belief in separation of powers. He added that "none of the three branches of government should interfere on how each one of them is performing his function and for the courts probably to tell them to stop or to adjust in certain respect. May be the legislature feels that the court will not have power to do that".[127] In a similar vein, Respondent 11 while providing an excuse for the disrespect for court order stated that:

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[124] Interview with Respondent 14 at his office on 8th September, 2017 at 1100hrs.
[125] Olu Ojewale "Disobedience of Court Orders: Nigerian Judiciary under Buhari's Spell"? *The Nigerian Voice*, March 4, 2017, available at https://www.thenigerianvoice.com/news/246131/disobedience-of-court-orders-nigerian-judiciary-under-buhar.html (accessed on November 17, 2017).
[126] Interview with Respondent 3 at his house on 5th October, 2017 at 1700hrs.
[127] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.

What may be the understanding of the legislators is that the court do not have jurisdiction at the initial stage to challenge their actions and that may be one of the reason why they do not respect it. Because had it been the constitution is very clear with clear powers that the court can intervene then they have to respect the power of the court. But since there is room for different interpretation that the court cannot interfere when they are doing this impeachment proceeding until thereafter so when they see it they will say no this court does not have jurisdiction and therefore whatever the court does it goes to no issue because it has no jurisdiction.[128]

6.7.3 Requirement of *Locus Standi* (Standing to Sue) as a Challenge to Judicial Review of Impeachment

Locus standi is the legal right of a party to be heard in litigation before a court of law or tribunal. A person is said to have *locus standi* where his civil rights and obligations have been or are in danger of being infringed[129] and he can show sufficient interest in the action. Sufficient interest test was developed by the courts.[130] In determining whether a litigant has the *locus standi* to institute an action, the court takes into account the nature of his claim as contained in his statement of claim or the evidence adduced.[131] Thus, in the celebrated case of *Adesanya vs. President of the Federal Republic of Nigeria*,[132] the Supreme Court held that a person is considered to have possessed *locus standi* if he/she could show sufficient interest in the subject matter of the action. A person is considered to have a sufficient interest if his "legal right has been adversely affected or who has

[128] Interview with Respondent 11 conducted in his office in Zaria, Nigeria on 8th August, 2017 around 16300hrs.
[129] *Attah vs. Idi* (2015) 2 NWLR (pt. 1443) 385 at 389. See also *Ibrahim vs. Independent National Electoral Commission* (1999) 8 NWLR (pt. 614) 334.
[130] See, for instance, the cases of *Adesanya vs. President of the Federal Republic of Nigeria* (1981) ANLR 1; *Olagunji vs. Yahaya* (1998) 3 NWLR(Pt. 542) 501; *Ogbuehi vs. Governor, Imo State* (1995) 9 NWLR (Pt. 417) 53 and *Okafor vs. Asoh* (1999) 3 NWLR (Pt. 593) 35; *Ibrahim vs. INEC* (1999) 8 NWLR (pt. 614) 334.
[131] *Attah vs. Idi* (2015) 2 NWLR (pt. 1443) 385 at 390; *Danglas vs.Shell Petroleum Development Co. Ltd.* (1999) 2 NWLR (pt. 591) 466.
[132] (1981)5 SC.

suffered or is in imminent danger of suffering an injury- damage or detriment personal to himself".[133] And where the subject matter of the action affects the general public, a person will have sufficient interest if he shows that he suffers a special damage over and above the general public.[134] This is to close the floodgate of litigations by persons who have no interest or sufficient interest in the subject matter of the proceedings otherwise known as "busy bodies". The constitutional basis for *locus standi* is provided as follows:

> *The judicial powers vested in the courts shall extend to all matters between persons, or between government and authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.*[135]

However, there was later a paradigm shift to this position as illustrated in the case of *Fawehinmi vs. The President of the Federal Republic of Nigeria*[136] where the court attempted to liberalize the interpretation of "sufficient interest" as the yardstick for determining *locus standi*. In the case, a tax payer instituted an action challenging the payment of salaries and allowances of two Ministers in foreign currency (dollar) contrary to the provision of the law which requires the payment to be made in local currency (Naira).[137] The action was dismissed by the trial court because the plaintiff lacked *locus standi* as the payment did not directly affect him. On appeal, the Court of Appeal set aside the decision. It held that any tax payer will have sufficient interest to go to court to ensure that the tax he pays is properly used as provided by law for the

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[133] *Adesanya vs. President of the Federal Republic of Nigeria* (1981) ANLR 1. See also *Thomas vs. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 and *Gamioba II vs. Esezi* (1961) All NLR 584.
[134] Ibid. See *Fawehinmi vs. The President of the Federal Republic of Nigeria* (2007) 14 NWLR (Pt. 1054) 275.
[135] See section 6 (6) (b) of the Constitution of the Federal Republic of Nigeria, 1999.
[136] (2007) 14 NWLR (Pt. 1054) 275.
[137] See Part IA of the Schedule to Certain Political, Public and Judicial Office Holders (Salary and Allowances etc.) Act No.6 of 2002.

running of the affairs of the State. However, despite this notable judgment, the issue is not finally settled due to conflicting decisions of the courts. This made the Court of Appeal to suggest for a review that "any future constitutional amendment should provide for access to court by any Nigerian in order to preserve, protect and defend the Constitution".[138]

Despite this laudable, bold and giant stride of the court in widening the scope of *locus standi*, the fact remains that only a person with sufficient interest is allowed to institute an action. This is the case even with breach of constitutional provision which affects the rights and interest of the citizens such as impeachment. It therefore, means that only some selected persons could institute an action to challenge the conduct of impeachment proceedings no matter how unconstitutionally it was conducted. Thus, according to the Supreme Court,[139] the President, Vice President, Governor and Deputy Governor possess the *locus standi* to sue. Members of the legislative Assembly who are aggrieved with the way the impeachment was conducted could also sue. This really called for review of this provision as every citizen will be affected by breach of so many constitutional provisions like impeachment. This is because impeachment which results in the removal of the public office holder concerned has the effect of taking away the mandate given by the citizens to another and different person. This actually should be a sufficient interest and of concern to all citizens.

[138] *Ibid.* 343.
[139] See *Inakoju vs. Adeleke* (2007) LPELR 10354.

As to who is to be sued, whosoever has a constitutional role to play in the impeachment proceedings could be sued. Thus, the legislative House;[140] the President of the Senate or Speaker of the State House of Assembly[141] the members of the impeachment investigation panel[142] and the Chief Justice of Nigeria or the Chief Judge of State[143] concerned could legally be sued when aggrieved with their conduct. In the same vein, persons who even though did not in any way participate in the impeachment proceedings could as well be sued not because of their role but because they will benefit from the impeachment and removal. Thus, persons who occupy the office in the event of the removal of the office holder are also appropriate co-parties.[144] Any person other than these cannot sue or be sued.

In the light of the above, there were cases of impeachment which resulted in the removal of the office holders whereby constitutionality and due process were sacrificed by the legislators and the persons directly affected by such impeachments did not bother to take legal actions to challenge the exercises. This had direct effect on the electorates as it took away the mandate freely given by them to the office holder through election. Yet, the law does not give them *locus standi* to recover the mandate. For instance, the case which readily comes to mind is that of impeachment of Ayodele Fayose as the Governor of Ekiti State. He was impeached and removed as the Governor on 15th October, 2006.

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[140] *Nyako vs. Adamawa State House of Assembly* (2017) 6 NWLR (pt. 1562) 347; *Danladi vs. Taraba State House of Assembly* (2015) 2 NWLR (pt. 1442) 1.
[141] *Balonwu vs.Peter Obi* (2007) 5 NWLR (1028) 488.
[142] *Balarabe Musa vs.Auta Hamza & Ors* (1982) 3 NCLR 439; *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135-136.
[143] *Alamieyeseigha vs. Igoniwari & Ors* (no. 1) (2007) LPELR-CA/PH/124M/2006 (R); *Alamieyeseigha vs. Igoniwari & Ors* (no. 2) (2007) LPELR-CA/PH/124M/2006; *Abiodun vs. The Chief Judge of Kwara State*, (2007) 18 NWLR(pt. 1065) 122-23.
[144] *Alamieyeseigha vs. Igoniwari & Ors* (no. 1) (2007) LPELR-CA/PH/124M/2006 (R).

The impeachment and removal were characterized by many illegalities and abuse of power by the legislature such as appointment of the impeachment panel. The Chief Judge was requested to appoint the investigation panel and he appointed it accordingly. The panel found that the Governor and his Deputy were not guilty of the allegations labeled against them. This was supposed to be the end of the matter according to the constitution. However, members of the legislature were not satisfied with this as they requested the Chief Judge to set up another panel. The basis for this was that the first panel which exonerated the Governor and his Deputy consisted of their friends and relatives. When the Chief Judge refused to oblige their request for being unconstitutional, they illegally suspended him and appointed another one. The new Chief Judge immediately constituted another panel. The new panel within two days found that the Governor and his Deputy were guilty of the same allegations they were earlier exonerated from by the first panel. On this basis, the House of Assembly removed the Governor and his Deputy on the same day the report of the panel was submitted. Neither the Governor nor his Deputy challenged the illegal removal because the impeachment generated so much chaos that three persons were laying claim to the governorship seat. They were the purportedly removed Governor, the purportedly removed Deputy Governor and the Speaker of the State House of Assembly. This led the Federal Government to declare a state of emergency in the State to forestall break down of law and order.[145] It was about nine years later that the Nigerian Supreme Court

[145] The President is empowered to proclaim a state of emergency in respect of the federation or any part of the federation in the following situations, that is when: the federation is at war, the Federation is in imminent danger of invasion or involvement in a state of war, there is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security; there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger; there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity,

declared the impeachment of the Governor unconstitutional, illegal, and therefore, null and void. This came when the constitutionality of the impeachment was raised in the case of *People Democratic Party vs.All Progressive Congress* [146] in which his eligibility to contest the governorship of the state was challenged.

The above scenario depicted the effect of the requirement of *locus standi* to judicial review of impeachment. This is because the electorates, who elected the Governor, have not been recognized as capable of instituting an action to challenge the impeachment in order to recover such mandate. If the electorates in Ekiti had the *locus standi* to challenge the impeachment and removal of their Governor, they would have done so and the Governor would have been reinstated before the expiry of his tenure. Of what benefit was it then that his impeachment and removal were nullified about eleven years later? It is worthy to note at this juncture, that the requirement of *locus standi* had been liberalized in some important human rights cases which affect the general public in Nigeria[147] but does not include impeachment proceedings. This is a lacuna in the constitution as rightly observed:

> *It would in my view be a grave lacuna in our system of public law if a pressure group... or even a single public spirited tax payer were prevented by outdated technical rules of locus from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.*[148]

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affecting the community or a section of the community in the Federation; there is any other public danger which clearly constitutes a threat to the existence of the Federation. See section 305 of the constitution of Nigeria.

[146] (2015) 15 NWLR (pt. 1481) 1.

[147] See for instance, the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 which allows public spirited individuals and nongovernmental organizations to enforce violations of human rights even though they are not directly affected.

[148] *Inland Revenue Commissioners vs. National Federation of Self Employed and Small Business Ltd.* (1981)2WLR 723at740.

6.7.4 Judicial Remedies/Reliefs for Illegal Impeachment

It has been revealed from the above discussions that disputes emanating from the exercise of impeachment powers are submitted to the courts for judicial review by the persons aggrieved with the exercise. The aim of such review is to determine the constitutionality or otherwise of the proceedings especially where they led to the removal of the office holder. Where the determination of the court is that the impeachment was conducted constitutionally, then the aggrieved person will not be entitled to any remedy. However, where the determination is that the proceedings were unconstitutional, the exercise becomes illegal and the aggrieved person(s) is/are entitled to judicial remedies. This is in line with the equitable maxim which says *ubi jus ubi remedium* (where there is right, there is remedy). Therefore, this issue is worth considering in a Thesis like this. The usual judicial remedies available for litigants following a successful judicial review of impeachment are declaration, mandamus and injunction/prohibition.

Declaration is a judgment declaring the legal rights of a party.[149] In other words, it is the pronouncement that one party is right and the other is wrong, or one party has a right and the other owes an obligation.[150] It simply declares the existence of a legal relationship and it may or may not comprise any order to be imposed against the defendant.[151] However, the plaintiff may subsequently apply for a consequential order

[149] *Fawehinmi* vs. *Abacha & Ors* (1996) 5 NWLR (pt. 447) 198.
[150] Malemi Ese, 414.
[151] *Okoye* vs.*Santilli* (1990)3 SCNJ 83 at 100; *Atiku Abubakar* vs.*Attorney General of the Federation & Ors* (2007) 6 NWLR (pt. 1031) 626; *Government of Gongola State* vs.*Tukur* (1989) 4 (tl 17) 517.

where the judgment does not contain one.[152] In impeachment cases, this is usually the first remedy sought for and granted by declaring that the impeachment is null, void and ofno effect whatsoever.[153]

"Mandamus" is a Latin word which literally means "we command". It is a high prerogative which obtains to ensure the performance of a public duty in which the applicant has a sufficient legal interest.[154] It's an order of court commanding the performance of a public duty which a person or body is bound to perform or compelling the reinstatement of the applicant to his workplace, office, entitlements, privileges or rights of which he has been wrongfully deprived.[155] This remedy is awarded to compel the payment of salaries and allowances to the public officer illegally removed by impeachment.

Injunction and prohibition are closely related judicial reliefs or prerogative writs awarded to litigants in deserving cases. The remedy of Injunction is granted to protect the right or threatened right of the plaintiff.[156] It is an order of court prohibiting a person or body from doing a specified thing.[157] Injunction may be interim,[158] interlocutory[159] or

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[152] See *Williams* vs.*Majekodunmi* (1962) 1 All NLR 410; Malemi, Ese, *The Nigerian Constitutional law,* (Princeton, 2012) 415.

[153] The courts have made this declaration in most of the cases of impeachment under the Nigerian constitution.

[154] *Ngo vs. Green* (2015) 7 NWLR (1459) 606.

[155] Malemi Ese, *The Nigerian Constitutional law,* (Princeton, 2012) 420; Henry Onoria, 'The African Commission on Human and Peoples' Rights and the Exhaustion of Local Remedies under the African Charter' (2003), 10 *African Human Rights Law Journal,* 35. See also *R* vs. *Western Urhobo Rating Authority, Ex parte Chief Odje and Ors* (1961) All NLR. 796. See also *The Director, SSS vs. Agbakoba* (1999) 3 NWLR (pt. 5959) 314; *Gani Fawehinmi* vs. *Akilu & Anor* (1987) 1 NWLR 554; Aguda T.A., *Principles of Practice and Procedure in Civil Actions in the High Courts of Nigeria* (Sweet and Maxwell, 1980) 8; *Anthony* vs. *Governor of Lagos State* (2003) 10 NWLR (pt. 828) 288.

[156] *Atiku Abubakar* vs. *Attorney General of the Federation & Ors* (2007) 6 NWLR (pt. 1031) 626

[157] *American Cynnamid Co., Ltd.* vs *.Ethihon Ltd.,* (1975) 1 All ER 504

[158] It is interim when granted upon an *ex parte* application to maintain the status quo or prevent damage or further damage to the *res* before the commencement of the substantive suit. See *Koloye* vs. *Central Bank of Nigeria* (1989) 1 (pt. 98) 419 SC

perpetual in nature[160] to protect legal right from invasion.[161] The most sought after judicial remedy in impeachment disputes is an order of injunction prohibiting or restraining any person involved in impeachment proceedings from taking any or further actions in relation to the impeachment of the applicant. Thus, it could be obtained against the Speaker;[162] or against the Investigation Panel;[163] or the Chief Judge.[164] Prohibition, on the other hand, is an order of court restraining an inferior court, tribunal, public or administrative authority from exercising its judicial or quasi-judicial powers.[165]

6.8.4.1Explaining the Inadequacy of Judicial Remedies for Illegal Impeachment

The first and *locus classicus* case in which the inadequacy of the judicial remedies awarded to public officers that had been removed through illegal impeachment was highlighted was *Ladoja vs. Independent National Electoral commission.*[166] The appellant in this case, Senator Rashid Ladoja was impeached in 2005 as a result of which his Deputy took over as Governor. He challenged his impeachment from the High Court through to the Court of Appeal and the Supreme Court which declared the impeachment illegal, null and void and accordingly ordered for his reinstatement after about eleven

[159] The order is interlocutory when obtained upon a motion on notice in order to maintain the status quo pending the final determination of the case. See *Governor of Lagos State* vs. *Ojukwu* (1986) 1 NWLR (pt. 18) 621 SC.

[160] For perpetual injunction, it is granted after the final determination of the case and it is meant to permanently prevent the act specified in the order because it is in breach of his leag rights. See *Shugaba* vs. *Minister of Internal Affairs & Ors* (1981) 1 NCLR 25; *Tanimowo vs.Odowoye* (2008) All FWLR (pt. 424) 1513.

[161] *Pharm-deko Plc vs* (2015) 10 NWLR (pt. 1467) 225. See also *Ako vs.Hakeem Habeeb* (1992) 6 NWLR (pt. 45) 247

[162] *Abaribe vs The Speaker, Abia State House of Assembly*(2002) 14 NWLR (pt. 788) 466 at 478

[163] *Balarabe Musa vs.Auta Hamza & Ors*(1982) 3 NCLR 439.

[164] *Alamleyeseigha vs. Igoniwari* (2007) LPELR- CA/PH/124/2006 and *Abiodun vs. Chief Judge, Kwara State* (2008) All FWLR (pt. 484) 675.

[165] See Malemi Ese, *The Nigerian Constitutional law,* (Princeton, 2012) 433. See also *Attorney General of Lagos State vs. Eko Hotels Ltd., & Anor* (2006) All FWLR (pt. 342) 1398.

[166] *Ladoja* vs. *INEC* (2007) 12 NWLR (pt. 1047) 115; (2007) 7 SC 99.

months of his removal.[167] Following this judgment, the appellant approached a Federal High Court to determine whether in the light of section 180 of the constitution, which bestows on him a four-year term, and the decision of the Supreme Court which declared his impeachment illegal; the eleven months he spent out of office as a result of the impeachment forms part of his four-year term. He sought for the declaration that he was entitled to uninterrupted four-year term and that the period of eleven months during which he was kept out of office did not form part of his tenure. In other words, he was seeking for computation of his four-year tenure.[168] The court, in a unanimous judgment, held that the appellant had not shown any thing on record by which the fixed period of four years under section 180 (2) of the constitution could be extended. The constitution does not give the court power to grant extension of tenure to the Governor who was improperly impeached. "To hold otherwise would amount to reading into the Constitution provisions that are not there",[169] the court concluded.

The decision above is hereby faulted for at least two reasons *viz*: wrong interpretation and application of the relevant constitutional provision and lack of substantial justice to the Governor. To start with the first reason, there are various rules of interpretation of statutes including the constitution under the Nigerian legal system. They are largely evolved and developed by the common law judges. The Nigerian courts mostly adopt

[167] *Inakoju vs. Adeleke* (2007) LPELR 10354.
[168] Computation of time has always been very argumentative despite the provisions of the various Interpretation laws in Nigeria. See the cases of *Action Congress & 2 Ors* vs. *Jonah David Jang & Ors* (2009) 4 NWLR (pt. 1132) 475; *Mohammed Dikko Yusuf* vs.*Chief Aremu Olusegun Obasanjo* (2003) 16 NWLR (pt. 847) 554, *Kamba* vs. *Bawa* (2005) 4 NWLR (pt. 914) 43; *Chief Momoh Yusuf Obaro* vs. *Alhaji Salihu Ohize & Ors* (2008) LPELR-19784(CA).
[169] *Ladoja* vs. *INEC* (2007) 12 NWLR (pt. 1047) 115; (2007) 7 SC 99.

and apply them in appropriate circumstances when performing their duty of interpretation.[170] The traditional rules are the literal, golden and mischief rule. The literal rule postulates that words must be interpreted according to their literal, ordinary and grammatical meaning.[171] However, where the words are ambiguous, or are reasonably susceptible of more than one meaning or the relevant provision is irreconcilable with any other provision of the enactment, then the court may depart from this literal rule.[172] The golden rule is that where the literal interpretation would lead to absurdity or apparent injustice which the lawmakers wouldn't have intended, the courts must reject that interpretation.[173] According to the mischief rule, in the interpretation of statute, the court should consider the common law as it stood before it was passed, the mischief and the shortcoming that gave rise to the legislation and the remedy it provided.[174] However, there emerged a new rule of interpretation known as the purposive rule as earlier

[170] Interpretation of laws and the constitution is one of the functions of the courts. See *Seaford Court Estates Ltd.* vs. *Asher (1949) 2 K.B. 481, 498 11; Action Congress* vs.*INEC (2007) 12 N.W.L.R. (pt.1048) 22;* Constitution of the Federal republic of Nigeria 1999, ss 251 and 285.

[171] *Sussex Peerage Case*, 11 CL& F.85; 8 E.R. 1034, 1057; *Fawehinmi vs. I.G.P.* (2002) 5 S.C. (Pt. 1) 63; (2002) 7 NWLR (Pt. 767) 606 at 678,It is a rule of interpretation which seeks the intention of the legislature through an examination of the language in its ordinary and natural sense. See Higgins J in *Amalgamated Society of Engineers vs. Adelaide Steamship Co Ltd.* (1920) 28 CLR 129, 161-2. The rule had been applied in many cases by the Nigerian courts. See for instance, *Dapianlong* vs. *Dariye* (2007) LPELR-SC.39/2007; *Attorney General Ondo State* vs. *Attorney General of The Federation & 35 Ors* (2002) 6 S.C. (Pt. I) I 180; *Federal Republic of Nigeria* vs. *Anache* (2004) 14 WRN 1 SC as pointed out in Stanley Ibe. 'Implementing Economic, Social and Cultural Rights in Nigeria: Challenges and Opportunities' (2010) 10 *African Human Rights Journal*, 199. Furthermore, the relevant section of the constitution should not be considered in isolation with its other sections. See *P.D.P.* vs. *I.N.E.C* (2001) 27 W.R.N, 62; *A.G of The Federation* vs.*All Nigerian Peoples Party* (2003) 27 W.R.N. 62 and *Mwana vs.U.B.N*(2003) 28 W.R.N. 142.

[172] *Escoigne Properties Ltd.* vs. *I.R.C.* (1958) A.C. 549, 565; *Action Congress & Anor* vs.*INEC* (2007) 12 NWLR (Pt.1048) 220 S.C.

[173] *Beck* vs.*Smith* (1836) 2 M. & W. 191; *Grey* vs. *Pearson* (1857) 6 H.L.C. 61; 10 E.R. 1216. *Ugwu* vs. *Ararume (2007)* 12 NWLR (Pt. 1048) 365.

[174] *Heydon's case* (1584) 3 co. Rep. 7a; 76 E. R. 637. The Nigerian Supreme Court has applied this rule in such cases as *I.B.W.A Ltd* vs. *Imano* (1988) 2 N.W.L.R. (Pt 85) 633 and *Kolawole* vs *Alberto* (1989) 1 N. W.L.R. (Pt. 98) 382; *Nwokocha* vs. *Governor of Anambra State & Ors* (1984) All N.L.R 324.

advocated by prominent Lord Denning.[175] Although it was initially rejected by some English judges,[176] the approach was later embraced by prominent law lords like Diplock[177] and approved by the House of Lord.[178] The Nigerian Supreme Court had also approved and adopted this approach in the celebrated case of *Nafiu Rabiu vs. The State.*[179] Furthermore, the courts had variously employed this creative mode of interpretation in order to expound the law in appropriate cases.[180]

This notwithstanding, the court in the case under review, *Ladoja vs. INEC* adopted a rather conservative rule of interpretation when confronted with the determination of the tenure of a Governor who was illegally impeached. The interpretation given in this case is against all the known rules of interpretation as highlighted above. The interpretation of the court is that the tenure of a Governor is four years which starts from the date he takes the oath of office and allegiance irrespective of what happened along the line that keeps him out of the office like impeachment. The constitution, according to the court, does not provide for uninterrupted four years as tenure of a Governor. In other words, once a Governor takes the oath, his tenure starts to count and will end four years

[175] *Seaford Court Estates Ltd vs. Asher* (1949) 2 K.B.481. 498; *Magor and St Mellons Rural District Council vs. Newport Corporation*(1951) 2 All E.R.839; and later *Nothman v Barnet Council.* (1978) 1 W.L.R. 220.

[176] Like Lord Simonds. who castigated this new approach "as a naked usurpation of the legislative function under the thin guise of interpretation" in the latter case in which Lord Denning advocated for it. See *Magor and St Mellons Rural District Council* vs. *Newport Corporation,* (1951) 2 All E.R.839.

[177] In *Kammins* vs. *Zenith Investments Ltd* (1971) A.C.850, 881.

[178] *Pepper (Inspector of Taxes) v Hart*(1993) I ALL E.R.42.

[179] 1981) 2 NCLR 293, 326. Where Udo Udoma JSC said "... I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends".

[180] See for instance *Obaji vs. State* (1972) 3 NMLR 336; *ADMAS* vs. *D. PP* (1966) I NMLR 111; *Council of the University of Ibadan* vs. *Adamolekun* (1967) 1 NMLR 213.

thereafter. The implication is that if a Governor is removed for a period of three years, then he is reinstated by the court after a finding that the impeachment was not legal; he is entitled to enjoy tenure of one year only. This is a very wrong interpretation in that it is against the letters and spirit of the constitutional provisions on the tenure of Governor. This seemingly literal interpretation leads to absurdity and injustice and is not in tandem with the purpose of the legislature. The literal rule, after all, is now completely out of date and has been replaced by the purposive approach.[181] The view which required courts to adopt the only literal meaning of language in interpretation has since vanished.[182] The trend now in most jurisdictions is to adopt the interpretation with the aim to "promote the general legislative purpose".[183] Although the Nigerian Supreme Court had variously applied the rules as pointed out above, the present judicial approach is that words of an Act are to be read in their entire grammatical and ordinary context and harmoniously with the structure of the Act and the purpose of the legislature.[184] This entails a combination of all the rules because they are considered as complimentary to one another.[185] Based on this, there are two broad approaches to constitutional interpretation. One is that it must be given a strict and literal construction to discover the intention of the lawmakers from the text itself. The other is that a constitution should be more generously construed than an ordinary legislative enactment.[186]

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[181] *Nothman* vs. *Barnet Council* (1978) 1 W.L.R. 220. See also Lonnquist, Tobias (2003) 'The Trend towards Purposive Statutory Interpretation: Human Rights at Stake' 13 *Revenue Law Journal*, 19 where the author argued that the practice of statutory interpretation over the last few decades has shifted from literal to purposive.

[182] *Pepper (Inspector of Taxes) Hart Nothman* vs. *Barnet Council* (1978) 1 W.L.R. 220.

[183] *Nothman* vs.*Barnet Council*(1978) 1 W.L.R. 220. See also *PDP* vs. *INEC* (1999) 11 NWLR (pt. 262) 200.

[184] Justus Sokefun, (2006) "The Court System in Nigeria: Jurisdiction and Appeals" 2 *International Journal of Business and Applied Social Science*, 18.

[185] *Attorney-General of Bendel State* vs. *Attorney General of the Federation* (1981) S.C.1

[186] Justus Sokefun, (2006) "The Court System in Nigeria: Jurisdiction and Appeals" 2 *International Journal of Business and Applied Social Science*, 18.

Thus, the purpose of the constitution drafters is that the Governor should serve for four years from the date he takes the oath of office, unless where it is reduced by a legal cause.[187] The provision only mentioned the particular date when the tenure starts, but not the specific date it ends. It's a misconception of the provision for the court to have concluded that the appellant's tenure in this case ended on 29th May, 2007, having taken the oaths on 29th May, 2003; despite that he was kept out of the office due to impeachment for a period of eleven months. This is also based on the simple logic that by that date he would have spent barely three years which is clearly shorter than the tenure provided by the constitution. The court ran into this error because it considered any interpretation which grants the Governor eleven months period to be extension or elongation of his tenure. Extension or elongationoftenure provided by the constitution is where the Governor served a day or more beyond the four years.[188] What the appellant was asking was that he should be allowed to complete or exhaust the four years given to him by the constitution which was reduced by his removal through illegal impeachment. And given the trend of liberal and purposive approach in the interpretation of the constitution being towed by the Supreme Court,[189] and other courts in recent times,[190]

[187] Section 180 (1) categorically mentioned death and resignation as capable of cutting short the four year tenure. However, it also recognizes some other causes under the constitution which could include impeachment and permanent incapacity as legally established.

[188] See the case of *Brig Gen Mohammed Buba Marwa & Ors. vs Admiral Murtala Nyako & Ors* [2012] LPELR–SC 141/2011, where five Governors were declared winners at a general election and took the prescribed oaths. The elections were later nullified and rerun elections conducted which they won and took another oath of allegiance and that of office. The question then arose as to when their tenure started and would end. Was it when they took the first oath after the general election or when they took the second oath after the rerun election? The Supreme Court held that the tenure commenced after the first oath. To hold that it started after the second oath would have amounted to tenure elongation or extension which is against the letters of the constitution. This is clearly the case that could be regarded as that of extension of the tenure beyond four years which the constitution frowns at.

[189] See *PDP* vs. *INEC* (1999) 11 NWLR (t. 626) 200 at 257 where the word "dies" under section 137 of a Decree was interpreted to mean or include unavailability or permanent incapacity. Thus, the court, per Kutigi JSC held that "I have no hesitation, therefore, in interpreting or construing the word "dies" in

the court ought to have given effect to the provision of the constitution which recognizes four years for the Governor. The intention of the framers of the constitution is that such Governor who is not caught by death, resignation, permanent incapacity or impeachment (legal impeachment, not like the one in this case) should enjoy four years. His illegal impeachment ought not to have served as a barrier to deny him the four years.

From the foregoing, the interpretation of section 180 (2) of the constitution as adopted and applied by the Supreme Court in this case that the tenure of an illegally impeached Governor is three years and one month and not four years is, with due respect, wrong. This is because it is against the letters and spirit of the section. The decision under review could also be faulted for lack of substantial justice to the Governor. The aim of administration of justice is to serve the end of justice to all concerned - the parties and the society. So, the courts have the duty to provide adequate remedy once it is established that a wrong has been done to a litigant.[191] The inspiration provided in the Lord Denning's famous judicial pronouncement in *Packer v Packer*[192] enables courts to do substantial justice in deserving cases even if it is for the first time.[193] The Nigerian Supreme Court is sometimes inspired by this philosophy in its quest to ensure that

section 37(1) of the Decree literally and widely as meaning "unavailable". See also *Ojunkwu vs. Obasanjo & Ors* (2004) 12 NWLR (pt. 886) 169.

[190] See for instance the case of *Njoku vs. Jonathan* (unreported) suit no: FCT/HC/CV/2449/2012 where a High Court in Abuja gave a liberal interpretation to sections 135(2) and 137(1) on the tenure of President. According to the court, what determines tenure is election. Therefore, a president who assumed office not as a result of an election but by operation of law, like the defendant, Goodluck Jonathan, is not on any tenure as he was never previously elected as president.

[191] PerOputa JSC in *Aliyu Bello* vs. *A-G Oyo State* (1986) 5 NWLR (pt. 45) 828 at 889-890.

[192] (1958) 15.

[193] "What is the argument on the other side? Only that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before we shall never get anywhere. The law will stand still whilst the rest of the world goes on and that will be bad for both". Ibid, 22.

substantial justice is done in a case. Eso JSC expressed the view that the concern for justice must be the overriding force and basis for the actions of the court in its interpretative jurisdiction.[194] The need for justice and fairness in deserving cases and to cater for societal changes is another principle behind the development of new laws.[195] Whenever a new situation arises which has not been considered before, the judges have to explain what the law is. In so doing, they do not change the law.[196] Thus, the Nigerian Supreme Court had in some cases demonstrated that the purpose of the courts is to do justice by awarding remedies adequate in the circumstances to deserving parties. For instance, in *Amaechi vs. INEC & Ors,*[197] the Supreme Court declared a person winner of a general election although he only participated in the primary election because it was then the only adequate remedy in the circumstance. The court said:

> *Am I now to say that although Amaechi has won his case, he should go home empty-handed because elections had been conducted into the office? That is not the way of the court. A court must shy away from submitting itself to the constraining bind of technicalities. I must do justice even if the heavens fall. The truth of course is that when justice has been done, the heavens stay in place. It is futile to merely declare that it was Amaechi and not Omehia that won the candidate of the P.D.P. What benefit will such a declaration confer on Amaechi? ...* [198]

The court went further to grant a judicial remedy not even requested because it was then the only remedy available to adequately redress the exclusion of Amaechi in the general election[199] because it best served justice in the case.[200] This was also exhibited in many

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[194] *Engineering Enterprise Contractor of Nigeria* vs. *Attorney General of Kaduna State* (1987) 1 N.S.C.C. 601 at 613

[195] Ibraheem, Ojo Tajudeen, 'Case Review: SPDC *vs* Amadi & Ors' (2013) 3, *International Journal of Humanities and Social Science*, 283.

[196] See Lord Denning M.R. in *Gouriet* vs. *Union of Post Office Workers* (1982) A C 435

[197] (2007) 7-10 SC 172.

[198] *Amaechie vs. INEC*(2007) 7-10 SC 172.

[199] Amaechi was asking the court that he was the duly nominated flag bearer of the PDP and not Omehia whose name was submitted to the electoral commission. The general election held while the case was still

cases like *Awolowo vs. Shagari*[201] where the court was faced with the onerous task of interpretation of what amounted to majority votes in two-third of 19 states. The court interpreted it to mean 12 states and two-third votes of another state, not 13 states as it was argued.[202] Another instance is the case of *Peoples Democratic Party vs. Independent National Electoral Commission*[203] where the Supreme Court liberally interpreted the word "dies" to include the situation where a Governor-elect abandoned the position before taking the oath of office.[204]

All these cases are a testimony to the fact that justice of the case should be paramount in that to decide otherwise is to cause miscarriage of justice to the party who deserves it. The *locus classicus* case of Ladoja discussed above paved the way for other cases of illegal impeachments to suffer the same fate. Thus, the case of the impeachment of Murtala Nyako presented a more difficult scenario because his tenure had already expired and someone else elected into the office. In adopting the interpretation of the

pending before the courts. At the time of the Supreme Court decision, the general election was concluded without Amaechi. In this respect, a reknown constitutional law expert, prof. I. E. Sagay, described the judgment as the new guiding operational philosophy of the courts. See http://www.profitsesagay.com/pdf/THE%20AMAECHI%20V%20OMEHIA%20CASE%20FOR%20A%20BOOK.pdf (accessed June 10, 2016).

[200] Justus Sokefun, (2006) "The Court System in Nigeria: Jurisdiction and Appeals" 2 *International Journal of Business and Applied Social Science,* 18.

[201] (1979) All NLR 120

[202] This interpretation was clearly given to ensure substantial justice was done to the respondent because it is not possible to get two-third of 19 states as the law required. The argument that the equivalent of two-third of 19 states was 13 was rejected because it would have occasioned great injustice by imposing more than what the law required.

[203] (1999) 11 NWLR(t.626)200. 257.

[204] The court was faced with the interpretation of section which is equivalent to section 137 of the constitution which provides that in the event where a person elected as Governor dies before the oath of office, his Deputy should be sworn in as Governor. In the instant case, the Governor did not die but abandoned the governorship seat and became the Vice President. The question arose as to whether his Deputy should be sworn in as Governor under this section. The court held that his abandonment of the Governorship seat amounted to "death".

tenure as held in the case above, the court expressed lamentation "... so if by peradventure something such as illegal impeachment eroded into that four years term, it is too bad as that period of infraction cannot be brought back or an extension of time to add up to what was lost".[205]

6.8 Conclusion

The power of judicial review of both legislative and executive actions had been vested in the judiciary. Judicial review of the former especially as it relates to review of impeachment presents a somewhat different scenario because the constitution exempts it from such review. This is due to the ouster clause in the constitution which prevents courts from questioning or entertaining any determination on impeachment. Initially the Nigerian courts gave full effect to the provision of the ouster clause as a result of which impeachment disputes submitted for review were rejected by the courts between 1981 and 2002. However, in 2007, there was a paradigm shift by the courts as a result of different and liberal interpretation of the ouster clause. It now means that courts could entertain impeachment disputes so long as there was no compliance with any of the constitutional requirements for impeachment. Several reasons necessitated the shift prominent among which was the soaring upsurge in the impeachment cases sweeping the country's democracy.[206]

Now that the judicial review of impeachment had been recognized, several issues and challenges abound which make it unsatisfactory and ineffective. Prominent among them

[205] *Nyako vs. Adamawa State House of Assembly* (2017) 6 NWLR (pt. 1652) 347 at 351-352.
[206] Per Niki Tobi JSC in *Inakoju vs. Adeleke* (2007) LPELR 10354.

are delay in judicial review; lack of respect for court orders; the requirement of *locus standi* and the remedies available to successful party in impeachment disputes. Delays in judicial review of impeachment are challenging in view of the fact that the office holders subjected to impeachment have a fixed tenure to serve in the public office. As a consequent, most of the impeachment disputes were finally disposed of after the tenure or a substantial part of it had expired. As for the intervention of the judiciary while the impeachment proceedings were going on, it had also encountered a lot of hiccups in that court orders granted were habitually disrespected with impunity. There is also the issue of the requirement of *locus standi* by which only a person who shows a sufficient interest in the impeachment could bring an action for judicial review and the judicial remedies available to litigants who successfully challenged the conduct of the impeachment. In this light, the chapter had shown how these issues had constituted a clog in the wheels of judicial review of impeachment. Therefore, the relevant objective which is to analyze the challenges to effective judicial review of impeachment had been achieved. Consequently, one of the questions of the research which is whether judicial review is an effective mechanism to address impeachment disputes has been answered.

CHAPTER SEVEN
RECOMMENDATIONS AND CONCLUSION

7.1 Introduction

This chapter is the last and concluding part of this study and it contains the findings and recommendations on the issues raised, discussed and analyzed in the preceding six chapters. In view of this, it consists of the findings on the constitutional requirements on impeachment; law and practice of investigations of the grounds for impeachment; challenges to compliance with constitutional provisions on impeachment; and challenges to judicial review of impeachment. Recommendations corresponding to the findings are made and general conclusion and suggestion to guide further research provided. They have been discussed *seriatim* as follows:

7.2.1 Findings on Constitutional Requirements for Impeachment

7.2.1.1 Finding on the Meaning of Impeachment

The Nigerian constitution lacks precise provisions on the meaning of impeachment nor does it categorically even mention the word "impeachment" in its provisions relating to impeachment. This brings about a lot of confusion and misunderstanding as to the exact meaning of impeachment. This is evidence in the judicial proceedings, legal discussions, media reportage and public analyses as pointed out in Chapter Two of this research. In fact, it was argued that in Nigeria, proceedings initiated by the legislature for the removal of some officers is popularly termed as impeachment although the word

impeachment was never used anywhere in the constitution".[1] In fact, many respondents alluded to this argument.[2]

Even some of our judges do have a similar misunderstanding of what the meaning of impeachment entails. For instance, Justice Niki Tobi of the Supreme Court once stated the view that the impeachment procedure under the Nigerian constitution should be regarded as removal procedure as it is different from the impeachment procedure under the United States constitution.[3] This is because the Nigerian constitution does not expressly refer the provision as impeachment but removal. Therefore, according to him, the procedure under section 188 should not be regarded as impeachment. But even the judgment of the other justices, who were sitting close to him in the case, regarded the provisions as contained in the section as impeachment provisions. For instance, Justice Musdapher in an attempt to provide the meaning of gross misconduct under section 188 of the constitution stressed that:

> *For articles of impeachment to be relevant, the misconduct must be gross. Accordingly, it is not every misconduct that will attract impeachment. Although, it appears that the legislature has the discretionary power to determine what amounts to "gross misconduct".*[4]

Furthermore, in subsequent cases, other Justices of the same court expressly regarded the provisions of section 188 of the constitution as impeachment procedure. For instance, Mahmud Mohammed JSC made this point beyond arguments that:

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[1] Ephipany Azinge, "Legislative Adjudication: Uses and Abuses", in Okon E., *Lawmaking Process in Nigeria*, (Benin: UNIBEN Press, 2009) 161.
[2] See for instance Interview with Respondent 11 conducted in his office on 8th August, 2017 around 16300hrs; Interview with Respondent 4 on August 1, 2017, at his residence around 1309.
[3] His words were extensively quoted in Chapter Two of this Thesis.
[4] Ibid.

> *The law governing impeachment proceedings in any State House of Assembly is contained in section 188 of the 1999 constitution which states in subsection (1) 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.*[5]

In fact, the other justices had at various places in their judgments corroborated this when they also referred the provision as impeachment. For instance, Justice Walter Samuel Onnoghen, who delivered the leading judgment in the case, said that "It is now settled that impeachment proceedings are *sui generis* as they belong to a class of their own and time is of the essence".[6] In a similar vein, Justice Katsina-Alu, said "eight members out of the ten members began the process of impeachment by allegedly serving Chief Dariye with notice of allegation of gross misconduct".[7] In fact, the judge went further to make his point clearer when he stated that:

> *It is particularly plain that while the initiation of the impeachment process requires the notice of any allegations 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-third majority of all its members.*[8]

These examples are too numerous to mention as there is no case under the sections in which the word "impeachment" was not used by the Supreme Court and other superior courts of records. This showed unequivocally and beyond doubt that the provisions of sections 143 and 188 of the constitution is refered as impeachment proceedings notwithstanding the fact that the word "impeachment" does not appear therein. To add another twist to what precisely impeachment entails, the constitution recognizes

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[5] Per Mahmud Mohammed JSC in *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007.
[6] Ibid.
[7] Ibid.
[8] Ibid.

impeachment as one of the situations in which the office of the President, Vice President, Governor and Deputy Governor becomes vacant. The constitution provides in this respect:

> *The Vice President shall hold the office of the President if the office of the President becomes vacant by reason of death or resignation, **impeachment**, permanent incapacity or the removal of the President from office for any other reason in accordance with section 143 or 144 of this constitution;*[9] *(bold for emphasis)*
>
> *Where the office of the Vice President becomes vacant –*
> *By reason of death or resignation, **impeachment**, permanent incapacity or removal in accordance with section 143 or 144 of this constitution.*[10] *(Bold for emphasis)*
>
> *The Deputy Governor shall hold the office of the Governor if the office of the Governor becomes vacant by reason of death or resignation, **impeachment**, permanent incapacity or the removal of the Governor from office for any other reason in accordance with section 188 or 189 of this constitution;*[11] *(bold for emphasis)*
>
> *Where the office of the Deputy Governor becomes vacant –*
> *By reason of resignation or death, **impeachment**, permanent incapacity or removal in accordance with section 188 or 189 of this constitution.*[12] *(Bold for emphasis).*

From the provisions of the constitution above, it is evident that confusion is added as to the meaning of impeachment. Although it recognizes impeachment as a ground on which the offices mentioned become vacant, it is confusing as to which section could one find impeachment. Is it in section 188 or 189 in case of Governor and Deputy Governor? And is it in section 143 or 144 in relation to the President and Vice President? This is because in none of the above sections could one find where

[9] Section 146 (1) of the constitution.
[10] Section 146 (3) of the constitution.
[11] Section 191 (1) of the constitution.
[12] Section 191 (3) (a) of the constitution.

impeachment is mentioned. Then one may rightly ask, why does the constitution mention impeachment here without mentioning it anywhere previously in the constitution? The simple answer is that it is nothing other than an additional confusion as to what impeachment entails. This has not been the case in some jurisdictions as their constitutions use the word "impeachment" either as a subhead, side note or in the text of the provision to show that it connotes a process which could lead to the removal of the public officer concerned.[13]

7.2.1.2 Finding on Requirement of One-Third of Members

Another finding is that the numerical requirement of one-third of the members of the Assembly to sign the notice of allegations of gross misconduct is not in tune with the underpinning philosophy behind impeachment under the Nigerian constitution. The philosophy behind the numerical requirement of members of the legislature in the impeachment proceedings, as discussed in Chapter Three, is that the electorates voted for the office holders subject to impeachment as such they should also, indirectly through the lawmakers who are their chosen representatives, be required to remove them by impeachment. This is based on the law that for a person to be elected into any of the public offices subject to impeachment, he should get not only the majority votes but also certain percentage of the votes from at least two-third states of the federation in case of President[14] and also two-third of the Local Governments in case of Governor.[15] This forms the basis for the requirement of two-third majority of the members to also remove the said office holders. The requirement of one-third in impeachment proceedings is,

[13] A list of such constitutions is provided under the recommendation to this finding later in this chapter.
[14] See section 134 of the constitution.
[15] See section 181 of the constitution.

therefore, not in line with this philosophy. The Supreme Court in *Dapialong vs. Dariye* explained the philosophy that:

> *The office of the Governor or Deputy Governor is an all important one. Any of them is in the office by the grace of the majority votes of the totality of that State. In getting him out of the office for one reason or the other, the voice of the majority of the totality of the populace of the State must be reflected on the decision even if it is now impossible to physically vote on that issue. Their voices should be reflected through the majority of the total members they voted into the House...* [16]

In view of the philosophy stated above, the requirement of one-third is less than majority of the members. This means, therefore, that less than two-third majority of members in all steps of the impeachment proceedings "... do not therefore have the mandate of the people to remove a Governor elected by two-third majority of the electorates...", the court added. [17]

Another finding closely related to this requirement is that the one-third required is not even one-third of the entire members of the legislative house as is the case with the requirement of two-third. This is glaring in the text of the constitution which says:

> *(2) Whenever a notice of any allegation in writing signed by not less than* ***one-third of the members*** *of the National Assembly...* [18]
> *(2) Whenever a notice of any allegation in writing signed by not less than* ***one-third*** *of the members of the State House of Assembly...* [19]
> (bold for emphasis)

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[16] *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007.
[17] *Ibid.*
[18] Section 143 (2) of the constitution.
[19] Section 188 (2) of the constitution.

From the above provisions, one-third of the members, not one-third of all the members; is required. This means, as explained by the Supreme Court, that only one-third of the members present during the impeachment proceedings is required to sign the notice. The court stated the requirement in this regards and explained the difference between the two requirements as follows:

> *Can it be said that the term "one-third of the members" and "two-third majority of all its members" mean the same thing? If so, why not simply use the same expressions in the two subsections? I am of the view that the words used are very clear and unambiguous and should be given their literal meanings. I am of the view that when subsection (2) of section 188 is compared with subsection (9) of section 188 it becomes clear that the expression "of the members" and "all the members" do not mean the same thing. I hold the further view that the expression "of the members" refers to the members present and voting at the House of Assembly on any particular day ...*[20]

7.3.1.3 Time frame for Service of Notice of Allegation of Gross Misconduct and Constitution of Investigation Panel

The President of the Senate or Speaker of the House of Assembly is required to cause to be served on each member of the legislature and the office holder the notice of allegations of gross misconduct within seven days. The period is too short considering the task envisaged especially of serving the office holder involved. This had been extensively demonstrated in Chapter Five of this Thesis as constituting one of the challenges to compliance with the requirements for impeachment.

The Chief Justice of Nigeria or Chief Judge of the State concerned is required to constitute investigation panel within seven days after the receipt of a request from the

[20] *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007.

Assembly to that effect. It is our finding that the period of seven days is also not sufficient considering the enormity of the task of constituting such panel. The persons to be composed in the panel cannot be easily come by within this time frame. To constitute a panel consisting of seven persons of unquestionable integrity and who are not members of any political party, legislative house and civil service within seven days is not an easy task. This is unlike other jurisdictions where longer time is provided.

7.2.1.4 Finding on Ouster Clause

Ouster clause still exists in the constitutional provisions for impeachment even though its practical effects had been whittled down by Supreme Court decision in *Inakoju vs. Adeleke*[21] delivered in March, 2006. This had given rise to frequent objections to the jurisdiction of courts in impeachment proceedings which had become a recurring decimal. For instance, many courts have had to deal with it again in subsequent impeachment cases.[22] It had, therefore, become a trend in impeachment cases to object to the jurisdiction of court to entertain any question on impeachment proceedings due to the continued existence of the text of ouster clause in the constitution. In this wise, the Supreme Court summed up this trend when it said: "Where impeachment proceedings have been challenged, the party who initiated the impeachment always seeks to take

[21] (2007) LPELR 10354.

[22] See the cases of *Ekpenyong vs. Umana* (2010) All FWLR 1387; *Peremobowei & Ors vs D.C. Denwigwe & Ors* (2011) LPELR-CA/PH/296/2010; *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135-136; *Balonwu vs. Obi* (2007) 5 NWLR (pt. 1028) 488 C.A.; *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007; *Chief Diepriye Alamieyeseigha vs. Hon Justice Emmanuel Igoniwari & Ors* (2007) LPELR-CA/PH/124M/2006 (R).

umbrage under section 188 (10)".[23] In fact, the author has not come across any such provisions in any constitution across the globe during this study.

7.2.1.5 Finding on Determination of Grounds for Impeachment

It is found that the definition of gross misconduct as a ground for impeachment to include whatever in the opinion of the legislature amounts to gross misconduct has given an enormous power to the legislature. According to the Supreme Court, the provision "is very nebulous, fluid and subject to potentially gross abuse and is also potentially dangerous at this point of our national or political life".[24] In fact, such categorical provision is very rare to find in constitutional provisions across the globe. Respondent 11 said "...the term misconduct has not been properly defined but it is there, the constitution has defined it but it left it open for the legislature to manipulate..."[25] This provision, according to Respondent 14, "subjects the governors to the whims and caprices of the legislature".[26] Despite the warning that the provision is broad and imprecise as such "It should not be taken as a license for the legislature to open a Pandora's Box of vendetta and rake up misconduct that are not gross",[27] the practice of impeachment has shown that it fell on the deaf ears of the legislature. This is not unconnected with the fact, which historical antecedents have shown, that Nigerian politicians should never be trusted with absolute power because they never fail to abuse it whenever it is conferred on them without any mechanism for checks and balances from the judicial arm of government. For instance, federal and state governments used

[23] Per Aka'ahs JSC in *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135-136 at 185. The section 188(10) he was referring to is the ouster clause.
[24] Per Musdapher JSC in *Inakoju vs. Adeleke* (2007) LPELR 10354.
[25] Interview with Respondent 11 conducted in his office on 8th August, 2017 around 16300hrs.
[26] Interview with Respondent 14 at his office on 8th September, 2017 at 11 00hrs.
[27] Per Niki Tobi JSC in *Inakoju vs. Adeleke* (2007) LPELR 10354.

Kor Mee supported this argument when he stated that "the belief was that the legislative arm in these former colonies could not later be trusted to act responsibly and fairly".[34]

Even in the United States of America where the Congress is said to possess some level of power to determine what amounts to "high crimes and misdemeanors" as a ground for impeachment,[35] objectivity in such determination is always doubted. Maxine Waters, for instance, asserted:

> *I am absolutely amazed at the liberal and loose interpretation of the Constitution that I'm hearing from conservatives. Usually, progressives are accused of loose interpretation and usually conservatives are considered to have strict interpretation of the constitution and law. But sitting in this committee, I have witnessed the most—the loosest interpretation of the Constitution, as my colleagues on the other side of the aisle have dealt with the meaning of high crimes and misdemeanors.*[36]

Furthermore, it is found that this power of determination has given rise to impeachment on ridiculous grounds which the legislature considered as gross misconduct. For instance, a Deputy Governor[37] was impeached on the ground that he was rearing poultry in the government house and another public officer removed for bleaching his skin.[38] In fact, the interpretations this provision attracts is worrisome consequent upon which we

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[34] Roger Tan Kor Mee (2004) "The Role of Public Interest Litigation in Promoting Good Governance in Malaysia and Singapore", *The Journal of the Malaysian Bar*, 13, no. 1, 64.

[35] Neal Kumar Katyal "Legislative Constitutional Interpretation", *Duke Law Journal*, (2001) 69; Paul Brest "The Conscientious Legislator's Guide to Constitutional Interpretation", 27 *Stanford Law Review*, (1975) 585, 587; Neal Katyal, "Impeachment as Congressional constitutional Interpretation", *Law and Contemporary problems*, 63, 1&2, (2000): 167.

[36] *House of Representatives Debate on Impeachment*, Dec. 12, 1998, *reprinted in* 1998 WL 857390.

[37] See one of the grounds for the impeachment of Nyebuchi Chukeu, the deputy Governor of Enugu State.

[38] This is one of the grounds for the impeachment of the speaker of the Kano State House Assembly, Alhaji Ibrahim Abdullahi Gwarmai. See "House Speaker intpeached for skin bleaching", available at https//ghanaweb/Ghana/house-speaker-impeached-for-skin-bleaching (accessed on January 18, 2016).

will start to see impeachments on the ground that the public officer refuses to smile to the legislators or refuses to marry a second wife as these acts may be regarded as gross misconducts by the legislators.[39]

7.2.1.6 Finding on Legal Effects of Impeachment

The constitutional provisions for impeachment do not clearly and sufficiently address some issues which mostly arise following removal as such are left to speculations, conjecture and misunderstandings. Such issues are the eligibility of a public officer to hold another or the same public office, prosecution and the entitlements which the office holders otherwise enjoy. The Nigerian constitution, unlike other jurisdictions, is silent on these issues. Therefore, the questions are left open for many interpretations. For, instance, the Lagos State House of Assembly passed a resolution in which they "pardoned" the State former Deputy Governor, who was impeached many years ago. The justification for the "pardon" is that he had shown remorse for his actions which resulted in his removal via the impeachment. And that the impeachment was not on any financial misconduct. This clearly shows lack of proper grasp of what exactly is the effect of removal through impeachment as is currently under the Nigerian constitution. In fact, if the legislature, which is vested with the power of impeachment; will exhibit such "ignorance" what more of the ordinary man in the street?

Thus, the eligibility of the public officer removed through impeachment to occupy the same office or different office in the future had always attracted controversy. This had

[39] Interview with Respondent 6 at QuaterHotel Hotel, Kaduna, Nigeria, on 15th August, 2017 at about 1116hrs; Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.

been recurrent whenever such persons attempted to contest or hold public office. In fact, three different cases arose which have been discussed in Chapter Three of this Thesis. It is found that due to lack of clear provision on what becomes of the public officers concerned, the courts always had to be engaged in a legal battle as to what exactly is the position of the constitution on their eligibility. It is our contention that this was what made the Lagos State House of Assembly to "pardon" the Deputy Governor as pointed out earlier. This could be found in the House's resolution which says "Pardon him and pass a vote of confidence on him as a fit and proper person that can be entrusted with political and administrative responsibilities"[40] and "to live a normal life".[41]

The issue of the prosecutions of the office holders after impeachment is also not categorically provided for as such is left to discretion. This arises when the grounds for impeachment amounted to offences under the criminal laws. In fact, there is no yet any public officer who has been successfully convicted of the offences for which he was impeached. All these issues would not have arisen if the constitution had made explicit provisions to address them. This is very unlike what obtains in other jurisdictions where these issues have been categorically taken care of by the constitutional provisions.

7.2.1.7 Finding on Checkmating the Legislature by Courts

On the whole, it is found that the constitution does not provide for specific role for the courts to checkmate the excesses of the legislature in impeachment proceedings.

[40] "Lagos Assembly Pardons Impeached Deputy Governor 8 Years After", Premium Times, December 31, 2015, available at https://www.premiumtimesng.com/regional/ssouth-west/196006-lagos-assembly-pardons-impeached-deputy-governor-8-years-after.html (accessed on June 17, 2016).

[41] "Impeachment of ex-Lagos Deputy Gov., Femi Pedro Invalidated", Vanguard, December 31, 2015 available at https://www.vanguardngr.com/2015/12/impeachment-of-ex-lagos-deputy-gov-femi-pedro-invalidated/ (accessed on June 17, 2016).

Therefore, once the legislature commences the exercise, the courts have no role to play at all as they are not part of the proceedings. They only have the general power of judicial review of the proceedings thereafter which had even been categorically prohibited but only recognized by way of active judicial interpretation as shown in Chapter Six of this Thesis. And this comes only after the damage had been done and the public officer removed. This is grossly inadequate to checkmate the excesses of the impeachment power of the legislature which appears to be an "unruly horse". For instance, unlike other jurisdictions, the courts are not given the role of final determination of whether the ground (s) for impeachment proved against the office holder concerned is/are cogent enough to warrant his removal. The courts do not also have specific role to ensure that the procedure for impeachment had been complied with before removal. This makes the impeachment power so enormous and largely unchecked as such subject to potential and actual manipulation and abuse.

7.2.2 Findings on the Law and Practice of Investigation and Proof of Grounds for Impeachment

7.2.2.1 Finding on Evidentiary Provisions

The constitutional provisions and some of the Rules guiding the investigation and proof of the grounds for impeachment do not contain provisions on evidence such as the standard required for proof of the grounds for impeachment. The constitutional provision on impeachment provides that the panel has the responsibility to find out whether the allegations of misconduct have been proved or not.[42] This is the only reference to proof as could be found under the constitutional provision. It does not

[42] Sections 143 (8) - (9) and 188 (8) - (9) of the constitution.

provide further for any yardstick upon which the panel could conclude whether the allegations are proved or not. The Rules guiding the procedure for such proof which could have taken care of this lacuna have not also been helpful in this direction as no such provision exists.[43] Therefore, the panel is left with its conscience.

Another finding on this issue is that the Rules of investigation do not make provision for admissibility of credible evidence. This is because they categorically prohibit the use of the general rules of the admissibility of evidence as provided under the Evidence Act and no alternative to them is provided. For instance, the relevant provisions empower the panel to "admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings".[44] Or, in other words, admit evidence which does not conform to the rules of admissibility of evidence.[45] The implication is that the investigation Panel is not bound to admit credible and reliable evidence in proof of the allegations of gross misconduct which are the grounds for impeachment. This is because the rules of admissibility are meant to guide the use of credible and reliable evidence in judicial proceedings.

7.2.2.2 Finding on Fair Hearing before the Panel

The composition of the investigation panel as specified in the constitution cannot guarantee fair hearing. The composition is that it should be made up of persons of unquestionable integrity and not members of any political party, legislative house or

[43] See the Rules as quoted in Chapter Four of this Thesis.
[44] Rule 2 (e) of the Panel to Investigate Allegations of Gross Misconduct Leveled against the Deputy Governor of Taraba State (Procedure) Rules, 2012.
[45] See Rule 13 of the Governor of Kaduna State Investigation (Procedure) Rules, 1981.

public service.[46] While this provision appears good,[47] it does not take into account the involvement of professionals like lawyers. This is in view of the fact that there are many legal issues to be dealt with by the panel in the course of its investigation and proof. These include the observance of fair hearing as judicial authorities show that all the rules of fair hearing as contained in the constitution and applicable to judicial proceedings are also applicable during the proceedings and must be observed. Thus, the court in *Obeta vs. Okpe* stressed this constitutional requirement in its words:

> *It is a basic principle of law that where a person's legal rights or obligations are called into question he should be accorded full opportunity to be heard before any adverse decision is taken against him with regard to such rights and obligations.*[48]

To buttress this further, Respondent 9 reiterated the requirement of the observance of fair hearing by the investigation panel in his words:

> *So the law on the requirement of fair hearing, you know, I think the judges have been very consistent and have really stood their grounds in all matters irrespective of the nature of the panel or the body of inquiry. And I think it is non-negotiable that it has to be respected and observed...*[49]

This entails that the panel must accord to the public officers under investigation adequate opportunity (like time and facility) to prepare for their defense including

[46] See section 143 (5) and 188 (5) of the constitution.
[47] The author has a lot of reservation with the provision because the judicial interpretation given to it by the courts may be subject of various litigations later as the requirement appears difficult to obtain. For an elaboration of the provision, see the case of *Inakoju vs. Adeleke* (2007) LPELR 10354.
[48] *Obeta vs. Okpe*(1996) 9 NWLR (Pt473) 401. See also *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135-136; *Inakoju vs. Adeleke* (2007) LPELR 10354.
[49] Interview with Respondent 9 at his residence on 3rd July, 2017 about 1514hrs.

service of hearing notice,[50] presentation and examination of witnesses and evidence[51] and the conduct of investigation within a "reasonable time" like judicial proceedings before the courts.[52] Edoko argued in this direction that "There is a presumption that when the legislature confers a power on an authority to make a determination, it intends that the power shall be exercised judicially, in accordance with the rules of natural justice".[53] The importance of giving notice as a requirement of fair hearing was noted by the courts thus: "It is the duty of a tribunal or decision making body which is bound to act judicially to give adequate notice of hearing to a party who is likely to be affected by the decision taken. Failure to give adequate notice would vitiate the proceedings".[54] The rationale behind this adequate notice is "for the party against whom it had been given to prepare for his defense".[55]

Another legal issue that comes up before the panel is whether the office holder is in grave breach or violation of the constitution. This is because it is one of the allegations to be proved by the panel. Or it may be alleged that a misconduct committed by the office holder amounts to breach of a particular law as could be seen in some of the allegations investigated by the panels.[56] All these issues are better understood by lawyers in that they are part of their professional calling. Yet, the constitution does not specifically require inclusion as members of the panel persons with legal training. It is

[50] *Balonwu vs Obi* (2007) 5 NWLR (1028) 488; *Inakoju vs. Adeleke* (2007) LPELR 10354; *Nyako vs Adamawa State House of Assembly*(2017) 6 NWLR (pt. 1562) 347.
[51] *Dapialong vs. Dariye* (2007) LPELR-SC.39/2007; *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 135.
[52] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442)136.
[53] Sunday Edoko (2011) "The Protection of the Right to Fair Hearing", *Sacha Journals of Human Rights*, 1 no. 1, 72.
[54] *Denloye vs. Medical and Dental Practitioners Disciplinary Tribunal* (1968) 1 All NLR 306; *Owolabi & Ors. vs. Permanent Secretary Minister Of Education*
[55] *First African Trust Bank Ltd vs. Ezegbu* (1993) 6 NWLR (Pt 297) 1.
[56] This had been discussed in Chapter Four of this Thesis.

found that this is a serious lacuna in the constitution and the Rules guiding the investigation proceedings. The consequence is that fair hearing as required by the constitution could not be adequately observed by most of the panels. This negatively affects the investigation proceedings most of which have been quashed on this ground.[57] In this light, the views of many respondents have supported this finding. For instance, Respondent 10 stated "You see whenever you talk about fair hearing, fair hearing is a legal concept and it is difficult if not impossible for a non-lawyer to comprehend the legal principle of fair hearing".[58] Respondent 2 corroborated this in his words: "Certainly it will be difficult to observe fair hearing without lawyers in the panel or to put it differently lawyers are most likely to observe fair hearing than non-lawyers. This is because they know better what fair hearing entails".[59]

7.2.2.3 Finding on the Credibility of the Investigation

It is found that the credibility of investigations of the grounds for impeachment is eroded by such factors as noninvolvement of persons knowledgeable in the subject matter of the investigations (proffessionals) and rush in the conduct of the investigations. The constitution and the rules of the investigations do not recognize that persons who have expertise in the subject matter of the investigation should be included in the investigation. This is a serious omission because integrity of the members of the panel alone could not always guarantee credible investigations. No matter the integrity of the members of the panel, they could not conduct credible investigation where they lack the expertise in the subject matter of the investigations.

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[57] This had been pointed out and discussed in Chapter Four of this Thesis.
[58] Interview with Respondent 10 at his office on 22nd August, 2017 around 1545hrs.
[59] Interview with Respondent 2 at his office on 9th August, 2017, at about 1450hrs.

Another finding which touches on the credibility of the investigations is that most of them were conducted in a rush and hastily. Findings further reveal that investigations were conducted within 2-7 days when the constitution provides for three months as discussed in Chapter Four. This is even in cases where the nature of the grounds investigated show that the three months given by the constitution may not be enough for thorough investigation as acknowledged by some members of the panel.[60] Such hast and rush in the investigation speak volume of its credibility. Consequent upon this, the natural conclusion is that the result of the investigation is predetermined. Lamenting on the hasty nature of an investigation conducted in six days, the Supreme Court said that the members of the panel "were acting out a predetermined script to achieve a predetermined end".[61] It went further to add that:

> *From the undisputed facts of the case, the inevitable impression was that the panel composed of the respondent was a mere sham and that the removal of the appellant from office was a done deal as it were. The respondents, in their purported investigations of the allegations made against the appellant, merely played out a script previously prepared and handed over to the panel.*[62]

In yet another case, the Supreme Court stated:

> *The lawmakers have a reason for giving such fairly long period. It is to ensure that a thorough investigation is carried out by the Panel. Although the Panel need not take the whole of the 3 months, an investigation of the magnitude of the gross misconduct of a Governor or Deputy Governor should certainly take more than 2 to 7 days as is the trend. An investigation which takes a very short period will lead to some speculation or conjecture that the Panel made up its mind early in the day and merely worked towards the achievement of that mind.*[63]

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[60] See the Report of the Investigation Panel against the Governor of Bayelsa state, Chief D.S.P. Almieyeseigha.
[61] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 140.
[62] Ibid, 136.
[63] *Inakoju vs Adeleke* (2007) LPELR 10354.

7.2.3 Findings on Challenges to Compliance with Constitutional Requirements for Impeachment

7.2.3.1 Finding on Determination of Grounds for Impeahment and Ouster Clause

It has been found that there is common notion among the lawmakers and other stakeholders that impeachment is a question over which the court cannot interfere. This misunderstanding is based on the constitutional provision which vests on the lawmakers the power to determine what constitutes gross misconduct as a ground for impeachment. The constitution also ousts the jurisdiction of the court to question whatever the lawmakers determine. Armed with this huge and seemingly unchecked power from these constitutional provisions, the lawmakers are encouraged to do as they wish at the expense of compliance. This is not peculiar to Nigeria as it had been found to also exist in jurisdictions like Malaysia. This had been confirmed by the Supreme Court of Malaysia in the case of *Mustapha vs. Mohammed and Anor*[64] in the following words:

> *As to whether the issues (i.e. the purported removal of the Prime Minister by the Head of State) are political in nature, one would be naive, in my view, not to regard them as partly political, but in my opinion, they are not wholly political in nature, their trial and decision thereon would involve construction of the Federal and State Constitutions and consideration of legal principles, and the legal issues of misrepresentation, conspiracy, fraud and duress, all of which fall within the jurisdiction and function of the court. The main issues of appointment and dismissal and the other issues mentioned in the foregoing paragraph are, in my view, legal matters, although in the circumstances, some of them may smack of political flavor, but this factor alone, in my view, does not have the effect of ousting the jurisdiction of the court.*[65]

[64] (1987) LRC 16.
[65] Ibid.

7.2.3.2 Finding on Corruption

The incident of corruption in the exercise of legislative responsibilities is being perpetrated with impunity by the lawmakers. This is because one hardly points at any case of successful prosecution of lawmakers for corruption in the exercise of their impeachment powers. This is despite the glaring cases where even the corrupt inducement given to the lawmakers to conduct impeachment were not only made public but shown live on national television stations. It had also been supported by factual basis cited and many responses from the Respondents in this research. However, despite all these pieces of evidence, nothing is done to investigate further and bring to book those found wanting beyond criticisms in public discourses. This makes corruption in legislative businesses thrive unabated and the image and credibility of the legislature battered a great deal.

The constitution detests corruption in its entire ramification and makes it a government objective to stamp it out.[66] Because it has the potential to undermine any system of government put in place.[67] In pursuance of this objective, anti-corruption agencies like the Economic and Financial Crimes Commission and the Independent Corrupt Practices and other related offences Commission were created. Yet, these agencies do not turn their attention to cases of corruption in legislative business by the lawmakers despite that the lawmakers lack immunity.[68] This is not the case in other places as former and current

[66] Section 15 (5) of the constitution provides that "the state shall abolish all corrupt practices and abuse of power". See *AG Ondo State vs AGF* (2002) 9 NWLR (Pt.772) 222.
[67] Oluwadere Aguda (2012) "National Assembly's Oversight Function and Fair Hearing", available at http://new jurist.com/national-assemblys-oversight-functions-and-fair-hearing.html#.WhwyR4aWbIU (accessed on May 29, 2017).
[68] Only the President, Vice President, Governor and Deputy Governor enjoy immunity from prosecution while in office. See section 308 of the constitution.

lawmakers have been and are being tried or even convicted for corruption in the exercise of legislative powers in India,[69] United States of America[70] Vanuatu,[71] South Dakota,[72] Indonesia,[73] Alabama,[74] Pennsylvania,[75] and Maryland.[76]

7.2.3.3 Finding on Personal Service of Impeachment Notice

The service of notice of impeachment is required to be made on the person of the public officer concerned within a period of seven days from the date of the receipt of the allegations by the Speaker or the President of the Senate as the case may be. It is found that this requirement is very difficult to comply with considering the personality involved especially when he may not welcome any such service. In Nigeria it is not easy to have access to the President, Vice President, Governor and Deputy Governor and effect personal service on them in view of the retinue of security and other personal aides surrounding them. This finds factual support in the affidavit of a witness who went

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[69] G. Kameswari *Anti-corruption Strategies: Global and Indian Socio-legal Perspective*, (India: ICFAI University Press, 2006) 108.

[70] Deborah Hellman, "Defining Corruption and Constitutionalizing Democracy", *Michigan Law Review*, 111 no. 8, (2013), 1388.

[71] "For the first time, Vanuatu jails corrupt legislators", The Economist, October 26, 2015, available at https://www.economist.com/news/asia/21676960-after-sentencing-mps-graft-vanuatus-government-imperilled-first-time-vanuatu (accessedon December 2,2017).

[72] Bob Macer, Anti-Corruption Act sparks a panic in legislative arena", Black Hills Pioneer, November 26, 2016, available at http://www.bhpioneer.com/news/anti-corruption-act-sparks-a-panic-in-legislative-arena/article_a38ba606-adde-11e6-8daa-b74ccfe6c2c5.html (accessed on November 26, 2017).

[73] Jon Afrizal and Kharishar Kahfi, "KPK arrests Jambi legislators for alleged Bribery", The Jakarta Post, November 29, 2017 available at http://www.thejakartapost.com/news/2017/11/29/kpk-arrests-jambi-legislators-for-alleged-bribery.html (accessed on December 7, 2017).

[74] Kent Faulk, "Former Alabama legislator Oliver Robinson charged in bribery scheme; enters federal plea deal", available at http://www.al.com/news/birmingham/index.ssf/2017/06/former_alabama_legislator_oliv.html (accessed on November 20, 2017); "11 charged in Alabama federal corruption case", CNN news, October 4, 2010, available at http://edition.cnn.com/2010/CRIME/10/04/alabama.corruption.arrests/index.html (accessed on December 7, 2017).

[75] Hans Von Spakovsky, "Democratic Legislators Take Bribes to Oppose Voter ID—And Get Away With It", The Daily Signal, March 21, 2014, available at http://dailysignal.com/2014/03/21/democratic-legislators-take-bribes-oppose-voter-id-get-away/ (accessed on December 1, 2017).

[76] Brian Witte, "Feds: 2 Md. Legislators Targeted in Bribery conspiracy Related to PG Co. Liquor Board", WJLA Washington D.C., available at http://wjla.com/news/local/feds-2-md-legislators-targeted-in-bribery-conspiracy-related-to-pg-co-liquor-board (accessed on October 27, 2017).

several times to both the offices and residences of a Governor and Deputy Governor to effect personal service on them but could not. Despite this difficulty, the service is required to be effected within seven days otherwise the notice becomes invalid. So, a public officer who knows fully well that he would be served could decide to travel out of either the state or even the country to effectively evade the service. This was established in the impeachment of Governor Murtala Nyako as admitted by his aide, Ahmed Sajo, that the Governor travelled to Abuja and was away for the whole period within which he was required to be served. The Governor had thereby effectively evaded the personal service. Yet, the constitution and courts do not recognize any form of substituted service as personal service is considered part of the principles of fair hearing as enshrined under the constitution.[77] This is what the Supreme Court had to say on service of process:

> *Apart from the fact that it is a fundamental human right of a party, extracted from his right to fair hearing as entrenched under Section 36 of the Constitution to have an initiating process or hearing notice in respect of any Proceedings served on him, such service or non-service, as the case may be goes to the root of the jurisdiction of the adjudicating Court.*[78]

7.2.3.4 Finding on Inaccessibility of Legislative Chambers

It is found that the challenge of inaccessibility of the legislative chambers by lawmakers when impeachment proceedings are being conducted is a deliberate ploy to frustrate the impeachment and render it invalid. The interpretation of the courts as regards the place for impeachment is that every step in the impeachment proceedings is strictly needed to be taken in the legislative chambers. The result is that anything the legislative house

[77] *Balonwu vs. Obi* (2007) LPELR-CA/E/3/2007.
[78] *Harry vs. Menakaya* (2017) LPELR-42363(SC).

does at a place other than the legislative chamber is at the risk of nullification for noncompliance with this requirement. This incapacitates the legislative house from conducting impeachment and any other legislative business. It is further found that the National Assembly does not always play its constitutional role of taking over the House of Assembly in the event of such crises to forestall any resort to unconstitutional acts by the lawmakers in furtherance of the impeachment outside the legislative chambers.

In some cases, the difficulty in compliance with the constitutional requirement as to the venue of legislative business arose not because of the inaccessibility of the legislative chambers but due to the strict interpretation by courts of what acts are strictly required to be conducted in the legislative chambers. This is due to the inability of the courts to distinguish the actual impeachment proceedings and acts done as preparatory and prelude to the proceedings. For instance, in *Danladi vs. Taraba State House of Assembly,*[79] the Supreme Court insisted that notice of allegations of gross misconduct must be prepared and signed in the legislative chambers. It held, inter alia, that:

> *The notice of allegation of misconduct against the Deputy Governor (the appellant) must be prepared, signed in the House of Assembly within congressional hours and not outside the House of Assembly or in a guest house. The meeting by about nineteen members of the Taraba State House of Assembly in the majority Leader's guest house to prepare and sign a notice of allegations of misconduct against the Deputy Governor was wrong and unconstitutional.*[80]

The preparation and signing of allegations of gross misconduct is not part of the impeachment proceedings as the proceedings do not actually commence until after the

[79] (2015) 2 NWLR (pt. 1442) 103
[80] Per Rhodes Vivour JSC at 110.

allegations have been presented to the presiding officer of the House concerned. How do you expect members to sit at the legislative chambers and prepare a notice of so much and weighty allegations in the House and during parliamentary hours? By this, the courts impose on the lawmakers a burden not required by the constitution. Besides, nowhere it is stated that the notice should be prepared and signed in the legislative house. In fact, the constitution is even silent on who is responsible for preparation of the notice. All the constitution provides categorically is that the notice be presented to the President of the Senate or the Speaker of the House concerned which heralds the commencement of the impeachment proceedings.[81]

7.2.3.5 Findings on External Influence, Selfish Interest, "Must Win" Syndrome and Omission from Third Party

It is found that external influence, selfish interest and "Must Win" syndrome as challenges to compliance arose due largely to lack of sincerity and good faith in the exercise of impeachment proceedings on the part of the lawmakers. This is despite the admonition of the courts for the lawmakers to exercise impeachment with utmost good faith and sincerity of purpose. For instance, the Supreme Court, stressing the need for the legislature to always act in good faith, cautioned that parliamentary duties "...must be done *bona fide* and not *mala fide*. A *bona fide* action will vindicate the totality of good parliamentary action, practice and conduct. A *mala fide* action will violate parliamentary action, practice and conduct...[82] The Supreme Court in another case also cautioned the lawmakers:

[81] See sections 143 (1) and 188 (1) of the constitution
[82] *Inakoju vs. Adeleke*(2007) LPELR 10354.

> *Impeachment proceedings provided by section 188 of the constitution is a purely legislative constitutional affair and in exercising their powers, good faith must always be at the forefront of their considerations... Legislative business especially for the impeachment of a high official is a very serious matter that demands the highest standards from honorable members. Their legislative acts should be seen al all times as in the best interest of the country and not to settle political scores.*[83]

If the lawmakers had really heeded the judicial counsel above, they wouldn't have conducted impeachment as a result of any influence from any quarters. It should have been conducted only in the interest of the country in order to get rid of a public officer found unworthy to occupy the office due to his misconduct in the exercise of his duties.

It is also found that omission of third party as a challenge to compliance is predicated on the attitude of the lawmakers for embarking on impeachment when they know that vacancies do exist as to the membership of the House and which have not been filled up by the electoral body. Thus, the lawmakers are largely to blame for this even though the electoral body, the third party in this case, also contributed. The lawmakers should have waited until after the vacancies have been filled up to get the required quorum. This is only when they could legally exercise impeachment power as observed by the Supreme Court in *Dapialong vs. Dariye*[84] that where such vacancies have not been filled through bye-election, the House could only conduct legislative business which requires not less two-third of its members and this definitely does not include impeachment proceedings.

[83] *Danladi vs. Taraba State House of Assembly* (2015) 2 NWLR (pt. 1442) 103 at 109-110.
[84] (2007) LPELR-SC.39/2007.

7.2.4 Findings on Challenges to Judicial Review of Impeachment

7.2.4.1 Finding on Delay in Judicial Review of Impeachment

It is our finding that the delay in judicial review of impeachment is attributable to the technical and clumsy nature of the procedural rules involved. The normal civil procedure rules applicable before Nigerian courts are used for judicial review of impeachment. The rules are, generally, time consuming and give a lot of room for delay tactics to be deployed. Hence, many litigants, through their legal practitioners, exploit them to cause a lot of delay in judicial review of impeachment. This mostly occurs at the courts of first instance like the State High Courts and the Federal High Courts. The Rules give much room for so many preliminary applications, objections and frivolous motions on technical grounds most of whom reach the Court of Appeal and the Supreme Court to finally dispose of. Thus, expressing her lamentation over the waste of time from such frivolous applications and how they are used to cause delay, a Justice of the Court of Appeal said:

> *In this case, the appellants filed a simple application to abridge time within which to file briefs of argument, and one days journey has taken us weeks to arrive at our destination because of this flimsy and nonsensical objection filed by the 2nd - 9th respondents, which has only succeeded in wasting the court's time and resources and no more.*[85]

This is coupled with the plethora of applications for adjournments thrown at the courts from the various counsel opposed to the office holders as they have nothing to lose from the adjournments. The result is that the case had already taken long time before the

[85] Per Amina Augie JCA in *Adeleke vs. Oyo State House of Assembly*

proper hearing commences. And in the worst cases, the case is sent back to the High Court or the Federal High Court for trial *denovo* (afresh). This is despite the fact that time is of great essence in impeachment disputes because the aim is to preserve the *res* which is the mandate given by the electorates to the public officer. Our study reveals that some impeachment disputes take a substantial part of the tenure of the public officer concerned to finally dispose of. In the worst cases, the final verdict comes after the expiry of the tenure! This renders nugatory whatever victory the public officer might have gotten because the *res* had been extinct. For instance, in *Alamieyeseigha vs. Igoniwari*,[86] a preliminary objection took almost one and a half years to be finally decided by the High Court and the Court of Appeal and only for the latter to refer the parties back to the former for fresh trial. This came after the tenure of the Governor, which he sought to protect by the litigation, had only two months to expire.[87] This occurred because the court granted the prayers of the lawyer opposed to the Governor in accordance with the Rules which allow a case to be remitted to the trial court after deciding appeals on preliminary issues.

Another finding is lack of constitutional provision on the time frame within which impeachment cases should be heard and determined. This permits unlimited time for judicial review of impeachment cases as a result of which the cases take too long a time.[88]

[86] *Alamieyeseigha vs. Igoniwari* (2007) LPELR-CA/PH/124M/2006 (R).
[87] The case was first instituted at the High Court of Bayelsa State on 16/12/2005 and disposed ofby the Court of Appeal on 08/03/2007.
[88] This had been shown in Table 6:2 earlier.

7.2.4.2 Finding on Lack of Respect for Court Order

It is found that lack of respect for court order in impeachment proceedings especially on the part of the lawmakers is attributable to some constitutional provisions which seemingly take away courts from the business of impeachment and confers exclusive jurisdiction on legislature. These provisions are those dealing with ouster clause and the exclusive powers of the legislature to determine what constitutes gross misconduct.[89] These have been discussed extensively under some other headings elsewhere in this Thesis. Suffice here to state that they also contribute to lack of respect for court order. Some of the lawmakers and the Respondents interviewed for this Thesis expressed the view that the court has no jurisdiction in impeachment. For instance, Respondents 3, 11, 9 and 14 expressed this view and the Speaker of a House of Assembly once categorically said:

> *The issue of impeachment is constitutional responsibility of the lawmakers and the House of Assembly will not allow the judiciary to intervene in it because there is no going back over the impeachment exercise* ***which the court lack the constitutional power to intervene.***[90]
> (Bold for emphasis)

It is also found that there is weak mechanism for the enforcement of court orders and even judgments. Contempt power is usually a mechanism meant to ensure obedience for court orders but the issue of enforcement poses a challenge. Although there are Rules of court which empower judges to commit for contempt any person who disobeys court orders, there is hardly any case of contempt against the lawmakers for disobedience to

[89] See sections 143 (10) (11) and 188 (10) (11) of the constitution.
[90] "Nyako: No court can't Stop us-Adamawa law makers", *African Spotlight Newspaper*, June 30, 2014, available at africanspotlight.com (accessed on February 12, 2017).

sufficient interest in impeachment proceedings like the public officers and other stakeholders in the impeachment proceedings are allowed to challenge unconstitutional acts in impeachment. In this light, the Supreme Court, on who has *locus standi* in impeachment cases stated that: "It is the law that to have *locus standi* to sue, the plaintiff must show sufficient interest in the suit".[94] And the court continued, "The interest must be substantial, tangible and not vague, intangible or caricature".[95] Thus, the attitude of Nigerian courts as to what determines whether a litigant has *locus standi* in constitutional issues like impeachment is not the interest of the public but whether the litigant has sufficient interest in the subject matter of the suit. Therefore, the silence of the constitution on who should have access to court to challenge unconstitutional acts like illegal exercise of impeachment powers and the refusal of the courts to summon the courage in interpreting the common law requirement of *locus standi* liberally so as to allow nongovernmental organizations and spirited individuals is a gap in the constitution.

In fact, the principle was considered by the Court of Appeal as "unnecessary in constitutional issues as it will merely impede judicial functions".[96] Many scholars have chided the courts on their strict interpretation of the requirement of *locus standi* on constitutional matters. Nwauche, for instance, stressed that "enough evidence exists to

NWLR (Pt. 931) 572; *UBA Plc. vs. BTL Industries Ltd* (2004) 18 NWLR (Pt. 904) 180; *A-G., Kaduna vs. Hassan* (1985) 2 NWLR (Pt. 8) 483; *Adesanya vs President, F.R.N.* (1981) 2 NCLR 358 21(1986) LPELR-3237(SC)Per Obaseki, J.S.C at pp. 28-29; *Adesanya vs. The President* (1981) 2 NCLR 338 14 385; (1981) 12 NSCC 146 at 160; (2002) 44 WRN 80 atp128-129

[94] *Inakoju vs.Adeleke* (2007) LPELR 10354

[95] Ibid.

[96] *Fawehinmi vs. Federal Republic of Nigeria* (2008) 23 WRN 65.

suggest that the standing principle ... was no longer good law".[97] The principle referred to by the author here is strict interpretation of *locus standi* in the case of *Adesanya vs. President of the Federal Republic of Nigeria*.[98] According to Simons and Donoghue, such strict rules "stultify the opportunity of review for constitutionality and hence condone much unconstitutional behavior".[99] The consequence, DiManno pointed out, is that potential constitutional violation by the government may go unchallenged.[100] The law, as pointed out under the Australian constitution, produces "unnecessary uncertainty".[101] Thus, Tunde stressed that any insistence on the requirement of *locus standi* is a "ready recipe for organized disenchantment with the judicial process"[102] and creates a "substantive deficit of demand for judicial review".[103] Scholars such as Oluwatayo,[104] Taiwo,[105] Okeke,[106] Malemi[107] and Nwadialo[108] have also lent their voices

[97] Enyinna Nwauche "The Nigerian Fundamental Rights (Enforcement) Procedure Rules: A Fitting Response to the Problems of Enforcement of Human Rights?" *African Human Rights Journal*, 10 no. 3(2010): 514.

[98] (1981) 2 NCLR 358.

[99] See Simon Evans and Stephen Donaghue, "Standing to Raise Constitutional Issues in Australia" in Richard S Kay (ed), *Standing to Raise Constitutional Issues* (Bruylant, 2005) 29; Simon Evans and Stephen Donaghue, "Standing to Raise Constitutional Issues in Australia" in Gabriël A Moens and Rodolphe Biffot (eds), *The Convergence of Legal Systems in the 21st Century: An Australian Approach* (Copy Right Publishing, 2002) 97-98.

[100] John DiManno, "Beyond Taxpayers' Suits: Public Interest Standing in the States", *Connecticut Law Review*, 41 no. 2, (2008): 639.

[101] Simon Evans "Standing to Raise Constitutional Issues Reconsidered" *Bond Law Review*, 22 no. 3(2010): 38. See also David Feldman, "Public Interest Litigation and Constitutional Theory in Comparative Perspective" *Modern Law Review* 55 (1992): 44.

[102] Tunde Ogowewo "The problem with Standing to Sue in Nigeria", Journal *of African Law*, 39 no. 1, (1995): 9. See also Bello JSC in *Adesanya vs. President of the Federal Republic of Nigeria* (1981) 2 NCLR358.

[103] HK Prempeh "*Marbury* in Africa: Judicial Review and the Challenges of Constitutionalism in Contemporary Africa" *Tulane Law Review*, 80 (2005-2006): 1239.

[104] Akogun Fatai Oluwatayo,"Doctrine of Locus Standi and Access to Justice in Nigerian Court", *Journal of Law and Global Policy*, 1 no.5 (2015): 71.

[105] Elijah Adewale Taiwo, "Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A need for a more Liberal Provision", *AHRLJ*, 9 no. 2 (2009): 546-575.

[106] Godwin N. Okeke, "Re-Examining the Role of Locus Standi in the Nigerian Legal Jurisprudence", *Journal of Politics and Law*, 6, no. 3 (2013): 65.

[107] Ese Malemi, *Administrative Law*, 3rd ed. (Princeton Publishing Co., 2008) pp. 358-373

[108] Fidelis Nwadialo, Civil Procedure in Nigeria, 2nd ed. (Lagos: University of Lagos Press, 2000), 31-44.

to the effects of strict interpretation of *locus standi* on human rights. It is our finding that these issues also affect impeachment.

7.2.4.4 Finding on Judicial Remedies for illegal Impeachment

The judicial remedies usually awarded to public officers who have been removed through illegal impeachment is found to be grossly inadequate as it does not compensate for the time they spend out of office as a result of the removal. This is due to the strict and inappropriate interpretation of the tenure of such public officers by the courts as earlier shown in the analyses of the relevant laws. The courts consider, wrongly in our view, that any remedy compensating the public officer to stay in office for the period he spent out of office amounts to extension of his tenure beyond the four years provided by the constitution. Consequent upon this interpretation, all the public officers illegally removed were denied substantial part of their tenure after their reinstatement by the courts. In the same vein, the refusal to fully compensate the public officers amounts to denying them substantial justice which is one of the cardinal principles of administration of justice.[109] This situation is akin to what the Supreme Court described as "... the loser in a civil case taking home all the laurels while the supposed winner goes home in a worse situation than he approached the court".[110] It is also contrary to the judicial principle that the concern for justice should be the "overriding force" in interpretation.[111]

[109] *Aliyu Bello* vs. *A-G Oyo State* (1986) 5 NWLR (pt. 45) 828 at 889-890.
[110] *Amaechi vs. Independent National Electoral Commission* (2007) 7-10 S.C. 172.
[111] *Engineering Enterprise Contractor of Nigeria* vs. *Attorney General of Kaduna State* (1987) 1 N.S.C.C. 601 at613

7.3 Recommendations

Based on the findings made in respect of the issues discussed in this Thesis, recommendations are accordingly made. The recommendations have been made correspondingly to the findings and presented *seriatim* as follows:

7.3.1 Recommendation on Constitutional Requirements for Impeachment

7.3.1.1 Recommendation on the Meaning of Impeachment

It is recommended that the Nigerian constitution should categorically use the word "impeachment" in the provisions dealing with it in such a way as to bring out its clear meaning as a process for removal of public officers concerned. This will go a long way in reducing the misunderstandings associated with what actually impeachment entails and its relationship with removal. This may not necessarily require any much amendment or definition of the word as it could be achieved by simply inserting the word in the appropriate places. Thus, the side notes to the provisions of sections 143 (1) and 188 (1) should read "Impeachment of President or Vice President" and "Impeachment of Governor or Deputy Governor" respectively. The relevant text should also contain the word "impeachment" as follows:

Section 143 (1):

> *The President or Vice President may be removed from office by* ***impeachment*** *in accordance with the provisions of this section.* (Bold for emphasis)

Section 188 (1):

> *The President or Vice President may be removed from office* ***by impeachment*** *in accordance with the provisions of this section.* (Bold for emphasis)

This appears in most state's constitutions in the United States like the constitution of North Carolina which provides that "Removal of those officers from office for any other cause shall be by impeachment".[112] The above provision shows that impeachment means a process through which the officers could be removed.[113]

7.3.1.2 Recommendation on Numerical Requirement of Members

The requirement of one-third of the members of the legislative house to sign notice of allegations of gross misconduct should be increased to two-third of all the members. This will ensure that two-third of all the members is the numerical requirement at all the stages of impeachment under the constitution. This will bring it in conformity with the philosophical underpinning of the rationale behind the two-third requirement as explained by the Supreme Court in *Dapialong vs. Dariye*[114] and pointed out in this Chapter. Thus, the relevant section should read thus:

Section 143:

> *(2) Whenever a notice of any allegation in writing signed by* ***not less than two-third of all members*** *of the National Assembly-*
> *(a) is presented to the President of the Senate.* (Bold for emphasis)

Section 188:

> *(2) Whenever a notice of any allegation in writing signed by* ***not less than two-third of all members*** *of the House of Assembly-*
> *(a) is presented to the Speaker of the House of Assembly of the State.*
> (Bold for emphasis)

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[112] Section 7 of the constitution ofNorth Carolina, 1868.
[113] Adrian, Sgarbi. "What's a Good Legislative Definition"? *Beijing Law Review*, 4 no. (2013) 32; Akhil, Reed Amar. "On Impeaching Presidents", *Hofstra Law Review*, 28, no. 29 (1999) 323.
[114] (2007) LPELR-SC.39/2007.

In the light of this recommendation, the numerical requirement of members of the legislature for the impeachment of public officers in Nigeria based on the total number of members of each legislative house concerned is illustrated in the table below.

Table 7:1

Number of Lawmakers Required for Impeachment of all Public Officers in Nigeria

S/N	Public Officer	Legislative House Concerned	Total Members	Not less than Two-third
1	President or Vice President	Senate	109	73
		House of Representatives	360	240
2	Governor or Deputy Governor of Abia State	Abia State House of Assembly	24	16
3	Governor or Deputy Governor of Adamawa State	Adamawa State House of Assembly	25	17
4	Governor or Deputy Governor of Akwaibom State	Akwaibom State House of Assembly	26	18
5	Governor or Deputy Governor of Anambra State	Anambra State House of Assembly	30	20
6	Governor or Deputy Governor of Bauchi State	Bauchi State House of Assembly	31	21
7	Governor or Deputy Governor of Bayelsa State	Bayelsa State House of Assembly	24	16
8	Governor or Deputy Governor of Benue State	Benue State House of Assembly	30	20
9	Governor or Deputy Governor of Borno State	Borno State House of Assembly	28	19
10	Governor or Deputy Governor of Cross Rivers State	Cross Rivers State House of Assembly	25	17
11	Governor or Deputy Governor of Delta State	Delta State House of Assembly	29	20
12	Governor or Deputy Governor of Ebonyi State	Ebonyi State House of Assembly	25	17
13	Governor or Deputy Governor of Edo State	Edo State House of Assembly	24	16
14	Governor or Deputy Governor of Ekiti State	Ekiti State House of Assembly	26	18
15	Governor or Deputy Governor of Enugu State	Enugu State House of Assembly	24	16
16	Governor or Deputy Governor of GombeState	Gombe State House of Assembly	24	16
17	Governor or Deputy Governor of Imo State	Imo State House of Assembly	27	18
18	Governor or Deputy Governor of Jigawa State	Jigawa State House of Assembly	30	20
19	Governor or Deputy Governor of Kaduna State	Kaduna State House of Assembly	34	23
20	Governor or Deputy Governor of Kano State	Kano State House of Assembly	40	27
21	Governor or Deputy Governor of Katsina State	Katsina State House of Assembly	34	23
22	Governor or Deputy Governor of Kebbi State	Kebbi State House of Assembly	24	16
23	Governor or Deputy Governor of Kogi State	Kogi State House of Assembly	25	17
24	Governor or Deputy Governor of Kwara State	Kwara State House of Assembly	24	16
25	Governor or Deputy Governor of Lagos State	Lagos State House of Assembly	40	27

Source: Author's compilation.

Table 7:1 (Continued)

S/N.	Public Officer	Legislative House Concerned	Total Members	Not less than Two-third
26	Governor or Deputy Governor of Nasarawa State	Nasarawa State House of Assembly	24	16
27	Governor or Deputy Governor of Niger State	Niger State House of Assembly	27	18
28	Governor or Deputy Governor of Ogun State	Ogun State House of Assembly	26	18
29	Governor or Deputy Governor of Ondo State	Ondo State House of Assembly	26	18
30	Governor or Deputy Governor of Osun State	Osun State House of Assembly	26	18
31	Governor or Deputy Governor of Oyo State	Oyo State House of Assembly	32	22
32	Governor or Deputy Governor of Plateau State	Plateau State House of Assembly	24	16
33	Governor or Deputy Governor of Rivers State	Rivers State House of Assembly	32	22
34	Governor or Deputy Governor of Sokoto State	Sokoto State House of Assembly	30	20
35	Governor or Deputy Governor of Taraba State	Taraba State House of Assembly	24	16
36	Governor or Deputy Governor of Yobe State	Yobe State House of Assembly	25	17
37	Governor or Deputy Governor of Zamfara State	Zamfara State House of Assembly	25	17

Source: Author's compilation.

This will bring the provision in line with the trend in some constitutions around the globe which require more than one-third of either the members or all the members of the legislative house for the endorsement of the allegation stage of impeachment.[115] In Malawi, for instance, the constitution requires two-third majority of all members of the Parliament at every stage of impeachment proceedings.[116] The constitution specifically provides that "indictment on impeachment shall require the affirmative vote of two-thirds of the members of the National Assembly in a committee of the whole house".[117]

[115] Such constitutions include that of countries like Malawi, section 86 of the constitution of Malawi 1994; Turkey, Article 105 of the constitution of Turkey 2011; Somalia, Article 92 of the constitution of Somalia, 2012; and Serbia, Article 21 of the constitution of Serbia, 2006.

[116] John Harchard, "Presidential Removal: Unzipping the Constitutional Provisions", *Journal of African Law*, 44 no. 1 (2000) 7.

[117] See section 186 (1) (b) of the constitution of Malawi, 1994.

7.3.1.3 Recommendation on Time Frame for Service of Notice of Allegation of Gross Misconduct and Constitution of Investigation Panel

The time frame for the service of notice of allegations which is now seven days should be abolished in view of the difficulty being faced for such service as shown in Chapter Three. This will provide ample opportunity to effect personal service as required or seek for substituted service where the former proved difficult. It will also prevent the situation where the legislative house could not proceed or proceeds at the risk of voiding the impeachment for noncompliance as in the case of *Nyako vs. Adamawa State House of Assembly*.[118] In fact, the trend in most constitutions around the world is that no particular time frame is specified within which it must be served.[119] This makes impeachment proceedings better off.[120]

Unlike service of notice pointed out above, specifying the time frame within which the Chief Justice or Chief Judge should constitute the panel is a good provision. This will avoid frustrating the legislature in the impeachment proceedings as pointed out in the case of *Abiodun vs. Chief Judge of Kwara State*.[121] However, the time within which to constitute the panel be increased from seven days to 21 days. This is in view of the enormity and importance of the task involved in selecting the appropriate and qualified persons in the panel.

[118] (2017) 6 NWLR (pt. 1562) 347.
[119] See for instance, the constitutions of Bangladesh (1972); Bhutan (2008) Slovenia (1991); Philippines (1987); South Sudan (1995); Russia (1993); Armenia (1995); Brazil (1988); Tanzania (1995).
[120] Anthony Stein, et al (eds) *Constitutional Law of South Africa.* (2nd Edition, OS, March 2008).
[121] (2007) 18 NWLR (pt. 1065) 122-23.

7.3.1.4 Recommendation on Ouster Clause

The ouster clause should be deleted from the constitutional provisions on impeachment of President, Vice President, Governor and Deputy Governor as contained in sections 188(10) and 143 (10) of the constitution. This is necessary in order to avoid the recurrence of the issue in subsequent impeachment cases as pointed out under the corresponding findings in this Chapter. Another justification for deleting the ouster clause is to avoid the possibility of the Supreme Court overruling its previous decisions on its interpretation. This is because the Nigerian legal system allows the Supreme Court, in appropriate circumstances, to overrule its previous decisions in the interest of justice and the proper development of the law. The Supreme Court recognizes this when it said:

> *It is settled law that this court has jurisdiction to depart from its previous decisions ... the Supreme Court, as a court at the apex of judicial hierarchy in this country, has the jurisdiction and power sitting as the full court of seven justices, to depart and overrule its previous erroneous decision on point of law given by a full court on constitutional question or otherwise.*[122]

The Court of Appeal had exhibited a kind of instinct to confirm this fear that the courts may lean against this interpretation if the text of the ouster clause is not deleted from the constitution. The court in *Abiodun vs. Chief Judge of Kwara State*[123] stated that:

> *The gale of impeachments of Governors which has blown with such ferocious and obnoxious notoriety across states like Bayelsa, Pateau, Oy, Ekiti, Anambra and Adamawa appears to be spilling over to Local Government system as has been exemplified in the case at hand. Hitherto and even now in spite of the revolutionary judgments of our*

[122] *T. A. Yonwuren vs. Mordern Signs (Nig) Ltd; John Ememon & Anor vs. Chief D. O. Onokite & Ors* (consolidated) (1985) 2 SC 86.
[123] (2007) 18 NWLR (pt. 1065) 1.

> *learned brothers of the Ibadan and Enugu Divisions of the Court of Appeal in the celebrated cases of Hon Adeleke vs. Oyo State House of assembly... and Balonwu vs. Peter Obi which have been given judicial assent by the Supreme Court, there were/are ardent apostles of the oft-quoted dictum of Pats-Acholonu JCA (as he then was) that courts have no **business plunging themselves into the murky waters or miasmic cauldron of what has now become the pastimes of political gladiators and their goons- impeachment proceedings**.*[124] (Bold for emphasis)

Agube JCA not only quoted the judgment of Pats-Acholonu JCA above which is in favor of the ouster clause, but also went further to quote the justification for the ouster clause as provided in the cases of *Abaribe vs. Abia State House of Assembly*[125] and *Alhaji Balarabe Musa vs. Auta Hamza.*[126] In fact, true to our fear, the Supreme Court had later in 2015 also clearly referred to impeachment as quite outside the jurisdiction of court. It held that "The impeachment of a Governor is a legislative constitutional affair outside the jurisdiction of the court".[127] In support of this decision, the court cited with approval the decisions which support the ouster clause.[128] This, therefore, most sincerely necessitates the deletion of the ouster clause from the text of the constitution to stem the tide of the confusions and uncertainty pervading it.

Deleting the ouster clause will pave way for unhindered judicial review of the impeachment proceedings. Consequently, it will force the observance of rule of law in impeachment as is the practice in some jurisdictions. In South Korea, for instance,

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[124] Ibid, 125.
[125] (2001) 1 CHR 225 at 236-237.
[126] (1983) 3 NCLR 229 at 247.
[127] *APC vs. PDP* (2015) 15 NWLR (pt. 1481) 1 at 11.
[128] *Abaribe vs. Abia State House of Assembly*(2001) 1 CHR 225 at 236-237 and *Alhaji Balarabe Musa vs. Auta Hamza*(1983) 3 NCLR 229 at 247.

President Roh Moo-hyun was removed through impeachment in 2004.[129] The legislature did not follow due process in the impeachment proceedings as such the court declared the impeachment illegal and reinstated him.[130] This was possible because there is no ouster clause in the impeachment provisions under the constitution of the country. In fact, it categorically provides "Any person against whom a motion for impeachment has been passed shall be suspended from exercising his power until the impeachment has been adjudicated.[131] In the same vein, the trend in Kenya is similar. The constitution provides an opportunity to challenge any unconstitutional act of the legislature like impeachment. In fact, the constitution vests on High Court the power to "hear any question respecting the interpretation of this Constitution including the determination of the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with or in contravention of this Constitution". Pursuant to this, the courts had intervened to ensure the constitutionality of impeachment proceedings in many cases.[132]

7.3.1.5 Recommendation on Determination of the Grounds for Impeachment

The determination of what amounts to gross misconduct as a ground for impeachment should not be left susceptible to abuse by the legislature as it is the position under the constitution. It is recommended that the constitution be amended to scale down the

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[129] James, Brooke. "Constitutional Court Reinstates South Korea's Impeached President", *New York Times*, May 14, 2004.

[130] Constitutional Court of Korea, Decision of May 14, 2004 (2004Hun-Na I) *English version available at* http://english.ccourt.go.kr (accessed on July, 10, 2017).

[131] See article 65 of the Constitution of Republic of Korea, 1987.

[132] *Martin Nyaga Wambora vs. Speaker of The County Assembly of Embu & 3 Others*; [2014] eKLR Constitutional Petition NO. 7; *Nick Githinji Ndichu v Clerk, Kiambu County Assembly & another* [2015] eKLR PETITION NO. 11 ; and *Walid Khalid v County Assembly of Mombasa & 2 others* [2014] eKLR PETITION NO. 342.

power by enumerating, in clear and categorical terms, the grounds which give rise to impeachment without giving any room for maneuver by the legislature. This should be done by amending the current provisions of subsection (11) of sections 143 and 188 which define "gross misconduct" as either grave violation or breach of the provisions of the constitution or any misconduct which, in the opinion of the National Assembly or House of Assembly, amounts to gross misconduct. The new provisions should now read:

Section 143 (11):

> ***Gross misconduct means:***
> ***(a) grave violation of the provisions of the constitution, code of conduct or any other law validly made by the National Assembly;***
> ***(b) treason; and***
> ***(c) bribery and corruption.*** (Bold for emphasis)

Section 188 (11):

> ***Gross misconduct means:***
> ***(a) grave violation of the provisions of the constitution, Code of Conduct or any other law validly made by the National Assembly;***
> ***(b) treason; and***
> (c) ***bribery and corruption*** (bold for emphasis).

Such provisions have been justified by some scholars in other jurisdictions such as Raoul,[133] Isenbergh [134] and Amar.[135] According to Thomas Uche, the provision should be in a "plain language which is not susceptible to any other interpretation and does not give room for any manipulation".[136] To Katyal, "not only is it conceivable, it is a good

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[133] Berger Raoul, *Impeachment: The Constitutional Problems*, (Cambridge: Harvard University Press, 1974) 19.
[134] Joseph Isenbergh "Impeachment and Presidential Immunity from Judicial Process", 29 *Yale Law & Politics Review*, 53 (1999): 62–77.
[135] Akhil Reed Amar, "On Impeaching Presidents", *Hofstra Law Review*, 28, no. 29 (1999): 323.
[136] Onyemachi Thomas Uche."The Mass Media and the Problem of Understanding Legal Language Use: A Call for the Adoption of Plain Legal Language in Nigeria" *African Research Review*, 4, no. 17(2010): 14-26. See also Onyemachi, T.U. *The Role of Information Technology and its Impact on the Legal*

thing to limit the activities that can serve as the basis for impeachment...this limitation serves to constrain the politicians' prejudice in their interpretation of the Constitution.[137] Studies have shown that this is the best way to determine whether grounds for impeachment exists otherwise any such determination by the legislature will be pervaded and shrouded in uncertainty and sentiment in countries practicing democracies.[138]

Apart from enumeration of what constitutes grounds for impeachment as recommended above, another related recommendation is that a definition of the enumerated grounds be provided. In this light, the same subsection shall read further:

> ***In this section, unless the context otherwise admits:***
> ***"Grave violation of the constitution or any other law made by the national assembly" means such violation as considered serious in the judgment of the Constitutional Court.***
> ***"Treason" has the meaning assigned to it under the Criminal and Penal Codes applicable in Nigeria.***
> ***"Bribery and corruption" mean as defined under the EFCC, ICPC and Code of Conduct Acts"*** (Bold for emphasis)

This definition is important because "Generally, definitions assist in the elimination of ambiguities, in the explanation of something, in the reduction of information, to

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Practice in Nigeria, (2004). (Research Project Submitted to the Computer Centre, University of Jos, Nigeria).

[137] Neal Kumar Katyal "Impeachment as Congressional Constitutional Interpretation", *Law and Contemporary Problems*, 66 no. 1-2 (2000): 181.

[138] See for instance, Cass R. Sunstein, "Impeaching the President", *University of Pennsylvania Law Review* 147 (1998); 279; Akhil Reed Amar "On Impeaching Presidents", *Hofstra Law Review*, 28 (1999): 291; Stephen B. Presser "Would George Washington Have Wanted Bill Clinton Impeached"?, *George Washington Law Review*, 67 (1999): 666; John O. McGinnis "Impeachment: The Structural Understanding" 67 *George Washington Law Review*, (1999): 650; Ronald Dworkin, *The Wounded Constitution*, (New York: Review of Books,1999) 63; Keith E. Whittington, "High Crimes: Deciding What's Impeachable", *Political Review*, (2000): 387.

influence attitudes, or even to avoid emotional repercussions".[139] Adrian Sgarbi believes that the reason for defining something is to expound the language used[140] in that, as rightly put by Salmi-Tolonen, "social reality, including law, is rooted in language".[141] The provisions as proposed here will help avoid the possibility of removing the President or any other public officer for the simple reason that he refuses to smile or take a second wife instructed by the legislature as discussed elsewhere in this Thesis.[142]

In some jurisdictions, the grounds for impeachment have been categorically provided without giving the legislature any power in their determination.[143] This could be found in the constitution of Malawi, for instance, which provides that "...indictment and conviction by impeachment shall only be on the grounds of serious violation of the Constitution or serious breach of the written laws of the Republic..."[144] In most of these jurisdictions, the categorical provisions had averted the manipulation and misunderstandings of the grounds for impeachment by the legislature which characterise the Nigerian provisions.Thus, in Malawi, the legislature did not manipulate the ground for the impeachment of Vice President, Dr. Cassim Chilumpha. This had been confirmed by the Supreme Court of Malawi in the case of *State vs Director of Public Prosecutions and Another; Ex parte: Dr. Cassim Chilumpha.*[145] In the same vein, Young Hum also asserted that impeachment in countries like Madagascar is very rare due to the clarity of

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[139] Copi, I., & Cohen, C. *Introduction to Logic* (New York: MacMillan, 1994) 54.
[140] Adrian Sgarbi "What's a Good Legislative Definition"? *Beijing Law Review*, 4 no. 1 (2013): 29.
[141] Salmi-Tolonen, T. "Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments", *Brooklyn Journal of International Law, 29*, (2004): 1169.
[142] See item 5.3.1 in Chapter Five.
[143] The jurisdictions include Malawi, section 86 of the constitution of Malawi, 1994; Madagascar, Article 131 of the constitution of Madagascar, 2010; and Croatia, Article 105 of the constitution of Croatia, 1992.
[144] Section 86 of the constitution of Malawi, 1994.
[145] (315 of200) [2005] MWHC 126 (22 November 2005). See also *State vs Ex parte Muluzi and Another* ((2 of2009)) [2009] MWHC 13 (16 May 2009).

the constitutional provision on the grounds for impeachment which leaves no room for legislature to manipulate. He contended that the only impeachment process in Madagascar between 1974 and 2003 was that of President Albert Zafy. He was removed through impeachment after it was upheld by the Supreme Court without the legislature having any opportunity to manipulate the grounds for the impeachment.[146] Thus, Madagascar had been better off with such provisions.[147]

7.3.1.6 Recommendation on Legal Effects of Impeachment

In view of the controversies surrounding the legal effects of removal through impeachment, it is recommended that the constitution be amended to address such post-impeachment legal issues as eligibility to contest and liability for prosecution. It should be categorically provided that removal through impeachment disqualifies the public officer from holding any other public office for ten years. The public officer shall also specifically be made liable for prosecution under the relevant laws. Thus, the relevant text of the constitution shall read thus:

> ***The result of the removal is that the President, Vice President, Governor or Deputy Governor is disqualified to hold any public office for a period of ten years and is liable to prosecution in accordance with the provisions of the relevant Nigerian laws.*** (Bold for emphasis)

The recommendation for disqualification is justified considering the philosophy behind the impeachment itself which had been described by Turley as "to get rid of the

[146] Young Hum Kin (2014) "Impeachment and Presidential Politics in New Democracies", *Democratization*, 23 no. 3, 524.
[147] Philip N Allen, "Madagascar: Impeachment as a Parliamentary Coup d'etat", in Jody c. Baumgatner and Naoko Kada (eds) *Checking Executive Power: Presidential Impeachment in Comparative Perspective* (London; Preager, 2003) 81.

malfeasant officers and prevent the office from the malfeasance".[148] It is, thus, necessary that the office holder is not only removed but also punished for his wrongdoings while he holds public office. This will ensure the promotion of more accountability in the public offices as rightly stated by Firmage and Mangrum:

> *Impeachment will be not only the means of punishing misconduct, but it will prevent misconduct. A man in public office who knows that there is no tribunal to punish him, may be ready to deviate from his duty; but if he knows there is a tribunal for that purpose, although he may be a man of no principle, the very terror of punishment will perhaps deter him.*[149]

Bestor also stressed the same philosophy but in different words while providing the justification for not only removal but disqualification of the office holders. He said that:

> *The only things that can be done—and the things that must be done if the abuse of power is not to become a precedent for subsequent and perhaps even graver abuses and usurpations—is to render the perpetrator incapable of further wrongdoing and to make his punishment serve as a warning to his successors. Impeachment serves the latter purpose fully as much as the former.*[150]

Furthermore, this recommendation is in line with the trend in many jurisdictions where removal by impeachment results in permanent or temporary disqualification for any office of trust or profit and prosecution. For instance, it is provided under the constitution of Brazil thus:

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[148] Jonathan Turley "Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President", *George Washington Law Review*, 67 no. 35 (1999): 769; Jonathan Turley "From Pillar to Post: The Prosecution of American Presidents", *American Criminal Law Review*, (2000): 1049.

[149] Edwin Brown Firmage & R. Collin Mangrum "Removal of the President: Resignation and the Procedural Law of Impeachment", *Duke Law Journal*, (1974): 1023.

[150] Arthur Bestor "Impeachment" *Washington Law Review*, 49 (1973): 255.

> ***In cases provided for in subparagraphs I and II, the President of the Supreme Federal Tribunal, shall preside, and a conviction, which may only be rendered by two-thirds vote of the Federal Senate, shall be limited to the loss of office, with disqualification to hold any public office for a period of eight years, without prejudice to any other judicial sanctions that may be applicable.***[151] (Bold for emphasis)

The aforesaid provison of the constitution of Brazil provides in clear terms the legal effects of impeachment which include judicial sanctions. The practical effect of the provisions had been demonstrated on many occasions. For instance, the former President of Brazil, Luis Inacio Lula da Silva, was prosecuted and convicted after his impeachment and removal.[152] On September 5, 2017, the Procurator General of Brazil charged Lula before the Supreme Federal Court with a series of crimes including "cartel formation, corruption, and money laundering".[153] He was convicted of the offences charged[154] and sentenced to nine years imprisonment by Judge Moron and his assets confiscated.[155] Dilma Russeff, on the other hand, is also being prosecuted for corruption related charges for which she was impeached and removed.[156] A similar development is playing out in South Korea where the former President, Park Geun-hye, is being

[151] Article 52 of the constitution of Brazil, 1988. Similar provisions could be found in the constitutions of countries such as South Africa, Section 30 of the Constitution of South Africa, 2012; Malawi, Section 86 of the constitution of Malawi, 1994, Sri Lanka; Article 38 of the constimtion of Sri Lanka, 1978; and most states'constitutions in the United States.

[152] Alexandra Rattingar (2018) "The Impeachment Process of Brazil: A Comparative Look at Impeachment in Brazil and the United States", *University of Miami Inter-American Law Review*, 49 no.129, 151.

[153] *Brazil Former Presidents Lula and Rousseff Charged in Corruption Case*, REUTERS (Sept. 5, 2017), https://www.reuters.com/article/us-brazil-corruption/brazil-former-presidents-lula-and-rousseff-charged-in-corruption-caseidUSKCN1BH013 (accessed on February 13, 2018).

[154] Alexandra Rattingar (2018) "The Impeachment Process of Brazil: A Comparative Look at Impeachment in Brazil and the United States", *University of Miami Inter-American Law Review*, 49 no.129, 151.

[155] "Brazil's Former President Lula has Assets Frozen", (July 20, 2017) BBC NEWS, http://www.bbc.com/news/world-latin-america-40664371 (accessed on February 12, 2018.

[156] Alexandra Rattingar (2018) "The Impeachment Process of Brazil: A Comparative Look at Impeachment in Brazil and the United States", *University of Miami Inter-American Law Review*, 49 no.129, 151.

prosecuted after his impeachment and removal. He faces a 30-year jail sentence if convicted.[157]

7.3.1.7 Recommendation on Checkmating the Legislature by Court

It is recommended that the constitution should vest specific role on court to checkmate the excesses of the legislature in the course of impeachment proceedings. Thus, the court should be given the power of final determination of whether the allegation(s) of misconduct proved against the office holders is/are sufficient to justify removal from office. This simply takes away from the legislature and vests in the court the power to determine whether the misconduct proved against public officers during the investigation are gross enough to justify removal. Therefore, instead of going ahead with the removal of the public officer based on the report of the investigation panel, the lawmakers will have to wait for final determination from the court. For this purpose, a special court, to be called Constitutional Court, shall be established to carry out this responsibility within a time frame of one month from the date of submission of the report of the panel to it as is the position in Croatia.[158] This is in line with what obtains in some jurisdictions such as South Korea where the constitutional court is responsible for final determination of the grounds of impeachment.[159] In its determination of

[157] Kim Hong (2018) "South Korea: Ex-president Park Geun-hye faces 30-year sentence", *Aljazeera*, February 27, 2018 available at https://www.aljazeera.com/news/2018/02/south-korea-president-park-geun-hye-faces-30-year-sentence-180227054815616.html (accessed on March 3, 2018). "Impeached South Korean President indicted, faces trial", the New York Post, April 17, 2017 available at (Accessed on February 3, 2018.

[158] "The Constitutional Court shall decide upon the impeachment of the President of the Republic during the term of 30 days form the day of the submission of the proposal to impeach the President of the Republic for violation of the Constitution". See Article 105 of the constitution of Croatia, 1991.

[159] Article 65 of the constitution of the Republic of South Korea. Justin Mccurry (2017) "Park Geun-hye: South Korean Court removes President over Scandal", The Guardian, March 10, 2017 available at https://www.theguardian.com/world/2017/mar/10/south-korea-president-park-geun-hye-constitutional-court-impeachment (accessed on March 1, 2018. Matt Stiles (2017) "South Korea's president is removed

whether the allegations justify removal, the constitutional court should consider the gravity of the misconducts and the effects of the removal of the public officer. This position was illuminated by the South Korean Constitutional Court when it held that:

> *The grave violations must be interpreted by "balancing the degree of negative impact on or the harm to the constitutional order caused by the violation of the law and the effect to be caused by the removal of the respondent from office."*[160]

The court went further to determine that the grounds for impeachment of the President, Roh Moo-Hyun, breach of Public Official Election Act, was not serious. The court said "...this infringement is not unconstitutional enough to impeach the President".[161] This decision was arrived at "by relying on the principle of proportionality; the Constitutional Court interpreted this provision in such a way that a minor breach cannot be sufficient to confirm impeachment".[162] In the same vein, the Legislative Committee of South Carolina recommended that the state Governor, Mark Stanford, be reprimanded because the allegations proved against him were not serious enough to justify his removal.[163] This, if adopted by the proposed Nigerian Constitutional Court, will greatly help in curbing the incidences of removal on allegations of trivial and simple constitutional breaches.

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from office as court upholds her impeachment", Los Angeles Times, March 9, 2017, available at http://www.latimes.com/world/asia/la-fg-south-korea-park-impeach-2017-story.html (accessed on February 2, 2018).

[160] Constitutional Court of Korea, Decision of May 14, 2004 (2004Hun-Nal) *English version available at* http://english.ccourt.go.kr (accessed on July, 10, 2017).

[161] Ibid.

[162] Jonghyun Park,"The Judicialization of Politics in Korea", *Asian-Pacific Law and Policy Journal, 10 no 1* (2008) 71. See also Soon-yang Kim, "The Veto Point Politics of the Presidential Impeachment in South Korea" *The Korean Social Science Journal,* 39 no. 2 (2012): 35; Youngjae Lee, "Law, Politics, and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective", *American Journal Comparative Law,* 53 (2005) 404.

[163] Shaila, Dewan, "South Carolina Panel rejects Impeachment of Governor", The New York Times, December, 2009, available at https//nytimes.com/2009/12/10/us/10stanford.html (accessed on November 4, 2017).

7.3.2 Recommendations on the Law and Practice of Investigation

7.3.2.1 Recommendation on Evidentiary Provisions

It is recommended that the constitution should set a standard for the proof of allegations of gross misconduct during the investigation proceedings. The standard of proof should be on balance of evidence as is the requirement of proof in other civil cases. Investigation and proof of grounds for impeachment deserves such a standard of proof as the removal or otherwise of the public officer depends largely on proof of the allegations during the investigation proceedings and in view of its abuse as shown earlier. Impeachment is so serious in that it seeks to take away a mandate given by the electorates, the majority of the people of the state concerned or even the whole country as such the process should not be regarded as a child's play. This had been categorically pointed out by the Supreme Court:

> *Impeachment of elected politicians is a very serious matter and should not be conducted as a matter of course. The purpose is to set aside the will of the electorates as expressed at the polls. It has implication for the impeached as well as the electorate who bestowed the mandate on him.*[164]

Considering the effect of impeachment as expressed by the court above which is as serious as any other civil proceeding if not more, a particular standard of proof should be prescribed by the constitution. The standard of proof in civil cases as required under the Evidence Act is that "The burden of proof shall be discharged on the balance of

[164] *Danladi vs. Dangiri* (2015) 2 NWLR (pt. 1442) 103 at 142.

probabilities in all civil proceedings".[165] Therefore, the relevant constitutional provisions need amendment to read as follows:

Section 143 (7)

> (a) *Within three months of its appointment, report its findings, **based on proof on the balance of probabilities**, to each House of the National Assembly.* (Bold for emphasis)

Section 188 (7)

> *(a) Within three months of its appointment, report its findings, **based on proof on the balance of probabilities**, to the House of Assembly.* (Bold for emphasis)

This is line with the arguments of scholars in some jurisdictions, where no standard of proof is provided, that a standard lesser than that of criminal cases be adopted.[166] Similar provision on standard of proof in impeachment is made under the constitution of the State of Nebraska in the United States. It provides:

> *No person shall be convicted without the concurrence of two-thirds of the members of the Court of impeachment that clear and convincing evidence exists indicating that such person is guilty of one or more impeachable offenses ...*[167]

[165] Section 134 of the Evidence Act, cap El4 Laws of the Federation of Nigeria, 2004.

[166] Thomas B. Ripy, "Standard of Proof in Senate Impeachment Proceedings" *CRS Report for Congress*, Report 98-990 (1999).

[1] Thomas B. Ripy, "Standard of Proof in Senate Impeachment Proceedings" *CRS Report for Congress*, Report 98-990 (1999); Edwin Brown Firmage, Collin Mangrum and William Penn, "Removal of the President: Resignation and the Procedural Law of Impeachment", *Duke Law Journal*, (1975) 1023. Gray & Reams, "The Congressional Impeachment Process and the Judiciary: Documents 7 and Materials on the Removal of Federal District Judge Harry E. Claiborne", Vol. 5, Document 41 (Motions Referred to the Senate by the Senate Impeachment Trial Committee), IX (Judge Claiborne's Motion to designate "Beyond a Reasonable Doubt" as the Standard of Proof in the Impeachment Trial (and supporting memorandum)) (1987).

[167] Section 17

7.3.2.2 Recommendation on Fair Hearing before the Panel

The composition of the panel shall be made up of seven members 5 of whom shall be persons with legal qualifications who have been so qualified for a period of not less than 15 years or retired justices of the Supreme Court, Court of Appeal or High Court. This will take care of the problems of observance of fair hearing and determination of breach of the constitution in view of the fact that "... the exercise of investigation under the Constitution will invariably touch law in its large parts... [168] This recommendation is in line with what obtains in many jurisdictions where the composition of such panel, committee or any other body saddled with the responsibility for the investigation of grounds for impeachment are composed of persons with legal training. For instance, under the constitution of the Seychelles, it is the responsibility of the Constitutional Court to investigate the grounds for impeachment as alleged against the President. It provides "... the Constitutional Court shall investigate the matter and report to the Speaker whether it finds that the particulars of the allegation specified in the motion constitute a prima facie case for the removal of the President... the Constitutional Court in investigating the matter under paragraph (c) may summon and examine any witnesses... The President shall have the right to appear and be represented before the Constitutional Court during its investigation of the allegation.[169] In the light of the above provisions, some components of fair hearing must be observed during the investigation. The Constitutional Court is composed of judges of the Supreme Court of the Seychelles who are qualified legal practitioners of not less than seven years experience.[170] This requirement is appropriate as only legal practitioners will be able to carry out

[168] Per Oguntade JSC in *Inakoju vs. Adeleke* (2007) LPELR 10354.
[169] Article 54 of the constitution of the Seychelles, 1993.
[170] Section 126 (1), ibid.

investigation by observing the fair hearing requirements as provided in the provisions quoted above.[171]

7.3.2.3 Recommendation on Credibility of Investigation

It is recommended that the issues which affect the credibility of the investigations should be addressed. They are lack of thorough investigations, non-involvement of professionals and predetermined results. For lack of thorough investigation and predetermination of results, the preceding recommendation on the composition of the panel to include retired and/or serving judges of superior courts will suffice here. This is because they will ensure that investigations are not compromised in all ramifications in order to arrive at the right conclusion as to whether the allegations have been proved or not. Equally, the relevant constitutional provisions should recognize the involvement of professionals in the conduct of investigations. This is because expertise in the subject matter of investigations is required for the credibility of the investigations. For instance, where financial fraud is under investigation, an experienced banker or personnel of the Economic and Financial Crimes Commission[172] should be made part of the investigation. Just like distortion of accounts will require the input of a seasoned Accountant.

[171] Eliezer S. Poukop, "An exploratory Study of the Constitutional Designs in three Island States: Seychelles, Comoros, and Mauritius" *Journal of Contemporary African Studies*, 35 no. 3 (2017) 76.
[172] The commission is responsible for investigation and prosecution of financial crimes in Nigeria. See section 5 of the Economic and Financial Crimes Commission (Establishment) Act, 2004.

7.3.3 Recommendations on Challenges to Compliance with Constitutional Requirement

7.3.3.1 Recommendation on the Power of Determination of Gross Misconduct and Ouster Clause

The power given to the legislature to determine what constitutes gross misconduct as a ground for impeachment and the provision which ousts the jurisdiction of the court to entertain any issue on impeachment was shown to have constituted a challenge to compliance with constitutional provisions on impeachment. They, at the same time, have been identified as part of the constitutional provisions on impeachment which are grossly defective for the reasons discussed in Chapters Three and Six respectively in this Thesis. Recommendations on them have been made and discussed there. Suffice it to state here that the power of determination of gross misconduct should be scaled down by enumerating the grounds for impeachment. As for the ouster clause, the recommendation is that it should be deleted from the impeachment provisions. This will help in providing solution to the challenges they pose to compliance.

7.3.3.2 Recommendation on Corruption in the Exercise of Impeachment Power

It is recommended that the relevant anti-corruption agencies responsible for investigation and prosecution of corruption related offences, like the Economic and Financial Crimes Commission,[173] should beam their search light towards corrupt practices by lawmakers in the exercise of their legislative duties like impeachment. This has the potential of stamping out the impunity with which legislative corruption is being perpetrated. The mandate of these anti-corruption agencies as provided in the laws establishing them is wide enough to investigate and prosecute lawmakers for corruption

[173] Ibid.

in the exercise of impeachment powers. Therefore, political will on their part is what is needed to do this. There is also the need for anti-corruption law specific for the lawmakers. The law should specifically proscribe the offer and acceptance of bribery to influence any legislative duty including impeachment. This will be in line with what is obtainable in other jurisdictions. Thus, having realized the danger of corruption in the exercise of legislative powers in such jurisdictions, specific constitutional provisions are made to take care of the situation. For instance, the constitution of the State of Alabama in the United States of America makes it categorically an offence for lawmakers to receive bribe and other corrupt inducement and for anyone to bribe them in the course of their legislative responsibilities. It elaborately provides:

> *A member of the legislature who shall solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another from any company, corporation, association or person, any money, office, appointment, employment, reward, thing of value, or enjoyment, or of personal advantage or promise thereof for his vote or official influence or for withholding the same; or with an understanding expressed or implied, that his vote or official influence would in any way be influenced thereby, or who shall solicit, or demand any such money or other advantage, matter, or thing aforesaid, for another as consideration for his vote, or influence or for withholding the same; or shall give or withhold his vote or influence in consideration of the payment or promise of such advantage, matter, or thing to another, shall be guilty of bribery within the meaning of this constitution; and shall incur the disabilities and penalties provided thereby for such offence, and such additional punishment as is or shall be provided by law.*[174]
>
> *Any person who shall, directly or indirectly, offer, give, or promise any money, or thing of value, or testimonial, or personal advantage to any executive or judicial officer, or member of the legislature to influence him in the performance of any of his public or official duties, shall be*

[174] Article IV, section 79 of the Alabama state constitution. See also *Wilbert vs. Wilcox County Commission* 623. so. 2d 727 (1993); Kim Chandler "Milton McGregor, 5 Ors Acquitted in Alabama Gambling Trial', www.al.com March 8, 2012 (accessed on December 12, 2017).

guilty of bribery, and be punished in such manner as may be provided by law.[175]

7.3.3.3 Recommendation on Personal Service

It is recommended that the constitutional provisions for impeachment should empower the Federal and State High Courts to order for substituted service of notice of allegations of gross misconduct where the courts are satisfied that personal service could not be effected. The mode for such substituted service and/or the persons to be served should also be specified in the order. This is line with the civil procedure rules of most courts in Nigeria where they are empowered to make such orders for substituted service of court processes where personal service is found to be practically impossible or difficult or for any other justifiable and recognized cause. For instance, the High Court of Lagos State (Civil Procedure) Rules provide:

> *Where personal service of an originating process is required by these rules or otherwise and a judge is satisfied that prompt personal service cannot be effected, the judge may, upon application by the Claimant make such order for substituted service as may seem just.*[176]

The courts should also embrace the grant of order for substituted service in deserving situations because it cannot be legally granted unless provided by an enabling law or by court order.[177] It is also recommended that the legislative House should strive to apply for and obtain the order because it is not usually made *suo motu* by the court. How to obtain and serve it had been provided recently by the Supreme Court thus:

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[175] Article IV, section 90 of the Alabama State constitution; William H Stewart, *Oxford Commentaries on the State Constitutions of the United States: Alabama State Constitution* (Oxford: Oxford University Press, 2016) 75-76.

[176] Order 7 Rule 5 (1) of the High Court of Lagos State (Civil Procedure) Rules, 2012. See similar provisions in Order 11 Rule 5 of the High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004; order 9 Rule 4 of the Abia State High Court (Civil Procedure) Rules, 2009.

[177] *Balonwu vs Obi* 2007) LPELR-CA/E/3/2007.

> *It is the usual practice when applying for substituted service to specify the manner in which service is to be effected, the person on whom it is to be effected and where. The applicant chooses the location where he believes the processes are most likely to come to the attention of the person to be served. The order would be made in accordance with the request. Having sought and obtained such a specific order, it cannot be open to a bailiff effecting service to do so at any other address or by any other means without a fresh order obtained from the Court.*[178]

The effect of this judgment is that once the order is obtained, it must be strictly complied with in the service as neither the parties could alter the mode for its service as specified in it.[179] Therefore, the lawmakers should strive to strictly comply with the terms specified in the order to avoid nullification of service for lack of compliance.

7.3.3.4 Recommendation on Inaccessibility of Legislative Chambers

It is recommended that the National Assembly should always not hesitate to exercise its constitutional responsibility to take over the affairs of any legislative house which is enmeshed in crises following the initiation or continuance of impeachment proceedings, pending the return of peace. This will ensure that the lawmakers do not continue the impeachment proceedings at places other than the legislative chambers which will be nullified for lack of compliance with the constitution. This power is provided under the constitution as follows:

> *At any time when any House of Assembly of a State is unable to perform its functions by reason of the situation prevailing in that State, the National Assembly may make such laws for the peace, order and good government of that State with respect to matters on which a House of Assembly may make laws as may appear to the National Assembly to be necessary or expedient until such time as the House of Assembly is able to resume its functions; and any such laws enacted by*

[178] *Emeka vs. Okoroafor* (2017) LPELR- 41738 (SC).
[179] *Harry vs. Menakaya* (2017) LPELR-42363(SC).

> *the National Assembly pursuant to this section shall have effect as if they were laws enacted by the House of Assembly of the State: Provided that nothing in this section shall be construed as conferring on the National Assembly power to remove the Governor or the Deputy Governor of the State from office.*[180]

Another related recommendation which will go a long way in checkmating the challenge associated with inaccessibility of legislative chambers is liberal interpretation of what constitutes impeachment proceedings or a part thereof necessarily needed to be conducted in the legislative chambers and those which do not. It is not everything done by lawmakers in pursuance of impeachment proceedings that must be conducted in the legislative chambers for some acts are conducted preparatory and as a prelude to the actual impeachment proceedings. This should be the approach of the courts in the interpretation of the relevant constitutional provision as opined, rightly in our view, by the High Court and the Court of Appeal in the case of *Danladi vs. Taraba State House of Assembly*.[181] The Court of Appeal specifically said:

> *On this issue therefore it is my view that, while the act of signing of the notice of allegation is definite part of the legislative act of the members of the house of Assembly. It is not intended by section 188 (2) of the constitution that the signatures to the notice of allegation must be generated from the floor of the House. It is my view that, once a notice of allegation is presented to the Speaker of the House, signed by one-third of the house, that aspect of section 188 (2) has been satisfied, and it will not matter that the signatures had been generated from outside the House of Assembly or that it was done outside parliamentary hours..*.[182]

In support of this recommendation also, it is discernible that even the lawmakers know very well that there are some acts done by the legislature pursuant to a legislative act

[180] Section 11 (4) of the constitution.
[181] (2015) 2 NWLR (pt. 1442) 103
[182] Ibid, 120-21.

which need not be done in the chambers of the House. For instance, budget presented to the legislative Houses are required to be considered and approved by the lawmakers. The lawmakers usually take the draft budget proposal to go through it in the comfort of their homes before the date slated for the consideration by the House. This also applies to other reports of investigations conducted by the House which need consideration of the House. It is, therefore, the consideration by the House which is needed to be done in the Chambers not the consideration by the individual lawmakers at home. This, in our view, should be the right and proper interpretation of the court on the place of impeachment proceedings.

7.3.3.5 Recommendations on External Influence, Selfish Interest, "Must Win" Syndrome and Omission from Third Party

In view of the fact that these challenges have a similar finding, they could as well be given a similar recommendation. Thus, it is recommended that before the commencement of impeachment proceedings, the lawmakers be made to subscribe to oath or affirmation not to allow any sentiment to interfere with the exercise. This is in line with what obtains under most of the states constitutions in the United States. For instance, the constitution of State of Colorado and Michigan provide respectively:

> *All impeachments shall be tried by the senate, and when sitting for that purpose, the senators **shall be upon oath or affirmation to do justice according to law and evidence.***[183] (Bold for emphasis)
> *The senators **shall take an oath or affirmation truly and impartially to try and determine the impeachment according to the evidence.***[184] (Bold for emphasis)

[183] Article 13, section 1 of the constitution of Colorado, 1876. Similar provisions could also be found in the constitutions of most states in the United States of America.
[184] Article 11, section 7 of the constitution of Michigan, 1963.

Another related recommendation is that orientation programs such as trainings, seminars, workshops and courses aimed at enlightening the lawmakers on the laws governing the exercise of their duties should be organized periodically. This could be undertaken by the relevant agencies responsible for such programs like the Nigerian Institute for Legislative Studies. This will greatly help in this direction.

7.3.4 Recommendations on Challenges to Judicial Review of Impeachment

7.3.4.1 Recommendation on Delay to Judicial Review

In order to curb the menace of delay, it is recommended that a time frame for final dispensation of all impeachment disputes should be provided by the constitution. As such new subsection (10) to sections 143 and 188 should be inserted to read as follows:

> ***All disputes arising from impeachment proceedings in accordance with the provisions of this section shall be determined and disposed of by the trial court and the appellate courts within 120 days and 60 days respectively from the date of filing.*** (Bold for emphasis)

This recommendation finds justification in the fact that similar provisions were made in respect of election petitions and other criminal proceedings by way of amendment to the constitution. For election petitions, a period of 180 days is required for trial to be finally disposed of and 120 days for all appeals. The constitution enacts:

> *An election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition.*
> *An appeal from a decision of an election tribunal or court shall be heard and disposed of within sixty days from the date of filing of the petition.* [185]

[185] Section 29 of the Constitution of the Federal Republic of Nigeria First Alteration) Act, 2010. This amendment was necessitated following the long delays which characterized elections petitions in Nigeria. As a result, many election petitions were finally decided just few months to the expiry of the tenure of the office holder which is the subject matter of the petition. For instance, the case of *Ngige vs. Obi* (2006) 14 NWLR (pt. 999) 1 was finally decided barely a year to the expiry of the tenure of the incumbent Governor who was then declared not legally elected and ordered to vacate the office. This means he had illegally

Alternatively and to comply with the recommended time frame, the courts are encouraged to always, as the Supreme Court said, " take the fast lane and do all that is possible to give it speedy hearing".[186] This is possible if the courts use the discretion they have in the conduct of all disputes as adumbrated by Supreme Court in *Fawehinmi vs. Akilu* as follows:

> *There is no valid procedure of law that makes a court of law a mere rubberstamp. A Judge is certainly not a robot nor (sic) automation that once he is fed with data, produces an automatic answer. In every action before this court, in every step taken by a Judge, his discretion is called into play, whether in interpreting the law or in deciding an action one way or the other.*[187]

Such area where the courts could exercise the discretion is where the procedure gives room for it. For instance, since many preliminary issues are normally raised and dealt with before the commencement of the trial proper, the courts could take both the preliminary issues and the substantive matters simultaneously.[188] The courts' discretion could also be exercised through avoiding unnecessary and long adjournments; by taking the path of a trial judge who heard a particular impeachment case promptly and even during the holidays[189] or weekends (Saturdays and Sundays).[190]

7.3.4.2 Recommendation on Lack of Respect for Court Order

Lack of respect for court order in impeachment disputes is attributed to the powers the constitution vests in the legislature to exclusively determine what amounts to gross

occupied the office of the governor for almost three years. So many election petitions ended like this hence the amendment to provide for the time frame as quoted above.

[186] *Inakoju vs Adeleke* (2007) LPELR 10354.

[187] (1987) 4 NWLR (Pt. 67) 797 at 843.

[188] *Senate President vs. Nzeribe* (2004)9 NWLR (pt. 878) 251.

[189] *Balonwu vs. Obi* 2007) LPELR-CA/E/3/2007.

[190] *Anie vs. Uzorka* (1993) 8 NWLR (pt. 309) 20

misconduct and the ouster clause provision. Therefore, the recommendation for categorical definition of what is gross misconduct and the deletion of ouster clause made elsewhere in this Thesis are also adopted here. This will help in no small measure to dispel the notion of the lawmakers that the court's issuance of an order is unwarranted interference with their power.

Another recommendation is that the courts should vigorously pursue the enforcement of court orders through the mechanism of contempt proceedings against the legislative house or any of its leaders found responsible for flouting court order. For instance, most of the Civil Procedure Rules of our courts provide for the power to punish for contempt. However, nowhere could one find the courts punish the legislature therefor. In this light, Respondent 2 said:

> *The abuse of court order is part of the impunity of the legislature. If the courts should strive to punish any legislative house or speaker who refused to obey its orders, some level of sanity could be achieved. But once this is not done they will continue to behave as they wish because they are not guided by any conscience.*[191]

This will subject the exercise of impeachment power to judicial control and make the judiciary reclaim its glory as "the last hope of the common man" and greatly restore the confidence of the people thereon.

7.3.4.3 Recommendation on Requirement of *Locus Standi*

In view of the findings on *locus standi* as pointed out earlier, there is need to liberalise the strict requirement that only persons with sufficient interest will have the standing to

[191] Interview with Respondent 2 at his residence on 12th August, 2017 around 1745hrs.

challenge unconstitutional acts like impeachment. This is to meet the yearnings and dynamics of the society as stressed:

> *In my view, the frontiers of the concept of locus standi should not be static and conservatively so at all times and for all times. The frontiers should expand to accommodate the dynamics and sophistication of the legal system and the litigation process respectively. In other words, the concept must move with the time to take care of unique and challenging circumstances in the litigation process. If the concept of locus standi is static and conservative while the litigating society and the character and contents of litigation are moving in the spirit of a dynamic changing society, the concept will suffer untold hardship and reverses. That will be bad both for the litigating public and the concept itself.*[192]

This is necessary for the country to remain governed under the rule of law so that citizens will be able to "preserve, protect and defend the constitution".[193] In this light, it is recommended that the standing to challenge unconstitutional acts like illegal impeachment be extended not only to persons sufficiently interested but any public spirited individual and nongovernmental organizations in the interest of the public.[194] Thus, section 6 of the constitution which purportedly[195] serves as the constitutional

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[192] [193] Per Tobi J.C.A. in *Busari vs.Oseni* Suit No. CA/L/284/288; (1992) 4 NWLR (Pt. 237) 557 at 589.

[194] *Fawehinmi v Federal Republic of Nigeria*(2008) 23 WRN 65.

[195] This is to be done in the interest of the public as Denning LJ put it "it is a strong thing for a court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy". See the case of *Hadkinson vs. Hadkinson* 1952 All ER 567 (CA) 574.

The word "purportedly" is used here to show that there are arguments for and against the use of the provision as the constitutional authority for *locus standi* in Nigeria. This is supported by the fact that there are divergent and contradictory decisions of the courts including the Supreme Court. See for instance; *A-G, Kaduna State vs. Hassan* (1985) 2 NWLR (Pt. 8) 483 at 521; *F.A.T.B.vs. Ezegbu* 35(1994) 9 NWLR 149, 236; *Thomas vs Olufisoye (1986) 1 NWLR (Pt. 18) 669 at 693; NNPC vs. Fawehinmi* 37(1998) 7 NWLR (pt. 559) 598 at 612; *Owodunni vs. Registered Trustees of Celestial Church* 39(2000) 10 NWLR (Pt. 675) 315; *Fawehinmi vs. IGP* (2002) 7 NWLR (Pt. 767) 606; *Dodo vs. E.F.C.C.* [2013] 1 NWLR (Pt. 1336) 468; *Fawehinmi vs. Akilu* (1987) NSCC 1266 at 1267; (1987) 4 NWLR (Pt. 67) 797. Scholars also expressed contradictory views as to whether the subsection is the constitutional authority for the requirement of locus standi. See for instance; Okey Ilof-Ilunwa, "Locus Standi in Nigeria: An Impediment to Justice", *available at* www.lexprimus.com (accessed on September 12, 2017); Tunde Ogowewo "The problem with Standing to Sue in Nigeria" *Journal of African Law*, 39 no. 9(1995): 65; Oyelowo Oyewo "Locus Standi and Administrative Law in Nigeria: Need for Clarity of Approach by the Courts", *International Journal of Scientific Research and Innovative Technology, 3 no. 1,* (2016): 82.

authority for *locus standi* should be amended. The amendment should contain a *proviso* to section 6 (6) (b) to read:

> ***Provided that any citizen may bring an action before a competent court to determine whether any act or omission of any person or authority is inconsistent with the provisions of this constitution.*** (Bold for emphasis)

This is in line with the trend in some countries whose constitutions recognize the right of every citizen to bring an action to challenge any unconstitutional act by any arm of government like unconstitutional impeachment. For instance, the constitution of The Gambia provides as follows:

> *A person who alleges that:*
> *(a) any act of the national assembly or anything done under the authority of an act of the national assembly;*
> *(b) any act or omission of any person or authority*
> *is in consistent with or in contravention of the provisions of this constitution may bring an action in a court of competent jurisdiction for a declaration to that effect.*[196]

In fact, it is not only a right but also a duty to defend the constitution in the Gambia as its constitution, in another breath, provides that "all citizens have the right and duty at all times to defend the constitution".[197] Interpreting this provision, the Supreme Court of The Gambia stated in clear terms:

> *... individually and collectively, they have a right and a duty to monitor and ensure that it is being complied with, that it is not contravened and that all public acts are consistent with its provisions. Access to a court of competent jurisdiction, free from the restrictive technicalities associated with the rule of locus standi, is sine qua non for the exercise of such a right and the discharge of such a duty. The law cannot regard the ordinary citizen, who wishes to assert his right to challenge in a court of law what he perceives to be a contravention of the Constitution, as an interloper, a stranger to the case, a busybody*

[196] Section 5 (1) of the constitution of The Gambia, 1996.
[197] Section 6, Ibid.

who is meddling with what does not concern him. It does indeed legitimately concern him...[198]

Other constitutions with similar provision which vests a right or even imposes a duty on citizens to challenge the constitutionality of acts of any person or authority like impeachment include Ghana[199]and Cameroon.[200] This is besides the expansion of *locus standi* in areas of human rights under the constitutions of Zimbabwe [201]and Republic of South Africa[202]from where a clue could be taken. The Nigerian courts should also, even after the amendment to the constitution, strive towards realizing the objective of the amendment by not giving it a restrictive meaning in order not to take the issue back to the era of strict interpretation.[203] This will determine the reach of constitutional justice and[204]enhance enforcement of the constitution[205]as is the case in some jurisdictions.

[198] *UDP & 2 Ors vs. The Attorney General SCCS No. 3/2000; Jammeh vs. Attorney-General* (1997-2001) GR 839.

[199] Section 2 (1) of the constitution of Ghana, 1992. See also *New Patriotic Party v Attorney-General (Ciba* case) (1996-1997) SCGLR 729; *Tuffour vs. Attorney-General (1980) GLR 637 CA; Sam (No.2) vs. Attorney-General (2000).*

[200] Article 40 of the constitution of Cameroon, 2008.

[201] See section 85 (1) of the constitution of Zimbabwe, 2013; Lovemore Chiduza and Paterson Makiwane "Strengthening Locus Standi in Human Rights Litigation in Zimbabwe: An Analysis of the Provisions in the New Zimbabwean Constitution", Potchefstroom Electronic Law Journal, 19 (2016): 32.

[202] See section 38 of the Constitution of the Republic of South Africa, 1996 and the cases of Minister of Health vs. Treatment Action Campaign 2002 5 SA 721 (CC); S vs. Makwanyane 1995 6 BCLR665 (CC); Mohamed vs. President of the Republic of South Africa 2001 7 BCLR 685 (CC); Moseneke vs. The Master 2001 2 SA 18 (CC); Christian Education South Africa vs. Minister of Education 1998 12 BCLR 1449 (CC); Christian Education South Africa vs. Minister of Education 2000 10 BCLR 1051 (CC); Hoffman vs. South African Airways 2000 11 BCLR 1211 (CC) and Government of the Republic ofSouth Africa vs. Grootboom 2000 11 BCLR 1169 (CC).

[203] S.P. Sathe, "Judicial Activism: The Indian Experience" 6 *Washington University Journal of Law & Policy* 6 no. 9 (2001): 29; Nwauche Eyinna "The Nigerian Fundamental Rights (Enforcement) Procedure Rules, 2009: A Fitting Response to Problems in the Enforcement of Human Rights in Nigeria?" *African Human Rights Journal*, 2 no. 7, (2010): 514.

[204] RS Kay "Standing to Raise Constitutional Issues: Comparative perspectives" in SR Kay (ed) *Standing to Raise Constitutional Issues: Comparative Perspectives* (2005): 1.

[205] A Rotman "Benin's Constitutional Court: An Institutional Model for Guaranteeing Human Rights" 17 *Harvard Human Rights Journal* (2004): 81.

7.3.4.4 Recommendation on Judicial Remedies

It is recommended that the courts should strive to imbibe the culture of applying the purposive rule of interpretation in the interpretation of tenure of public officers who had been illegally removed through impeachment. This means that the courts should be sufficiently dynamic in interpreting and applying the provisions of the constitution in the interest of substantial justice in deserving cases of illegal impeachment as the Supreme Court did in the cases discussed earlier.[206] Alternatively, it is also recommended that section 180 (2) (a) which deals with the tenure of the public officers be amended to have a *proviso* to read:

> ***Provided that in the determination of the tenure of Governor illegally removed by impeachment, the period of time spent out of office during the illegal impeachment shall not be taken into consideration.***[207] (Bold for emphasis)

The amendment is justified because the constitution was amended to similarly determine the tenure of a Governor whose election had been voided but later won a rerun election.[208] The amendment will ensure that effect is given to the intendment of the constitution that public office holders shall enjoy four-year tenure uninterrupted by illegal act of removal through impeachment. This will be the only efficient remedy as "It is well settled that the efficacy of any remedy is dependent not only on its availability but its sufficiency and adequacy".[209]

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[206] *Amaechi vs. Independent National Electoral Commission* (2007) 7-10 S.C. 172; *PDP* vs. *INEC* (1999) 11 NWLR(pt. 262) 200; *Awolowo vs. Shagari* (1979) All NLR 120. In all these cases, the court preferred and did substantial justice instead of technical justice and awarded remedies adequate to the parties in the circumstances.

[207] A similar amendment shall also be made to section 135 (2) (a) of the constitution relating to the tenure of the President.

[208] See section 18 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010.

[209] Jacob Abiodun Dada 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal', *Journal of Law, Policy and Globalization*, 10 no. 7 (2013): 9.

7.4 Suggestions for Further Study

It is suggested that further study could be undertaken on the laws governing the exercise of impeachment at the local government level in Nigeria. This is because the present study does not cover the power of impeachment as exercised by the local government legislative councils in Nigeria as it is not provided under the constitution but under the various local government administration laws made by State Houses of Assembly. The further study could as well use socio-legal research method in order to get authentic data from the stakeholders involved in the exercise of impeachment power for an articulate and in-depth analysis.

7.5 Conclusion

The study has undertaken a critical analysis of the legislative power of impeachment and its exercise as provided under the constitution of Nigeria. It has revealed that the provisions do not adequately address some aspects of impeachment. For instance, it does not provide for an effective mechanism to check the excesses of the legislature in the process of impeachment. The constitution also lack sound provisions to ensure credible investigation and proof of the grounds for impeachment. The consequence, therefore, is that most impeachment proceedings were fraught with non-compliance with the constitutional requirements due largely to some social and legal challenges identified and dealt with. The judicial review of impeachment, which is part of the constitutional provisions for impeachment, is also bedeviled by such challenges as delay, lack of respect for court order and *locus standi*. Therefore, it is recommended that the

constitutional provisions relating to the power of impeachment be amended in such a way as to have sound constitutional provisions that adequately take care of impeachment power; guarantee credible investigation and proof of the grounds for impeachment; ensure compliance with constitutional requirements and smooth settlement of disputes which may arise therefrom. References and discussions have been made to relevant constitutional provisions in other jurisdictions from which Nigeria could learn a lot.

REFERENCES

A, Fiseha. "Federalism and the Adjudication of Constitutional Issues: The Ethiopian Experience". *Netherlands International Law Review,* 52 (2005): 1-19.

A, H. Hammond. "Judicial Review: The Continuing Interplay between Law and Policy". *Public Law* 34, (1998): 35-39.

A, Rotman. "Benin's Constitutional Court: An Institutional Model for Guaranteeing Human Rights". *Harvard Human Rights Journal* 17 (2004): 81-96.

A. T, Shehu. "The True Foundation of Judicial Review: A View from Nigeria". *Jindal Global Law Review*,2 (2010): 212-216.

Abel, Daniel. "Impeachment: the Dilemma of Nassarawa Assembly over Gov. Almakura" available at https//www.vanguardngr.com/2014/08/impeachment-dilemma-nassarwa-assembly-almakura-over-gov-almakura (2014 (accessed October 17,2017).

Adam, A Anyebe. "Federalism as a Panacea for Cultural Diversity in Nigeria". *Global Journal of Human Social Sciences,* 15 no. 3, (2015): 15-24.

Adangor, Z. "The Presidential Pardon Granted Chief D.S.P. Alameyeiseigha: Time to Revisit the President's Pardoning Power under Section 175 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)". *Journal of Law Policy and Globalization*, 39 (2015): 178-191.

Adegbeyoga O., Oyekunle. "Political Corruption and the Future of Nigerian Politics". *International Law Research*, 4 no.1 (2015): 178-188.

Adeoye, Akinsanya. *Introduction to political Science in Nigeria.* Rowman & Littlefield, 2013.

Adewale, Y. "Democratic Consolidation, Fiscal Responsibility and National Development: An Appraisal of the First Republic". *African Journal of Political Science and International Relations*, 7 no.2 (2013): 76-88.

Adrian, Sgarbi. "What's a Good Legislative Definition"? *Beijing Law Review*, 4 no. 1 (2013): 29-32.

Agbaje, F."The Rule of Law and the Third Republic". In Owoboye, W. (ed.) *Fundamental Legal Issues in Nigeria* (1959).

Agbe, M.A. O. (ed) *All Nigeria Judges Conference, 2001*, 47-61.

Agbonika, John Musa. "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint". *Journal of Law, Policy and Globalization* 26 no.4, (2014): 130-142.

Aguda, T.A. *Principles of Practice and Procedure in Civil Actions in the High Courts of Nigeria.* Sweet and Maxwell, 1980.

Aihe, A.D. and Oluyede, P.A. *Cases and Materials on constitutional Law in Nigeria,* London: Oxford University Press, 1979.

Ajape, Taiwo Shehu. "Judicial Review and Judicial Supremacy: A Paradigm of Constitutionalism in Nigeria". *International and Comparative Law Review,* 11 no.1 (2011): 43-72.

Ajepe, Taiwo Shehu, Mohammed, Mustapha Akanbi. "Modeling Separation For Constitutionalism: The Nigerian Approach" *Journal of Law, Policy and Globalization,* 3, (2012) 22-30.

Ajikeme, Jombo Nwagwu. "Legislative Oversight in Nigeria: A Watchdog or a Hunting Dog? *Journal of Law, Policy and Globalization,* 22 (2014): 16-24.

Aka-Basorun, A. "The Supreme Court and the Challenges of the 1990s", in Akinseye George (ed) *in Law, Justice and stability in Nigeria: Essays in Honor of Justice Kayoed Eso* (1993).

Akhil, Reed Amar. "On Impeaching Presidents", *Hofstra Law Review,* 28, no. 29 (1999): 291-323.

Akinseye- George, Yemi. "Constitutional Framework for Accountability in Nigeria". *University of Ibadan Law Journal,* 1 no.1 (2011): 77-89.

Akinwole, Ogunlola. "Indictment and Election Disqualification: The Nigerian Experience" available at www.gamji.com/article6000/NEWS7504.htm (accessed on November 2, 2017).

Akogun, Fatai Oluwatayo. "Doctrine of Locus Standi and Access to Justice in Nigerian Court". *Journal of Law and Global Policy,* 1 no.5 (2015): 71-83.

Alan I., Abramowitz. "It's Monica, Stupid: The Impeachment Controversy and the 1998 Midterm Election", *Legislative Studies Quarterly,* 26, no. 2. (2001): 56-70.

Alec, Walen. "Judicial Review in Review: A Four-part Defense of Legal Constitutionalism". *International Journal of Constitutional Law,* 7 no.2, (2009): 329- 332.

Alewo, Musa Agbonika. "Nigerian Federalism: Problems and Prospects". *Kogi State University Biannual Journal of Public Law*, 4 no. 1 (2012): 14-18.

Alexander, Bickel. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. Yale University Press, 1986.

Alexander, Hamilton. *The Federalist*. New York: Barnes and Nioble, 1961.

Alexandra Rattingar "The Impeachment Process of Brazil: A Comparative Look at Impeachment in Brazil and the United States", *University of Miami Inter-American Law Review*, 49 no.129, (2018): 140-151.

Alon, Harel & Tsvi, Kahana. "The Easy Core Case for Judicial Review", 2 *Journal of Legal Analysis* (2010): 227-239.

Alon, Harel and Adam, Shinar. "Between Judicial and Legislative Supremacy: A Cautious Defense of Constrained Judicial Review", *International Journal of constitutional Law*, 10, no. 4 (2012): 950-957.

Alonso, Soto and Peter, Cooney. "Brazil Recalls ambassador to Venezuela over Impeachment Spat",http://www.reuters.com/article/us-brazil-impeachment-venezuela-recall-idUSKCN1l6358. (Accessed on September 2, 2016).

Anandan, Krishnan. *Words, Phrases and Maxims: Legally and Judicially Defined*, vol.9 ,Singapore: Lexis Nexis, 2008.

Andrew, Halpin. "The Theoretical Controversy Concerning Judicial Review", *The Modern Law Review* 64 no. 3, (2001): 500-511.

Angela E., Obidinma, Emmanuel O.C. Obidinma. "The Legislative Executive Relations in Nigeria's Presidential Democracy". *International Journal of Business and Law Research*, 3 no.1 (2015): 63-78.

Anita S. Krishnakumar. "How Long is History's Shadow?, *Yale Law Journal*, 127 (2018): 23-40.

Anon, HQ. "Venezuela Breaks Ties With Brazil As Rousseff Impeachment Takes Effect" September 1, 2016.

Anthony, Bradley. "The Sovereignty of Parliament - Form or Substance?" in Jowell and Oliver (eds) The Changing Constitution. Oxford University Press, 2011.

Anthony, Egobueze. "Crisis and Crisis Management in the Legislature: The Rivers State House of Assembly Experience, 2011-2015". *Scottish Journal of Arts, Social Sciences and Scientific Studies*, 26 no.1 (2015): 187-199.

Anthony, Faiola. "Court Rejects South Korean President's Impeachment". *Washington Post*, May 14, 2004.

Anthony, Stein, Matthew Chaskalson & Michael, Bishop (eds) *Constitutional Law of South Africa* 2nd Edition, OS, March 2008.

Anwarul, Yaqin & Nik Ahmad Kamal, Nik Mahmod "Review and Appellate Powers: An Elusive Quest For Maintaining the Dividing Line". 3 *MLJA* (2004): 66-79.

Anyaegbunam, E. O. *A Legislator's Companion.* Lagos: FEF, 2000.

Arishe, G.O. "Reflections on Some Issues, Problems and Challenges of the National Assembly" *Abuja Journal of Public International Law*, 3, no. 2 (2014): 245-256.

Arthur, Bestor. "Impeachment". *Washington Law Review*, 49 (1973): 255-267.

Ashish Kumar, Senghal and Ikramuddin, Malik. "Doctrinal and Socio-legal Methods of Research: Merits and Demerits". *Educational Research Journal*, 2 no.7 (2012): 250-267.

Auwalu, Musa & Ndaliman, A. Hassan, "An Evaluation of the Origin, Structure and Features of the Nigerian Federalism". *Journal of the Social Sciences and Humanities Inventions*, 1 no. 5, (2014): 314-325.

Ayoola, E. O. "The Importance of the Rule of Law in Sustaining Democracy and Ensuring Good Governance", in Ayua, M. "The Rule of Law in Nigeria" in Ayua I. A. (ed), *Law, Justice and the Nigerian Society* (1995) 69-90.

Azikwe, N. "Essentials of Nigeria Survival Foreign Affairs". 43, (1965).

Babalola. "The Efficacy of Federalism in Multiethnic State: The Nigerian Experience". 77.

Barbara, Demick. "South Korean President Is Reinstated: A Court Rules That His Impeachment Was Unjustified". *Los Angeles Times*, May 14, 2004.

Barkan, J. "Legislatures on the Rise"? Baltimore: John Hopkins University press, 2010.

Baron, de Montesquieu. *The Spirit of the Laws.* Thomas Nugent: St. Hafner Publishing Co., 1949.

Bassey, Antiga Okon. "An Examination of the Causes and Consequences of Conflict between Legislature and Executive in Cross Rivers State in Nigeria". *Academic Journal of Interdisciplinary Studies*, 2 no.1 (2013): 179-187.

Ben, Nwabueze. *Constitutional Democracy in Africa*, vol.1, Ibadan: Spectrum Books Ltd., 2003.

Ben, Nwabueze. *The Presidential Constitution of Nigeria.* London: C.Hurst & Company Publishers Ltd, 1982.

Benjamin, Solomon Akhere "An Appraisal of the Functions of Federal Legislature Constituency Offices in Nigeria: A Study of Nassarawa, Niger, Kogi, Kaduna states and FCT Abuja". *Publication of the Policy Analysis and Research Project, National Assembly*, Abuja (2010).

Benjamin. "The Legislature and Constituency Representation", in Hamalai Ladi (ed) *The National Assembly and Democratic Governance in Nigeria.*

Berg, B.L. *Qualitative Research Method for the Social Sciences,* (5th ed.) Boston: Pearson, 2004.

Berger, Raou. *Impeachment: The Constitutional Problems.* Cambridge: Harvard University Press, 1974.

Birch, A. "Approaches to the Study of Federalism", *Political Studies,* 14 (1966): 27-38.

Bishin, Benjamin G. *Tyranny of the Minority: The Sub constituency Politics Theory of Representation.* Philadelphia: Temple University Press, 2009.

Black, H.C. *Black's Law Dictionary.* St. Paul, Minn.: West Publishing Co.,1990.

Bolaji, Omoyola and Olusola, Ogunnubi "Subnational Legislature and democratic Consolidation in Nigeria's Fourth Republic: Lessons from Osun State House of Assembly"*Jounal of Social Sciences*, 12 no. 4, (2016): 164-173.

Brabley, Selway "The Principle behind Common Law Judicial Review of Administrative Action-The Search Continues". *Federal Law Review*, 1 no. 8 (2002): 22-34.

Brain, C. Kalt. "The Constitutional Case for the Impeachability of Former Federal Officials: An Analysis of the Law, History and Practice of Late Impeachment", *Texas Review of Law and Politics,* 6 no. 1, (2001-2002): 126-135.

Bryan, A Garner. *Black's Law Dictionary,* USA: Thomson Reuters, 1999.

Bryman, Alan. "The Research Question in Social Research: What is its Role?" *International Journal of Social Research Methodology* 10 (2007): 5-20.

Cass, R. Sunstein. "Impeaching the President". *University of Pennsylvania Law Review* 147 (1998): 279-306.

Chandrachad, Y. V. *The Law Lexicon, The Encyclopedic Law Dictionary,* 2nd ed. India: Wadhwa & Company, 2004.

Chang Cheouljoon. "Government Replacement Process through Emergency Procedures". *National Law Research*, 13 no. 2 (2017): 48-62.

Channels TV news, available at www.channelstvnews.com (accessed on October 10, 2017).

Channelstv Programme "Politics Today" 21st July, 2014, available at https://www.youtube.com/watch?v=LIdzfgUETU4 (accessed on November 19, 2017).

Charles, Arinze Obiora and Eze, Malachy Chukwuemeka "Constitutionalism, Impeachment and Democracy in Nigeria: An Appraisal". *Journal of Constitutional Development*, 12 no. 1, (2012): 44-55.

Charles, Black. *Impeachment: A Handbook*. New Haven CT: Yale University Press, 1973.

Charles, Madu Tella. "The Evolution, Development and Practice of Federalism in Nigeria", *Public Policy and Administration Review*, 2 no. 4, (2014): 51-66.

Chuks, Okpaluba. "Of 'Forging New Tools' and 'Shaping Innovative Remedies': Unconstitutionality of Legislation Infringing Fundamental Rights Arising from Legislative Omissions in the New South Africa". *Stellenbosch Law Review*, 12 (2001): 462-471.

Clark, T. A."Right Honourable Gentlemen: The life and Times of Alhaji Sir. Abubakar Tafawa Balewa", cited in Izunwa, I.M., et'al, *A jurisprudence of the Rule of Law: An Appraisal of its Application in the Nigerian Democracy Today.*

Clinton, Bill. *My Life*. New York: Alfred A. Knopf, 2004.

Connaway, L. S. Powell, R. *Basic Research Methods for Librarians*, (5th ed.) California: *ABC-CLIO* Publishers, 2010.

Copi, I., & Cohen, C. *Introduction to Logic*. New York: MacMillan, 1994.

Cornelius, Ejimofor. "The Concept of Separation of powers" a paper presented at the Workshop for Members of the Anambra State House of Assembly, held in Enugu. (1981): 7-18.

Craswell J., W. *Qualitative Inquiry and Research Design*, (3rd ed.) London: SAGE, 2013.

Curzon, L. B. *Dictionary of Law*. (5th ed) London: Financial Times Pitman Publishing, 1998.

D., Lloyd. *The Idea of Law*. London: Pengium Books.

D.O., Odeleye. "The Theory and Practice of Separation of Powers in a Presidential Constitution: The Nigerian Experience", *Frontiers of Nigeria Law Journal,* (2008): 157-168.

Dahiru, Mustapher. *The Nigerian Judiciary: Towards Reform of Bastion of Constitutional Democracy*, Nigerian Institute of Advanced Legal Studies, Abuja, (2011).

Damisi, Ojo. "Mimiko Gets New Deputy as Ondo House Sacks Olanusi", (2015) available at thenationonline.net/mimiko-gets-new-deputy-as-ondo-house-sacks-deputy (accessed on 10/10/2017).

Dan, Ascani. "To Impeach or not Impeach: Full Analysis of Effects the Impeachment Process on Global Markets", *Gold Eagle,* September 14, 1998, http://www.gold-eagle.com/article/impeach-or-not-impeach-full-analysis-effects-impeachment-process-global-markets, (accessed on February 12, 2016).

Dan, Remenyi. *Field Methods for Academic Research: Interview, Focus Group and Questionnaires in Business and Management Studies*, (3rd. ed.) London: Academic Conferences and Publishing International Ltd., 2013.

Daniel, Luchsinger. "Committee Impeachment Trials: The Best Solution?" *Georgia Law Journal*, 16, no. 7 (1991): 76-90.

Dankofa, Yusuf. "Work Attitude and Organizational Efficiency: The Need to Enforce the Code of Conduct in the Nigerian Civil service", *Journal of Public and International Law*, 6, (2013): 1-10.

David S., Broder and Dan, Baiz. "Scandal's Damage is Wide, if not Deep". *Washington Post,* February 11, 1999.

David, Bernard Guralnik. *Webster's New World College Dictionary*. New York: Random House Inc., 2010 available at www.frredictinary.com (accessed on February 10, 2017).

David, Feldman. "Public Interest Litigation and Constitutional Theory in Comparative Perspective". *Modern Law Review,* 55 (1992): 44-58.

David, Law. "Judicial Review" in Badie, Berg-Schlosser & Morlino (eds) *International Encyclopedia of Political Science* (vol 5). Sage Publications, 2011.

Deborah, Hellman. "Defining Corruption and Constitutionalizing Democracy". *Michigan Law Review*, 111 no. 8, (2013): 1388-1396.

Dele, Babalola. "The Efficacy of Federalism in Multiethnic State: The Nigerian Experience". *The Journal of PanAfrican Studies,* 8 no. 2, (2015): 76-88.

Dennis, Davis. "The Case against the Inclusion of Socio- economic Demands in a Bill of Rights except as Directive Principles". SAJHR 8 (1992): 475-485.

Dennis, Davis. "The Relationship between Courts and the other Arms of Government in Promoting and Protecting Socio-Economic Rights in South Africa: What About Separation of Powers?" *Potchefstroom Electronic Law Journal* 1 no.15 (2012): 3-17.

Dicey, A. V., *Introduction to the Study of Law of the Constitution.* London: Macmillan, 1959.

Dieter, Grimm. "The Achievement of Constitutionalism and its Prospects in a Changed World" in P. Dobner & M. Loughlin (eds) *The Twilight of Constitutionalism.* Oxford University Press, 2010.

Diram, A.H. "Constitutional Violations and the Fallacy of a Political Approach: the Case of Adamawa State" *Kogi State University Bi-annual Journal of Public Law,* 2 (2009): 135-141.

Dominic, Jerry Nardi. "Finding Justice Scalia in Burma: Constitutional Interpretation and Impeachment of Myanmar's Constitutional Tribunal". *Pacific Rim Law and Policy Review,* 3 no.3 (2014) 631-650.

Donald C., Smaltz. "The Independent Counsel: A View from Inside", *Georgia Law Journal*, 86, no.98 (1998): 49-52.

Donald R., Wolfensberger. "Congress and the People: Deliberative Democracy on Trial", Woodrow Wilson Center Press, 2001.

Douglas, A. Linder. "The Impeachment Trial of President William Clinton". Available at http://www.law.umkc.edu/faculty/projects/ftrials/clinton/clintontrialaccount.html (accessed on October 29, 2017).

Down, Oliver. "Parliamentary Sovereignty: A Pragmatic or Principled Doctrine?" available at https://ukconstitutionallaw.org/2012/05/03/dawn-oliver-parliamentary-sovereignty-a-pragmatic-or-principled-doctrine/ (2012) (accessed on October 12, 2017).

Duckachec, I.D. *Comparative Federalism: The Territorial Dimension of Politics.* London: University Press of America, 1990.

E.C.S., Wade and Godfrey, Phillips. *Constitutional and Administrative Law.* London: Longman, 1977.

Edet J., Tom and Amadu J., Atai. "The Legislature and National Development: The Nigerian Experience". *Global Journal of Arts, Humanities and Social Sciences,* 2 no. 9 (2014): 63-78.

Edmund G., Ross. *Impeachment of Andrew Johnson, President of the United States of America.* United States of America: Sheba Blake Publishing, 2016.

Edwin, Brown Firmage & R. Collin, Mangrum. "Removal of the President: Resignation and the Procedural Law of Impeachment". *Duke Law Journal,* (1974): 1023-1033.

Egbewole, O. W. "Nigerian Judiciary and Consolidation of Democracy: Analysis of Election Petitions" in Olarinde O. N and Wale Akinlabi Jr. (eds), *Essays and Selected Judgment in Honour of an Incorruptible Judge, Hon. Justice John Olagoke Ige* ,Ibadan: Crown Goldmine Communication Ltd, 2008.

Eghosa E., Osaghae. *Crippled Giant: Nigeria since Independence.* Indiana University press: Hirst & Co. Publishers, 1998.

Elijah, Adewale Taiwo. "Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A need for a more Liberal Provision". *AHRLJ,* 9 no. 2 (2009): 546-575.

Ellis, Timothy J. and Yair Levy, Nova. "Framework of Problem-Based Research: A Guide for Novice Researchers on the Development of a Research-Worthy Problem." *The International Journal of an Emerging Transdiscipline* 11 (2008): 39-57.

Eme, Okechukwu and Ogbochie, Andrew. "Stemming Impunity in Appointments in Nigeria: A Case Study of the Sack of Service Chiefs". *Journal of Research and Development,* 1 no. 2, (2013): 20-33.

Emmanuel Onyaegbunam, *The legislator's Companion,* (Ibadan: Book Builders, 2010) 11-12.

Enyinna Nwauche "The Nigerian Fundamental Rights (Enforcement) Procedure Rules: A Fitting Response to the Problems of Enforcement of Human Rights?" *African Human Rights Journal,* 10 no. 3(2010): 514.

Enyinna, Nwauche. "Is the End Near for Political Question Doctrine? A Paper Presented at African Network for Constitutional Law Conference on Fostering Constitutionalism in Africa, Nairobi, Kenya, (2007) 3.

Ephipany, Azinge. "Legislative Adjudication: Uses and Abuses", in Okon E., *Lawmaking Process in Nigeria.* Benin: UNIBEN Press, 2009.

Eri, Umaru. "Law as an Instrument for the Promotion of Social Justice: A Nigerian Perspective", being a paper presented at the World Jurist Association Conference held at Beijing and Shanghai China, (2005).

Eric, Ikhilae. "How to End Appeal Delays, By Lawyers", *The Nation Newspaper,* September 19, 2017, available at http://thenationonlineng.net/end-appeal-delays-lawyers (accessed on 01/10/2017).

Erwin, Chemerinsky. "Cases under the Guarantee Clause Should Be Justiciable", 65 *University of Columbia Law Review,* 65, no. 7(1994): 84-96.

Ese, Malemi. *Administrative Law*, 3rd ed. Princeton Publishing Co., 2008.

Ewuim, N.C. et al "Legislative Oversight and Good Governance in the Nigeria's National Assembly: An Analysis of Obasanjo and Jonathan's Administration", *Review of Public Administration and Management,* 3 no.6 (2014): 140-152.

Fashagba, Joseh. "Legislative Oversight under the Nigerian Presidential system", *The Journal of Legislative Studies,* 15 no. 4, (2009): 439-459.

Fidelis, Nwadialo. *Civil Procedure in Nigeria,* 2nd ed. Lagos: University of Lagos Press, 2000.

Folabi, Ayeni-Akeke. "Towards a Balanced Federal Political System in Nigeria", a paper presented at a seminar on Nigeria,s political future, held at the Nigerian Institute of International Affairs, Lagos, (1996).

G., Kameswari . *Anti-corruption Strategies: Global and Indian Socio-legal Perspective.* India: ICFAI University Press, 2006.

Garner, B. A., *Black's Law Dictionary,* St. Paul, Minn: West Publishing Co., 2009.

Gary L., McDowell Coke. "Corwin and the Constitution: The Higher Law Background Reconsidered". *The Review of Politics,* 55 no. 3, (1993): 393-420.

Gerald, Gunther. "Judicial Hegemony And Legislative Autonomy: The Nixon Case and the Impeachment Process", *University Of California Law Review,* 22, no.30 (1974): 67-80.

Glenn A., Bowen. "Document Analysis as a Qualitative Research Method", *Qualitative Research Journal,* 9 no. 2, (2009), 30-45.

Gloria, Nakiyimba. "Court Nullifies Kampala Mayor Impeachment as City Operations Shut Down" *Radio France international Africa,* November 20, 2013.

Godwin N., Okeke. "Re-Examining the Role of Locus Standi in the Nigerian Legal Jurisprudence". *Journal of Politics and Law,* 6, no. 3 (2013): 65- 71.

Greg, Guest, Kathleen M. MacQueen. *Applied Thematic Analysis,* SAGE Publications, 2011.

Hamalai, Ladi. *Legislative Practice and Procedure of the National Assembly*. Abuja: Imax Media Ltd., 2014.

Harsh, H.C. "Accumulators and Democrats: Challenging State Corruption". *African Journal of Modern African Studies*, 31 (1993): 134-142.

Henry, Barnett. *Constitutional and Administrative Law*. New York: Routledge Taylor & Francis, 2013.

Henry, Onoria. "The African Commission on Human and Peoples' Rights and the Exhaustion of Local Remedies under the African Charter" 10 *African Human Rights Law Journal*, (2003): 35-44.

Hezron Sabar Rotua Tinambunan. "Reconstruction of the Authority of Constitutional Court in Impeachment Process of President and/or Vice President in Indonesian Constitutional System". *Jurnal Dinamika Hukum*, 16 no. 1 (2016): 39-54.

HK, Prempeh. "*Marbury* in Africa: Judicial Review and the Challenges of Constitutionalism in Contemporary Africa". *Tulane Law Review*, 80 (2005-2006): 1239-1247.

Hood, Phillips. *Constitutional and Administrative Law*. Fletcher and Son, 1978.

Hudson, A. and Wren, C. "Parliamentary Strengthening in Developing Countries", United Kingdom: Oversees Development Institute (2007).

Hutchinson, Teryy. "Doctrinal Research: Researching the Jury" in *Research Methods in Law*, ed. Watskin D., Burton, M., Oxfordshire: Routledge, 2013.

Ian, Freckelton and D., List. "The Transformation of Regulation of Psychologists by Therapeutic Jurisprudence". *Psychiatry, Psychology and Law, 11 no. 2*, (2004): 296-3002.

Ian, Freckelton. "Paths Toward Reclamation and the Regulation of Medical Practitioners". *Journal of Law and Medicine, 12* (2004): 91-101.

Ibraheem, Ojo Tajudeen. "Case Review: SPDC *vs.* Amadi & Ors". *International Journal of Humanities and Social Science*, 3 (2013): 283-292.

Ibrahim O., Salawu. "Governance and National Security in a Democracy: Avoiding the 'Down Risks' to Statehood in Nigeria", *Scientific Research Journal*, 1, no.2 (2013): 19-25.

Ifedayo, Timothy Akomolade. "Good Governance, Rule of Law and Constitutionalism in Nigeria" *European Journal of Business and Social Sciences*, 6 (2012): 69-85.

Igwenyi, B.O. *Modern Constitutional Law*. Abakaliki: Nwamazi Printing and Publishing Co. Ltd., 2007.

Imam, Ibrahim, et al. "Judicial Activism and Intervention in the Doctrine of Political Questions in Nigeria: An Analytical Exposition". *African Journal of Law and Criminology*, 1, no 2 (2011): 50-69.

Imo J., Udofia. "The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects". *Journal of Law, Policy and Globalization*, 40 (2015): 192-205.

Irving, Siedman. *Interviewing as Qualitative Research: A Guide for Researchers in the Education and the Social Sciences*, London: Teachers College Press Ltd., 2013.

Iwu, Maurice. "INEC's New Roadmap: Addressing the Imbalance", *Tell*, September, (2008) 43.

Jack N., Rakove. "The Origins of Judicial Review: A Plea for New Contexts, *Stanford Law Review*, 49, (1997): 1031-1056.

Jacob, Abiodun Dada. 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal'. *Journal of Law, Policy and Globalization*, 10 (2013): 7-16.

Jacob, Abiodun Dada. "The Imperatives of Good Governance and Sustainable Democracy in Nigeria". *African Journal of Social Sciences*, 3 no. 2 (2013): 45-60.

James E., Fleming. "Judicial Review without Judicial Supremacy: Taking the Constitution Seriously Outside the Courts", 73 *Fordham Law Review*, (2005): 1377–1389.

James, Brooke. "Constitutional Court Reinstates South Korea's Impeached President", *New York Times*, May 14, 2004.

James, Wilson. *The Works of James Wilson*. Chicago: Callaghan and Company, 1896.

Jane, Ritchie et. al. *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, (2nd ed) London: SAGE Publications, 2014.

Jayson, Lamchek. "Thrilla in Manilla: The Impeachment of Chief Justice Cristiana Bonoan", *East Asia Forum*, March 3, 2012, www.eastasiaforum.org (accessed on July 14, 2016).

Jeffrey, Jowell QC. "Managing Conflict between Parliament and the Court", being an opening remarks at the Joint IPU-ASGP Conference held in Geneva on October 10, 2013.

Jemide, I. O. "Legislative Remedies Under the 1989 Constitution" in *Law Making Process in Nigeria*, ed. Okon E., Benin: UNIBEN Press, 2009.

Jennings, H. "The Law and the Constitution" (5th ed.) Chap. II; Phillips John "Constitutional Government and the Rule of Law", *Journal of Comparative Legislation*, 10, no.3 (1998): 262-273.

Jill K., Jesson et. al., *Doing Your Literature Review: Traditional and Systematic Technique*, London: SAGE, 2011.

Jody C., Baumgatner. "Comparative Presidential Impeachment" in Jody C. Baumgatner and Naoko Kada(eds) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*. Preager Publishers: Westport, 2003.

John D., Feerick. "Impeaching Federal Judges: A Study of the Constitutional Provisions", *Fordham Law Review*, 39, no. 1 (1970): 23-40.

John O., McGinnis. "Impeachment: The Structural Understanding". *George Washington Law Review*, 67 (1999): 650-662.

John, DiManno. "Beyond Taxpayers' Suits: Public Interest Standing in the States". *Connecticut Law Review*, 41 no. 2, (2008): 639-642.

John, E.D. "The Rule of Law in Nigeria: Myth or Reality?". *Journal of Policies and Law*, 4, no1, (2011): 212-223.

John, Harrison. "The Relations between Limitations on and Requirements of Article III Jurisdiction". *California Law Review*, 95 no. 39, (2007): 1367-1376.

John, Laws. "Law and Democracy" *Public Law*, (1995): 72-81.

John, Murphy. *The Impeachment Process*. New York: Infobase Publishing, 2007.

Johnson, John K. *The Role of Parliament in Government*. Washington DC: The World Bank, 2005.

Jon, Afrizal and Kharishar, Kahfi. "KPK arrests Jambi legislators for alleged Bribery", The Jakarta Post, November 29, 2017 available at http://www.thejakartapost.com/news/2017/11/29/kpk-arrests-jambi-legislators-for-alleged-bribery.html (accessed on December 7, 2017).

Jon, Elster. "Constitutionalism in Eastern Europe: An Introduction". *University of Chicago Law Review* no. 58, (1991): 447-465.

Jonathan, Turley. "Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President". *George Washington Law Review*, 67 no. 35 (1999): 769-779.

Jonathan, Turley. "From Pillar to Post: The Prosecution of American Presidents". *American Criminal Law Review*, (2000): 1049-1060.

Jordy, C.B. et.al. *Checking Executive Power: Presidential Impeachment in Comparative Perspective.* London: Preager, 2003.

Joseph, Isenbergh. "Impeachment and Presidential Immunity from Judicial Process". *Yale Law & Politics Review*, 29 no. 53 (1999): 62–77.

Joseph, Story. "Commentaries on the Constitution of The United States" (1991).

Joshua, Segun. "The Nigerian House of Representatives and Corruption, (1999-2011)" *Mediterranean Journal of Social Sciences, 5 no. 2,* (2014): *565.*

Julie R., O'Sullivan. "The Interaction between Impeachment and the Independent Counsel Statute", *Georgia Law Journal*, 39, no. 86 (1998): 208.

Julie R., O'Sullivan. "The Independent Counsel Statute: Bad Law, Bad Policy". *American Criminal Law Review,* 23, no. 46 (1996): 71-85.

Jung Young- Hoa, "Impeachment of President for 'high crimes'- A Comparison between US and Korea" *Studies on American Constitution*, 27 no. 3 (2016): 76-88.

Justice, Sunil Ambwani. "Justice Administration: Case and Court Management", A Paper Revised and Delivered at IJTR, India on 31st January, 2009.

Justin Mccurry. "Park Geun-hye: South Korean Court removes President over Scandal", The Guardian, March 10, 2017 available at https://www.theguardian.com/world/2017/mar/10/south-korea-president-park-geun-hye-constitutional-court-impeachment (accessed on March 1, 2018).

Justus, Sokefun. "The Court System in Nigeria: Jurisdiction and Appeals". *International Journal of Business and Applied Social Science,* (2006): 18-29.

K.M., Stack. "The Reviewability of the President's Statutory Powers". *Vanderbilt Law Review,* 62, (2009): 1172-1181.

Kainec, Lisa A. "Judicial Review of Senate Impeachment Proceedings: Is a Hands off Approach Appropriate?" *Case Western Reserve Law Review*, 43 (2010): 1499-1510.

Katherine, Mae L.et. al. "Impeachment of a Former Chief Justice: Its Effects to the Court Employees in Batangas City". *Asia Pacific Journal of Education, Arts and Sciences*, 1, no. 2 (2014) 80-85.

Kehinde, Mowoe. *Constitutional Law in Nigeria.* Lagos: Malthouse Press, 2008.

Keith E., Whittington. "High Crimes: Deciding What's Impeachable". *Political Review,* (2000): 387-396.

Ken, Gormley. "Impeachment and the Independent Counsel: A Dysfunctional Union". *Stanford Law Review,* 51 no. 2(1999): 98-110.

Kenneth M., Roberts. "Impeaching Brazil's President Rousseff opens New era of Institutional Instability", available at https// www.mediarelations.cornell.edu (accessed July 18, 2016).

Kim, Chandler. "Milton McGregor, 5 Ors Acquitted in Alabama Gambling Trial" available at www.al.com March 8, 2012 (accessed on December 12, 2017).

Kim Hong. "South Korea: Ex-president Park Geun-hye faces 30-year sentence", Aljazeera, February 27, 2018 available at https://www.aljazeera.com/news/2018/02/south-korea-president-park-geun-hye-faces-30-year-sentence-180227054815616.html (accessed on March 3, 2018).

Kim Hyunjin. "Would Congressional-court Governance based on Judicial Review Enhance Democracy? Focusing on the Korean Constitutional Court's Decisions on Presidential Impeachment". *Memory and Future Vision,* 37 no. 1 (2017): 94-110.

Kim, Moonsoon. "Critique of 'Serious Abuse' as a Requirement for Constitutional Court to Uphold Impeachment". *Younsei Journal of Public Governance and Law,* 9 no. 1 (2018): 11-26.

King, Preston. *Federalism and Federation.* Baltimore: John Hopkins University Press, 1982.

Kolawale, Kazeem Oyeyemi. "Stare Decisis in Nigeria – Inakoju v Adeleke Revisited" *South Asian Journal of Multidisciplinary Studies,* 2 no. 2 (2012) available at http//www.sajms.com, (accessed September 18, 2015).

Krishnan, Arjunan. "Judicial Review and Appellate Powers: Recent Trends in Hong Kong and Malaysia" 2, *MLJA* (2000): 345-356.

Ladan, Tawfiq. "The Constitutional Powers, Privileges and Immunities of the Nigerian Legislature", being a paper presented at a 3-Day Training Workshop for Adamawa State Assembly Legislators on Constitutional Powers, Privileges and Immunity of the Legislature, at Best Western Plus Ajuji Hotel, Abuja, (2013): 10-23.

Ladi, Hamalai and Niyi, Ajiboye. *Legislative Practice and Procedure of the National Assembly.* Abuja: Imax Media, 2014.

Laeey S., Lutton. *Qualitative Research Approaches for Public Administration.* London: Rutledge, 2015.

Lafenwa, Stephen A. "The Legislature and the Challenges of Democratic Governance in Africa: The Nigerian Case." *A* seminar paper delivered *at a* conference on *Governance and Development on Democratization in Africa: Retrospective and Future, Prospects,* held on December 4-5, held at University of Leeds, United Kingdom (2009).

Lami, Sadiq. "Plateau Deputy Speaker Gagdi was impeached" Available at https://wwwdailytrust.com.ng (accessed April 4, 2017).

Lamidi, K. O. and M.L. Bello. "Party Politics and Future of Nigerian Democracy: An Examination of the 4th Republic". *European Scientific Journal,* 8 no. 29 (2012): 168-178.

Larry E., Uduh and Joseph, Okwejoli. "The Imperatives of Credible Elections for Sustainable National Development in Nigeria, Lessons from the Ekiti State Gubernatorial Elections, 2014". *Journal of Sustainable Development,*8 no. 2 (2015): 209-219.

Larry, Catá Backer. "From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems" *Penn State Law Review* 113, no.3, (2009): 101-112.

Lawrence, Joseph Perrone. "The Fundamental And Natural Law 'Repugnant Review' Origins Of Judicial Review: A Synergy Of Early English Corporate Law With Notions Of Fundamental And Natural Law". *BYU Journal of Public Law,* 23, (2008): 61-81.

Lawrence, Njoku. "Court Quashes Impeachment of Former Enugu Deputy Governor, Sunday Onyebuchi" Available at https://guardian.ng/news/court-quashes-impeachment-of-former-enugu-deputy-governor-sunday-onyebuchi/ (accessed on 20th September, 2017).

Laws, Stephen. "Legislation and politics," in *Law in Politics, Politics in Law,* ed. David Fieldman, Oxford: Hart publishing, 2013.

Lipset, S.M. and Lenz, G.M. "Corruptions, Culture, and Markets" in: Lawrence, E. Harrison and Samuel P. Huntington (eds.) *Culture Matter.* New York: Basic Book, 2000.

Lisandra Paraguassu, (2016) "Brazil Impeachment opens Diplomatic Rift in Latin America", Sep 1,2016,http://www.reuters.com/article/us-brazil-impeachment-diplomacy-dUSKCN1 16341; (accessed on September 1, 2016).

Lonnquist, Tobias. 'The Trend towards Purposive Statutory Interpretation: Human Rights at Stake". *Revenue Law Journal*, 13 no.19 (2003): 34-47.

Lord, Denning. *The Discipline of Law*. London: Butterworth, 1979.

Louis, Henkin. "Is There a "Political Question" Doctrine? *Yale Law Journal* (1976): 45-56.

Lovemore, Chiduza and Paterson, Makiwane. "Strengthening Locus Standi in Human Rights Litigation in Zimbabwe: An Analysis of the Provisions in the New Zimbabwean Constitution". *Potchefstroom Electronic Law Journal*, 19 (2016): 32-43.

Lowell, Brown. *High Crimes and Misdemeanors in Presidential Impeachment*. New York: Palgrave Macmillan, 2010.

Lynn W., Turner. "The Impeachment of John Pickerings" *The American Historical Review*, 3, (1949): 485-507.

Madue, S. M. "Complexities of the Oversight Role of the Legislatures", *Journal of Public Administration*, 47, no. 2, (2012): 431- 444.

Mahmud, Jega. "Impeachment is a Dangerous Game" *Daily Trust Newspaper*, July 7, 2014, available at https//www.dailytrust.eom.ng/news/Monday-column/impeachment-is-a-dangerous-game50606,html (accessed on 4th November, 2017).

Malcom, Carey. *Qualitative Research Skills for Social work: Theory and Practice*. London: Ashgate Publishing Ltd., 2012.

Malcom, Jewe et.al. *The Legislative Process in the U.S*. New York: Random House, 1977.

Mamodu A., Jude and Matudi, Gambo Ika. "The Implication of Legislative-Executive Conflicts on Good Governance in Nigeria". *Public Policy and Administration Research*, 3 no. 8 (2013): 30-42.

Maria, Simon. "Bribery and Other Not so "Good Behavior": Criminal Prosecution as a Supplement to Impeachment of Federal Judges", *Columbia Law Review*, (1994): 94-110.

Marius, Pieterse. "Coming to Terms with Judicial Enforcement of Socio-Economic Rights". *SAJHR*, 20 (2004): 383-397.

Mark V., Tushnet. "The Constitutional Politics of Clinton Impeachment" in Leornard V. Kaplan, Beverly I. Moran, ed. *Aftermath: The Clinton Impeachment and the Presidency in the Age of Political Spectacle*, New York: University Press, 2001.

Mark, Ryan. *Unlocking Constitutional and Administrative Law*. New York: Routledge, 2014.

Mark, Tushnet. "Principles, Politics, and Constitutional Law". *Michigan Law Review*, 88, no.49 (1989): 12-27.

Mark, Weisbrot. "Brazil's Impeachment Crisis undermines Investor Confidence", The Hill, July 21, 2016, http://thehill.com/blogs/pundits-blog/international/288675-amid-political-upheaval-is-brazil-facing-long-term-economic, (accessed August 21, 2016).

Martin H., Redish. "Judicial Review and the "Political Question," *Nw. University Law Review*, (1985): 78-90.

Martin O.U.,Gasiokwu. *Legal Research and Methodology*. Enugu: Chenglo Ltd., 2006.

Matt Stiles. "South Korea's president is removed from office as court upholds her impeachment", Los Angeles Times, March 9, 2017, available at http://www.latimes.com/world/asia/la-fg-south-korea-park-impeach-2017-story.html (accessed on February 2, 2018).

Mbah, G. "Valley of Corruption". *Insider Weekly Magazine*, December, (2002): 19-20.

Menge, Legesse. "Federalism for Unity and Minorities' Protection: A Comparative Study on Constitutional Principles and their Implications in US, India and Ethiopia", (Unpublished) LLM Thesis, Department of Legal Studies, Central European University, Budapest, Hungary, (2010).

Mgubolu, A. K., "The Rule of Law as a Pillar of an Enduring Democracy: An Appraisal of the Supreme Court Decision in the Case of *Peter Obi vs. Independent National Electoral Commission*", *Nnamdi Azikwe University Journal of International Law and Jurisprudence*, (2010): 237.

Michael J., Gerhardt. "Rediscovering Nonjusticiability: Judicial Review of Impeachments After Nixon", *Duke Law Journal* (1994): 19-28.

Michael J., Gerhardt. "The Historical and Constitutional Significance of the Impeachment and Trial of President William Jefferson Clinton". *Hofstra Law Review* 28, no. 4 (1999): 98-111.

Michael J., Gerhardt. "The Perils of Presidential Impeachment". *University of Chicago Law Review*, (2000): 293-313.

Michael J., Gerhardt. "The Constitution under Clinton: A Critical Assessment", *Law and Contemporary Problems*, 63 no. 1/2 (2000): 34-44.

Micheal J., Gerhardt "Putting the Law of Impeachment in Perspective". *St. Louis University Law Journal*, 43, no. 21 (1999): 801- 905.

Micheal J., Gerhard. *The Federal Impeachment process: A Constitutional and Historical Analysis*, (2nd ed) Chicago: University of Chicago Press, 2000.

Micheal, Adler. "Recognising the Problem: Socio-Legal Research Training in the United Kingdom", http://www.ucl.ac.uk/laws/socio-legal/empirical/docs/Adler_REPORT.pdf (accessed April 12, 2016).

Michel, Rosenfeld. "The Rule of Law and the Legitimacy of Constitutional Democracy" *Southern California Law Review*, no. 74 (2001): 1307-1318.

Mike, Jones. "Impeachment Investigation of Alabama Governor over Sex Scandal Begins" *Chicago Tribune*, July 15,2016,http://www.chicagotribune.com/news/nationworld/ct-impeachment-alabama-governor-20160615-story.html (accessed on July, 2016).

Miller, Kristina C. *Constituency Representation in Congress: The View from Capitol Hill*. Cambridge: Cambridge University Press, United Kingdom, 2010.

Mira, Crouch Hearther, Mckazie. "The Logic of Small Samples in Interview-based Qualitative Research" 45 no. 4 (2006): 484-495.

Mobolaji, H. I. "Legislature, Governance and Development" in Hamalai Ladi (ed) *The National Assembly and Democratic Governance in Nigeria*. Abuja: Imax Media Ltd., 2014.

Momoe Kehinde, *Constitutional Law in Nigeria*, Lagos: Malthouse Press Ltd., 2008.

Mona, Lee Tevez. "Courtroom Drama in the Philippines: Impeachment Trial Find Chief Justice Guilty", June 20, 2012, http//www.transparencyinternational.org (accessed on July 19, 2016).

Morris S., and Berth A. "Overseeing Oversight: New Departures and Old Problems", *Legislative Studies Quarterly*", 15 no. 1(1990): 5-24.

Muhammed, Abubakar. "Bauchi Impeachment Drama: Court Reinstates Sacked Deputy Governor", *Daily Trust*, June 26, 2010, available at https//www.dailyrust.com.ng/index.php/news/11240-houses-for-civil-servants-soon (accessed on September 2, 2017).

Musa, Abdullahi Krishi. "New Twist in Al-makura Impeachment Saga", available at https://www.dailytrust.com.ng/daily/politics/30627-new-twists-in-al-makura-impeachment-saga, (accessed on October 12, 2017).

Naoko, Kada. "The Role of Investigative Committees in the Presidential Impeachment Processes in Brazil and Colombia". *Legislative Studies Quarterly*, 28, no.1 (2003): 29-44.

Naomi, Sidebothan. "Judicial Review: Is There Still a Role for Unreasonableness?, *Murdoch University Electronic Journal of Law*, 8 no. 1, (2008): 1-13.

Neal, Kumar Katyal. "Legislative Constitutional Interpretation". *Duke Law Journal*, (2001) 69-78.

Neal, Kumar Katyal. "Impeachment as Congressional Constitutional Interpretation". *Law & Contemporary Problems*, 63, no.169 (2000): 49-65.

Neil, Walker. "Taking Constitutionalism beyond the State", *Political Studies*, no.56, (2008) 512-521.

Ngamsa, John. "Boni Haruna's Impeachment-The Plot, the Intrigues". *Daily Trust, March* 6 (2007).

Nicholas, Haysom. 'Constitutionalism, Majoritarian Democracy and Socio-economic Rights' 8 *SAJHR* (1992): 451-464.

Nicholas, W Barber. "Prelude to the Separation of Powers" *Cambridge Law Journal* (2001): 59- 69.

Niki, Tobi. "The Rule of Law and Anti-corruption Crusade in Nigeria", Lecture delivered at the 9th Justice Idigbe Memorial Lecture, at the Akin Deko Auditorium, University of Benin, Benin City, Nigeria on 6th August, 2008, 22-40.

Nmeribeh, M. "Nigeria is in a Mess". *The News Magazine*, (2 010): 18-23.

Nwabueze, Ben. "Federalism in Nigeria under the Presidential Constitution. Lagos State Ministry of Justice Law Review Series, (2003).

Nwabueze, Ben. *Constitutional History of Nigeria.* London: Christopher Hirst, 1982.

Nwabueze, Ben. *Federalism in Nigeria under the Presidential Constitution of 1979.* London: Sweet & Maxwell, 1982.

Nwaubani, Okechukwu. "Legislature and Democracy in Nigeria (1960-2003): History, Constitutional Role and Prospects", *Research on Humanities and Social Sciences*, 4 no. 15 (2014): 49-63.

Nwaubani, Okechukwu. "The Legislature and Democracy in Nigeria (1960-2003): History, Constitutional Role and Prospects" *Research on Humanities and Social Sciences*, 4 no.15 (2014): 81-90.

Nwauche, Eyinna. "The Nigerian Fundamental Rights (Enforcement) Procedure Rules, 2009: A Fitting Response to Problems in the Enforcement of Human Rights in Nigeria?" *African Human Rights Journal*, 2 no. 7, (2010): 514-520.

Nwugu, M.O. "The Rule of Law in Governance in Nigeria". *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, (2010): 218-230.

O., Abifarin. *Essays on Constitutional and Administrative Law under the 1999 Constitution*. Kaduna: Mofolayomi Press, 2000.

Oba, Popoola. "The Courts and the Democratic Process in Nigeria: An Appraisal of the application of some American Judicial Doctrines" in Ajibade Bello (ed) *Law, Democratic Governance and Justice Administration in Nigeria*. Ibadan: Life Gate Publishing Co. Ltd., 2009.

Odey, O.J. *Democracy, Our Lofty Dreams and Crazy Ambitions*. Enugu: Snap Press Ltd., 2002.

Ogboru, I. "Reflection on External Debt, Corruption and Nigerian Economy". Jos: University Press ltd, 2009.

Ogundiya, I. S. "Corruption: The Base of Domestic Stability in Nigeria", *Current Research Journal of Social Science*, 2, no.4, (2010): 235-249.

Ohonbamu, "The Rule of Law in Nigeria" in Elias, T. O. (ed.) *Law and Social Change in Nigeria*. Ibadan: Evans Brothers, 1972.

Okey, Ilofulunwa. "Locus Standi in Nigeria: An Impediment to Justice". *Available at* www.lexprimus.com (accessed on September 12, 2017).

Okoosi-Simbine, A. T. "Understanding the Role of the Legislature in the Fourth Republic: The Case of Oyo State House of Assembly". *Nigeria Journal of Legislative Affairs*, 3. no. 1 & 2 (2010): 69-81.

Olasupo, F. A. "Voice of Jacob, Hand of Esau: Appraising the Role of the Chief Executives and Party Leaders in impeachment Processes in Nigeria' *Beijing Law Review*, 5 no. 1 (2014): 7-21.

Olive, Nakatudde, "Kampala Mayor, Erias Lukwago, Impeached", http//www.ugandanradio.com, (accessed on August 3, 2016).

Olu, Ojewale. "Disobedience of Court Orders: Nigerian Judiciary under Buhari's Spell"? *The Nigerian Voice*, March 4, 2017, available at

https://www.thenigerianvoice.com/news/246131/disobedience-of-court-orders-nigerian-judiciary-under-buhar.html (accessed on November 17, 2017).

Oluokun, Y and Desmond, U. "Crazy Cost of Running Nigeria". *The News*, June 27, 2011, 15.

Oluwadere Aguda (2012) "National Assembly's Oversight Function and Fair Hearing" available at http://newjurist.com/national-assemblys-oversight-funetions-and-fair-hearing.html#.WhwyR4aWbIU (accessed on May 29, 2017).

Oni, Ebenezer Oluwofe. "The Challenges of Democratic Consolidation in Nigeria, 1999-2007", *International Journal of Politics and Good Governance*, 5 no.1 (2014): 1-29.

Onozure Daniel "Judges not the Cause of Cases Delay- Adedipe" Vanguard News, October 12, 2017 available at https://www.vanguardngr.com/2017/10/judges-not-cause-cases-delay-adedipe (accessed on November 13, 2017).

Onyediran, O. *New Approach to Government*. Ikeja: Longman Nigeria Plc., 2008.

Onyekwere, Nwanko. "Legislative Supervision of the Administration", a paper presented at the workshop for Legislators of the Anambra State House of Assembly held in Enugu (1989).

Onyemachi, T.U. *The Role of Information Technology and its Impact on the Legal Practice in Nigeria*. Research Project Submitted to the Computer Centre, University of Jos, Nigeria (2004).

Onyemachi, Thomas Uche. "The Mass Media and the Problem of Understanding Legal Language Use: A Call for the Adoption of Plain Legal Language in Nigeria". *African Research Review*, 4, no. 17 (2010): 14-26.

Onyesi, chukwudi kingsley. "Knitting Contempt of the Law to the Administration of Justice in Nigeria: No Longer at Ease", available at https//:www.researchgate.net/publication/317640076 (accessed on 12 August, 2017).

Oputa, Chukwudifu. "Understanding the Place and Role of the Judiciary in Our Society". Available at www.thenationonline.net (accessed on April 4, 2017).

Oscar, Sang. "The Separation of Powers and New Judicial Power: How The South African Constitutional Court Plotted its Course". *Elsa Malta Law Review*, 3, (2013): 96-123.

Oyediran, O. *Introduction to Political Science*. Ibadan: Oyediran Consult International, 1998.

Oyelowo, Oyewo. "Constitutionalism and the Oversight Functions of the Legislature in Nigeria", being a Paper presented at the African Network of Constitutional Law Conference for Fostering Constitutionalism in Africa held in Nairobi, Kenya in April, 2007, 20-32.

Oyelowo, Oyewo. "Locus Standi and Administrative Law in Nigeria: Need for Clarity of Approach by the Courts". *International Journal of Scientific Research and Innovative Technology, 3 no. 1,* (2016): *82-95.*

Oyeneye L., et. al. *Government: A Complete Guide.* Lagos: Longman Publishers, 2001.

P.A., Oluyede and D.O., Aihe. *Cases and Materials on Constitutional Law in Nigeria,* 2nd Edition, Ibadan: University of Ibadan Press Plc, 2003.

Patrick, Lenta. "Judicial Restraint and Overreach" 20 no.2, *SAJHR* (2004): 551-567.

Paul, Brest. "The Conscientious Legislator's Guide to Constitutional Interpretation", 27 *Stanford Law Review,* 27 (1975): 585- 597.

Paul, Chepkwony broadcast by Kenya Citizen TV on May 29, 2014 available at https://www.youtube.com/watch?v=juOwYqOsZXY (accessed on November 18, 2017).

Pellizo R, and Staphenhurst R. "Oversight Effectiveness and Political Will: Some Lessons from West Africa", *Journal of Legislative Studies,* 20 no. 2, (2014): 255-261.

Pellizo R, and Staphenhurst R. *Parliamentary Oversight for Government Accountability.* Washington D.C.: World Bank Institute, 2006.

Peter A., Gerangelos. "The Separation of Powers and Legislative Interference in Pending Cases". *Sydney Law Review,* 30, no. 61 (2008): 60-94.

Peter, Dada. "Appeal Court Nullifies Ondo Ex-deputy Governor's Impeachment". Available at punchng.com/appeal-court-nullifies-ondo-exdeputy-govs-impeachment. (Accessed on September 29, 2017).

Peter, Obi. Addressing an audience during "Words of Wisdom", a weekly program of Wesley Chapel, published on March 20, 2016, available at https//m.youtube.com (accessed on October 16, 2017).

Pieter, Labuschagne. "The Doctrine of Separation of Powers and its Application in South Africa". *Politeia* 23 (2004): 87-95.

Pirkko, Makula Micheal, Silk. *Qualitative Research for Physical Culture,* London: Palgrave Macmillan, 2011.

Polit D.F., Beck C.T. *Essentials of Nursing Research. Methods, Appraisal and Utilization*, (6th ed) Philadelphia: Williams and Wilkins, 2006.

Ponnle, Solomon Lawson. "Immunity Clause in Nigeria's 1999 Constitution: Its Implications on Executive Capacity", *American Journal of Social Science*, 26 no. 2, (2014): 133-146.

Popoola, A.O. "The Courts and the Democratic Process in Nigeria: An Appraisal of the Application of Some American Judicial Doctrines" in *Law, Democratic Governance and Justice Administration in Nigeria*, ed. Ajibade B., Life Gate Publishing Co. Ltd, 2009.

Popoola, Naomi. "I borrowed money to buy my G.C.E form in 1979 – Hon. Mojeed Alabi". *Encomium*, October 2, 2014.

Rachel E., Barkow. "More Supreme Than Court?: The Fall of the Political Question Doctrine and the Rise of Judicial Supremacy". *Columbia Law Review* (2002): 102-115.

Rakesh, Sharma. "Brazil's Presidential Impeachment and the Economy", December 3, 2015,http://www.investopedia.com/articles/investing/120315/brazils-presidential-impeachment-and-economy.asp, (accessed on July 20, 2016).

Rebecca L., Brown. "When Political Questions Affect Individual Rights: The Other Nixon v. United States", *Supreme Court Review* (1993): 23-40.

Richard A., Posner. *An Affair of State: The Impeachment, Investigation and Trial of Clinton*. Massachusetts: Harvard University Press, 1999.

Richard H,. Fallon Jr., Daniel J. Meltzer, and David L. Shapiro. *Hart & Wechsler's The Federal Courts and the Federal System*, 5th ed. New York: Foundation Press, 2003.

Richard H., Fallon. *The Dynamic Constitution: An Introduction to American Constitutional Law*. New York: Cambridge University Press, 2004.

Richard S Kay (ed), *Standing to Raise Constitutional Issues*. Bruylant, 2005.

Richard, E. *Beginning Qualitative Research: A Philosophic and Practical Guide*, Washington D,C.: The Palmer Press, 1994.

Richard, Pious. "Impeaching the President: The Intersection of the Constitutional and Popular Law". *St. Louis University Law Journal*, 43 no. 895 (1999): 61-74.

Richardo Perlingeiro. "Due Process in the Brazilian Presidential Impeachment". *Florida Journal of International Law*, 28 no. 3 (2016): 33-51.

Rob, Van Gestel and Hans-W Macklitz. "Revitalizing Doctrinal Legal research in Europe: What about Methodology?" *European University Institute Working Papers,* (2011).

Robert C., Post & Reva Siegel. "Roe Rage: Democratic Constitutionalism and Backlash". *Harvard Constitutional Review,* 42 (2007): 373-385.

Robert J,. Pushaw. "Justiciability and Separation of Powers: A Neo-Federalist Approach", *Cornell Law Review* (1996): 79-88.

Robert, Barros. *Constitutionalism and Dictatorship: Pinochet, the Junta and the 1980 Constitution.* London: Cambridge University Press, 2004.

Robert, French A.C. "The Courts and Parliament". *Australian Law Journal,* 87 (2013): 820-830).

Robert, French AC. "The Courts and the Parliament", a paper presented at the Queensland Supreme Court Seminar Brisbane on 4th August 2012, 1-16.

Robert, Mark Silverman. *Qualitative research Method for Community Development.* New York: Routledge, 2015.

Roger, Tan Kor Mee. "The Role of Public Interest Litigation in Promoting Good Governance in Malaysia and Singapore". *The Journal of the Malaysian Bar,* 13, no. 1, (2004): 64-86.

Ronald D., Rotunda. "An Essay on the Constitutional Parameters of Federal Impeachment". *KY. Law Journal* (1988): 56-70.

Ronald, Dworkin. *The Wounded Constitution.* New York: Review of Books, 1999.

Rose, Auslander. "Impeaching The Senate's Use Of Trial Committees". *New York University Law Review,*62, no.5(1992): 88-99.

Rotimi, Ajayi. "Constitution and Constitutionalism", in Adeboye Akinsanya, ed. An Introduction to Political Science in Nigeria. University Press of America: Ruman & Littlefield, 2013.

Roy, Chikwem. "Broken Government: The Threshold of Constitutional Crisis in the Impeachment Process in Nigeria", available at http://nigeriaworld.com/articles/2009/feb/091.html (accessed on September 16, 2017).

RS, Kay. "Standing to Raise Constitutional Issues: Comparative perspectives" in SR Kay (ed) *Standing to Raise Constitutional Issues: Comparative Perspectives* (2005).

S. N., Ray. *Modern Comparative Politics: Approaches, Methods and Issues.* India: Princeton-Hall of India Press, 1999.

S.I., Nchi. *Separation of powers under the Nigeria Constitution.* Jos: Greenworld Publishing Co. Ltd., 2000.

S.P., Sathe. "Judicial Activism: The Indian Experience". *Washington University Journal of Law & Policy,* 6 no. 9 (2001): 29-40.

Sagay, Itse. *The Law maker*, 12, no 2(2011): 64-80.

Saikrishna, Prakash & John, Yoo. "The Origins of Judicial Review" 70, *University Chicago Law Review*, 70 no.887 (2003): 982-2000.

Salmi-Tolonen, T. "Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments". *Brooklyn Journal of International Law, 29,* (2004): 1169.

Samuel, Johnson. *Dictionary of the English Language.* Boston: Houghton Mifflin Harcourt Publishing Co., 2016 available at www.freedictionary.com (accessed on February 12, 2017).

Sandy Q., Qu and John Dumay. "The Qualitative Research Interview". *Qualitative Research in Accounting & Management,* 8 no.3 (2011): 238-264.

Sara, Silveer. "Mexican Congress Vote for Impeachment Trial", *Financial Times*, April 22, 2005, http///www.ft.com (accessed on October 12, 2015).

Seoum Kim Taek. "Whether the Intervention in State Affairs by Confidante of the President could be the Grounds for Impeachment of the President". *Constitution Studies,* 23 no. 3 (2017): 14-29.

Scott E., Gant. "Judicial Supremacy and Nonjudicial Interpretation of the Constitution", *Hastings Constitutional Law Quarterly.* 24 (1997): 366–389.

Sheila, Bone. *Osbone 's Concise Law Dictionary*, 9th ed. London: Sweet & Maxwell.

Shyllon, Obasanjo. "The Demise of the Rule of Law in Nigeria under the Military: Two points of View". Ibadan: University Press, 1980.

Simon, Evans and Stephen Donaghue. "Standing to Raise Constitutional Issues in Australia" in Gabriël A., Moens and Rodolphe, Biffot (eds) *The Convergence of Legal Systems in the 21st Century: An Australian Approach.* Copy Right Publishing, 2002.

Simon, Evans and Stephen, Donaghue. "Standing to Raise Constitutional Issues in Australia" in Simon, Evans. "Standing to Raise Constitutional Issues Reconsidered". *Bond Law Review*, 22 no. 3 (2010): 38-50.

Simon, Halliday. "The Influence of Judicial Review on Bureaucratic Decision Making". *Public Law* (2000): 110-126.

Solomon, Akhere Benjamin. "The Legislature and Constituency Representation", in Hamalai Ladi (ed) *The National Assembly and Democratic Governance in Nigeria. Publication of the Policy Analysis and Research Project, National Assembly,* Abuja (2010).

Stanley, Ibe. "Implementing Economic, Social and Cultural Rights in Nigeria: Challenges and Opportunities". *African Human Rights Journal*, 10 (2010): 199-209.

Steiner, Kvale. *Interviews: An Introduction to Qualitative Research Interviewing.* California: SAGE Publications, 1996.

Stephen B., Presser. "Would George Washington Have Wanted Bill Clinton Impeached"? *George Washington Law Review*, 67 (1999): 666-678.

Stephen L., Carter. "The Independent Counsel Mess", *Harvard Law Review,* 102 no. 105 (1989): 39-54.

Steven J., Taylor Robert Bogdan. *Introduction to Qualitative Research Methods: A Guidebook and Resources.* New Jersy: John Wiley & Sons Inc., 2016.

Sudha, CKG Pillay. "The Ruling In Ramachandran - A Quantum Leap In Administrative Law?" 3, *MLJA,* (1998): 62-76.

Sudha, CKG Pillay. "The Emerging Doctrine of Substantive Fairness - A Permissible Challenge to the Exercise of Administrative Discretion?" 3 *MLJA* (2001): 1-21.

Suleiman, T. "This House Has Failed" *Tell,* June 6, 2011, 22.

Sunday, Edoko "The Protection of the Right to Fair Hearing". *Sacha Journals of Human Rights,* 1 no. 1, (2011): 72-85.

Susan, Low Bloch. "A Report Card on the Impeachment: Judging the Institutions that Judged President Clinton". *Law & Contemporary Problems*, 63, no. 2, (2000): 77-89.

T.R.S., Allan. "Deference, Defiance and the Doctrine of Defining the Limits of Judicial Review". *University of Toronto Law Journal*, 60 (2010): 42-59.

T.R.S., Allan. "The Constitutional Foundation of Judicial Review: Conceptual Conundrum or Interpretative Inquiry". *California Law Journal* 61 no. 87 (2002): 123-136.

Tahir, Mamman and Chibueze, Okorie. "Nurturing Democracy through Constitutional Adjudication: The Contribution of Nigerian Courts". *Journal of Contemporary Legal Issues,* 4, (2012): 40-68.

Taiwo, Eliah Adewale. "Judicial Review of Impeachment Procedure". *Malawi Law Journal*, 3 no. 2 (2009): 23-36.

Terence, Halliday. *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex.* (New York: Cambrige University Press, 2012.

Theodore, J. L. Benjamin, G. and Kenneth, A. S. "American Government" 10th Ed., London: W.E. (2008).

Thomas B., Ripy. "The Federal Impeachment Process" 40-43.

Thomas, Sargentich. "The Critique of Active Judicial Review of Administrative Agencies: A Reevaluation". *Administrative Law Review* 49 no. 9, (1997): 599-607.

Tobi, N "Law, Judiciary and Nigerian Democracy" in Ayua I,A. (ed) *Law Justice and the Nigerian Society – Essays in Honour of Hon Justice Mohammed Bello.* Lagos: Nigerian Institute of Advance Legal Studies, 1995.

Tolu, Lawal and Abegunde, Oladunjoye. "Local Government, Corruption and Democracy in Nigeria". *Journal of Sustainable Development in Africa,* 12 no. 5, (2012): 229-230.

Tom, Rhodes. "Uganda: Block the Opposition and Block the Press", December 12, 2013, http//www.cpj.com/Uganda-bock-the-opposition-and-block-the-press, (accessed on July 7, 2016).

Trabor, Peter Odion. "A Critical Assessment on the Nigerian Federalism: Path to a True Federal State", a paper presented at the 4th National Conference of the Colleges of Education Academic Staff Union, held at the Federal College of Education, Potiskum, Yobe State, (2011): 10-21.

Tsav, Steven Aondona. "Constitutional Provision: Relationship between the Executive and the Legislature". *International Journal of Business and Law Research,* 3 no.2 (2015): 27-32.

Tsega, G.S. *In the Eye of the Law: The Authorized Biography of Justice Umaru Eri,* Zaria: Tamaza Publishing Company Ltd., 2009.

Tunde, Ogowewo. "The problem with Standing to Sue in Nigeria". *Journal of African Law*, 39 no. 9 (1995): 65-80.

Uk Heo and Seongi Yun. "Presidential Impeachment and Security Volatility in Korea". *Asian Survey*, 58 no. 1 (2017): 65-80.

Umaru, Usman. "Corruption and the legislative Function". *Journal of Economics and Finance*, 8 no. 1, (2017): 3-14.

V., Anantaraman. "The Extended Powers of Judicial Review in Malaysian Industrial Relations: A Review", 4 *MLJA* (2006): 114: 130.

Verney, D. V. *Structure of Government*. London: Macmillan, 1969.

Victor, Egojiego Okafor. *Nigerid's Tumbling Democracy and its Implications for Africa's democratic Movement* (CLIO-ABC, 2008).

Virginia, Bruant Victoria, Clarke. "Using Thematic Analysis in Psychology". *Qualitative Research in Psychology*, 3, no. 2, (2006): 1-14.

W., Freidmann. *Legal Theory*, 5th edn., London: 1967.

Wade, Phillips. *Constitutional Law*. London: Longmans, 1961.

Walter, Dellinger. "The Legitimacy of Constitutional Change: Rethinking the Amendment Process". *Harvard Law Review*, (1983): 40-56.

Wan, Azlan Ahmad and Nik Ahmad, Kamal Nik Mahmod. *Administrative Law in Malaysia* Malaysia and Hong Kong: Sweet & Maxwell, 2006.

Warren, C.B., Karner, TX. *Discovering Qualitative Methods: Field Research, Interviews and Analysis*. Los Angeles: Roxbury Publishing Company, 2005.

Wayne, Martin. "Parliament and the Courts: A Contemporary Assessment of the Ethic of Mutual Respect". *Australasian Parliamentary Review*, 30 no. 2, (2015): 80-98.

Western Post Report (2015) "Impeachment: Fayose's Supporters Besiege Assembly", available at http://westernpostnigeria.com/fayoses-impeachment-supporters-invade-assembly-over-threat-in-ekiti-state (accessed on 01/10/2017).

Wheare, K. C., *Federal Government*. London: Oxford University Press, 1963.

Wiersma, W. *Research Method in Education: An Introduction*. Boston: Allyn and Bacon, 2000.

William M., Treanor. "Judicial Review before Marbury", *Stanford Law Review* 58, (2005): 455-458.

William, H Stewart. *Oxford Commentaries on the State Constitutions of the United States: Alabama State Constitution*. Oxford: Oxford University Press, 2016.

Williams, D. "What Manner of Senate"? *The Politico Magazine*, May, 2016, 17-18.

Xuehua, Zhang and Leonard, Ortolano. "Judicial Review of Environmental Administrative Decisions: Has It Changed the Behavior of Government Agencies?" *The China Journal*, no. 64, (2010): 97- 109.

Y.B., Hassan. "The Role of Law in Checkmating Executive Lawlessness in Nigeria from 1999-2014" *Journal of Law, Policy and Globalization*, 37 no. 8(2015): 217-225.

Y.T., Fisseha. "Judicial Review and Democracy: A Normative Discourse on the (novel) Ethiopian Approach to Constitutional Review" *African Journal of International and Comparative Law*, 14 (2006): 53-70.

Yakubu, J.A. *Constitutional Law in Nigeria*. Demyaxs, Law Books, 2003.

Yamamoto, H., "Tools for Parliamentary Oversight: A Comparative Study of the National Parliament". *Inter-Parliamentary Union*, (2007): 1-82.

Yun Jeong-In. "The Scope of Impeachable Offenses in the Presidential Impeachment Process- President (Park Geun-hye) Impeachment Case". *Public Law Research* 45 no. 3 (2017): 34-53.

Yusuf O., Ali and Adekilekun. "An Appraisal of the Supreme Court Decision in *Inakoju v Adeleke* and its Impact on the Political Stability of Nigeria", *The Appellate Review*, 1 no.2 (2010): 149-158.

Yusuf, Aboki. *Introduction to Legal Research Methodology*, 3rd ed. Kaduna: Ajiba Printing Production, 2013.

Yuval, Eylon & Alon, Harel. "The Right to Judicial Review". *Virginia Law Review*, 92 (2006): 991-999.

APPENDIX I: INTERVIEW PROTOCOL/TEMPLATE

Purpose of the Interview

I am pursuing a PhD degree in law at the university Utara Malaysia. The area of my research is impeachment and, to be more precise, the topic is "A Critical Analysis of the Legislative Power of Impeachment under the Nigerian Constitution". This interview is a method employed to gather first-hand information from the "horse's mouth" with a view to enriching the discussion and analysis of the issues involved in this research. Sir/Ma, you have been chosen to participate in this interview due to my conviction that your wealth of experience will greatly shape my understanding of the area of this research which will ultimately assist in realizing the objectives of the research.

Confidentiality

Your responses to the questions asked and the views expressed thereon will be very important towards the realization of objectives of this research. All these will be treated as highly confidential and will only be used for the purpose of this research. Therefore, feel free to divulge relevant information as much as possible.

Length and Format of the Interview

The interview is intended to last between 30 minutes and one hour covering four main areas. It is necessary for me to record the interview in order to have comprehensive information as may be contained in your responses. In this light, may I have your kind permission for the recording?

How to Contact Me

I could be contacted through my Nigerian mobile number: **+2348039642540**.And in case I return to school, my mobile number in Malaysia is **+601136427627**. I could also be contacted through my email address which is abuabdallah055@gmail.com

Any Question?

Before the commencement of the interview, is there any question, clarification or explanation you need from me on the interview?

Background of the Interviewee

(a) Name, institution and designation of the interviewee.

(b) Date of the interview.

(c) Place of the interview.

Interview Questions

Part One: Constitutional Requirements for Impeachment

(a) In the light of the recent revelations in which some judges accused of corruption were asked to resume duty which shows that the disciplinary body for judges may not effectively deal with judges' misconduct. Do you think judges too should be made subject to impeachment like the President, Vice President, Governor and Deputy Governor?

(b) Under the constitution, one of the grounds for impeachment is whatever the legislators regard as misconduct. What is your opinion on this?

(c) Public office holders legally removed through impeachment may be allowed to contest for the same office they were removed from. Do you see anything wrong with this law?

(d) There are reports of serious allegations of corruption, financial misappropriation and constitutional violations in the management of local government but many local government laws do not provide for impeachment of the local government executive. What is your take on this?

(e) Unlike other jurisdictions, the entire impeachment procedure in Nigeria leaves almost everything in the hands of the legislators with little role for the judiciary. Do you consider this healthy for our constitutional democracy?

(f) Only one-third of legislators are required to commence impeachment proceedings and two-third to remove the office holder. Do you see any nexus between this requirement and the frequency of impeachment threats and attempts in Nigeria?

(g) In what manner do you think the constitutional requirement for impeachment needs improvement?

Part Two: Investigation and Proof of the Grounds for Impeachment

(a) Investigation of the grounds for impeachment is the responsibility of a panel whose membership does not take into account any professionalism in the subject matter of the investigation. Do you think this could have impact on the quality of investigations being carried out?

(b) Do you think investigation of the grounds of impeachment will be better handled by professional investigatory bodies like the Economic and Financial Crimes Commission (EFCC)?

(c) In most cases investigations are carried out within a very short period of time when it appears even the three months given by the constitution may not be enough. Could this have impact on the quality or result of the investigation?

(d) In your understanding, could a panel not consisting of persons trained in the legal profession determine whether there is breach of the constitution?

(e) Fair hearing is a constitutional requirement which the panel must observe. Do you think the panel can observe fair hearing without lawyers as some of its members?

(f) Proof of the grounds of impeachment alleged against office holders before the impeachment panel has always been easy. What, in our understanding, is responsible for this?

(g) What do you think are the challenges bedeviling the investigation and proof of the grounds of impeachment?

(h) How, in your opinion, would the proof of grounds of impeachment be better handled?

(i) Do you have any other suggestion on how to improve investigation and proof of the grounds of impeachment?

Part Three: Challenges to Compliance with Constitutional Requirements

(a) Investigations reveal that more than 90 per cent of impeachment proceedings were carried out without compliance with the constitutional requirement. What do you think is responsible for this?

(b) The procedure for impeachment reveals that there is no mechanism by which the legislature could be effectively checked by the judiciary. Do you think this could have any impact on compliance with the procedure?

(c) Some reports have it that the legislators were sometimes subjected to all manners of pressure including physical assault and other external influences to make them commence or stop impeachment proceedings. Could this, in your opinion, have effect on the way and manner they conduct impeachment proceedings?

(d) Information from some quarters alleges that some impeachments were carried out not for the causes recognized by the constitution but for personal interest of the legislators. What do you have to say on this?

(e) In Nigeria, bicameral legislature operates at the federal level while unicameral legislature is obtainable at the state level. Do you think this could impact on the way and manner the legislators handle impeachment proceedings?

(f) Are there, in your opinion, other issues or challenges which make compliance with the constitutional requirement difficult?

Part Four: Challenges to Judicial Review of Impeachment

(a) Lack of respect for court order which seeks to review the steps taken so far in impeachment proceedings appears prevalent. What do you think account for this?

(b) Some cases bordering on impeachment disputes take a long time to be finally disposed of despite the fact that the affected office holders are elected for a fixed tenure. What, in your opinion, is responsible for this and how will it be avoided in the future?

(c) No matter how improperly impeachment proceeding was conducted, it could not be challenged by the electorates due to the requirement of *locus standi*. How do you view this requirement?

(d) In your opinion, is there any other challenge(s) to judicial review of impeachment? How could it be overcome?

APPENDIX II: LIST OF PARTICIPANTS

S/N	Name	Status	Interview Venue
1.	Ibrahim Khaleed	Lawmaker	Residence
2.	Aliyu Balarabe Jigo	Lawmaker	Office
3.	Abdullahi Mohammed	Lawmaker	Office
4.	Jafaru Tela	Lawmaker	Office
5.	Abdulkadir balarabe Musa	Impeached Governor	Residence
6.	Nasiru Abdu Dangiri	Chairman Investigation Panel	Hotel
7.	Joseph Samuel	Member Investigation Panel	Residence
8.	Isah Aliyu	High Court Judge	Residence
9.	Bashir Yusuf Ibrahim	Professor of Law	Office
10.	Muhammad Taufiq Ladan	Professor of Law	Residence
11.	Bala Babaji	Professor of Law	Office
12.	Yusuf Dankofa	Professor of Law	Office
13.	Ustaz Yunus Usman	Legal Practitioner	Office
14.	Andrew Akume	Legal Practitioner	Office
15.	Aliyu Umaru	Legal Practitioner	Office