

# An Appraisal Of Legislative Prerogatives In Impeachment Proceedings In Nigeria Under The 1999 Constitution

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*Abstract: This paper sets out to analytically x-ray Legislative prerogative in impeachment proceedings, the loopholes of such proceedings and recommendation to curb the lapses created by these loopholes. Impeachment was first employed in the Nigerian history during the second republic in the case of Balarabe Musa, Ex-Governor of Kaduna State. Since then impeachment process has become a topical issue in Nigeria's Constitutional development, typical in this regard is the case of the Governor of Plateau, Joshua Dariye and others that have preceded it. It is against this background that impeachment will be considered. The word impeachment derives its root from the Latin expression which means; 'be caught' or 'entrapped'. The purpose of impeachment has been alleged to have been abused by the Legislatures, who 'supposedly' use impeachment as a tool of oppression and intimidation.*

*Keywords: Appraisal, Legislative, Prerogatives, Impeachment, Proceedings, Nigeria, Constitution*

## I. INTRODUCTION

A proper study of the legislative prerogative in impeachment proceedings is therefore imperative to give a clearer political and legal clarification to the general populace on the issue of impeachment. The principal function of the Legislative arm of government as we know it is to legislate and make laws for good governance in accordance with the provisions of the constitution. The Legislative power is vested in the National Assembly which consists of the Senate and the House of Representatives while the Legislative power of a state is vested in the State Houses of Assembly. The Legislature has the power under the 1999 Constitution to impeach the Electoral Officers of both the executive and legislative arms of Government, such as the President and Vice President, Governor or Deputy Governor, Senate President, Speaker of House of Representatives and other elective Officers of the National and State Houses of

Assembly. The research considers the Constitutional provision which spells out the roles of the Legislative arm in impeachment of the President and Vice President, Governors and Deputy Governor, Senate President, Speaker of House of Representatives, and the State House of Assembly. The Constitution of Nigeria ensuring the separation of power as an underlining principle of the Nigerian governmental system by vesting legislative power of the Federal Government in the National Assembly. It provides thus:

*The legislative power of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representative.1*

It is against this backdrop that legislative prerogative will be considered on impeachment proceedings under the 1999 Constitution. Impeachment process has become a topical issue on the Constitutional development of Nigeria. The starting point was the impeachment of Alhaji Balarabe Musa of an Ex-

Governor of Kaduna State<sup>2</sup>. It has been contained that impeachment has been so much abused by the State Assemblies who do it without recourse to laid down Constitutional measures.

Section 1883 is imparimateria with section 1704 of the 1979 Constitution of the Federal Republic of Nigeria on impeachment proceeding. The section forecloses recourse to the Court of Law in impeachment proceeding. The section provides thus:

*No proceeding or determination of the panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entrained or questioned in any Court.*

This provision ousted the jurisdiction of the Court in matters relating to impeachment embarked upon by the Legislature. Impeachment rarely occurs therefore the term is often misunderstood. This misconception occurs where it is confused with involuntary removal of Officer from office. The word impeachment derives its root from a Latin expression 'to be caught' or 'entrapped'. Thus impeachment as a Constitutional process is not designed as a weapon of political oppression, suppression or harassment of a President or Governor whose face the Legislature does not want to behold any longer in power. However, impeachment when used appropriately will put the government of the day on its toes, thereby making such government responsible and accountable.

## II. MATERIALS AND METHODS

To achieve an intellectual result in the course of this research work on the impeachment moves or outright removal of some; Governors, Deputy Governors and even the President of the Federal Republic of Nigeria it is imperative that emphases be laid on primary sources of data collation viz a viz other relevant statues and legislations, Reported Judicial Authorities etc. The Secondary materials implored here include Newspapers, articles by Political and Legal authors, Internet resources, seminar papers Textbooks. These will in no small measure give a holistic approach to the subject matter of discourse.

## III. LEGISLATURE AND IMPEACHMENT

Impeachment proceeding is perhaps the most sensitive functions performed by the legislature<sup>3</sup> The requirement of two – third majority of the National Assembly to remove a president or vice-president from office may sometimes be difficult, as experiences have shown in Nigeria. Since the inception of the 1979 constitution, no president or vice president has been successfully impeached. Many Governors and Deputy Governors have in the past been shown their way out of office through impeachment. It is significant to note that the decision on impeachment proceedings once passed by the legislature on appeal does not lie with any court of Law<sup>4</sup>.

## IV. COMPOSITION OF THE NATIONAL ASSEMBLY

The National Assembly is the highest law making body in Nigeria. It is a bicameral parliament, it is a parliament made up of two legislative houses or chambers that is, the senate otherwise known as the upper house and the house of representative otherwise known as the lower house .Section 47 of the 1999 Constitution establishes the national Assembly for the federation, which shall consist of a senate and a house of representatives.

## V. THE SENATE

The senate is the highest legislative body in Nigeria .The senate has 109 members each state of the federation is divided into three senatorial districts. A senator is elected to represent each senatorial district. Therefore each state has 3 senators in the National Assembly, whilst one senator represents the federal capital territory Abuja. Representation of the states' in the senate is based on the principle of equality of the Nigerian State. In respect of representation in the senate<sup>5</sup>; the constitution provides that there shall be three senators from each state and one from the federal territory (Abuja). The constitution stipulates the qualifications required before vying for the position of a senator of the Federal Republic on Nigeria<sup>6</sup>. To be eligible to be a senator of the Federal Republic of Nigeria, the individual must be a citizen of Nigeria and he or she must have a minimum educational qualification of secondary school certificate. He must be a member of a registered political party and must have attained the minimum age of 35years by the date of his or her election into the senate.

## VI. THE HOUSE OF REPRESENTATIVES

The house of representatives is the lower house of the National Assembly. The house of representatives has 360 members. Each member is selected for a 4year term of office. Each member is elected to represent one of the 360 federal constituencies into which Nigeria is presently divided. The constituencies are demarcated in such a way that each has about the same size and the same population. The states with larger population have more representatives than states that have less population with exception of Lagos state, which has the highest population. Section 49 of the 1999 constitution provides for the composition of the House of representative. The house of representatives shall consist of three hundred and sixty members representing 10 constituencies of nearly equal population as far as possible, provided that no constituency shall fall within more than one state. Section 65 of the 1999 constitution provides for qualification to be a member of the House of Representatives. A member of the House of Representatives must not be less than 30years by the date of his or her election. He or she must be a citizen of Nigeria and must have minimum educational qualification of secondary school certificate or its equivalent he must be a member of a political party and is sponsored by the party.

## VII. LEGISLATIVE POWERS IN THE 1999 CONSTITUTION

The Legislative Powers of the Federation are to be found in Section 4, Chapter 5, and the legislative lists contained in the second schedule of the 1999 constitution. There are of course, many other provisions giving specific powers to the legislatures of the country in relation to the National Assembly alone, new states and Local government areas cannot be created without appropriate Acts being passed by it. Section 4(1) specifically confers on the National Assembly, the legislative powers of the Federal Republic of Nigeria. The provision further goes on to declare that 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<sup>11</sup>. Section 4(7) confers the same power on State House of Assembly with regard to any matter in the prescribed column of the concurrent list, any subject matter specifically assigned to states in the Constitution and any matter not listed in the Constitution i.e. the residual list.<sup>12</sup> Since we are now operating under the rule of law and strict separation of powers, where there is doubt or controversy about what constitutes 'peace', 'order' and 'good governance'(subject to political question doctrine) is a matter for judicial interpretation, and such interpretation is final. This supervisory power of the Courts over the legislature is confirmed in Section 4(8) as follows:

*Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly shall be subject to the jurisdiction of the courts of law and of judicial tribunals established by law and accordingly, the National Assembly or a House of Assembly shall not enact any law, that oust or purports to oust the jurisdiction of a Court of Law or of a judicial tribunal established by law.*

It is important to stress that the National Assembly's powers to make laws for the Peace, Order and Good Government, are limited to matters contained in the Exclusive Legislative List. It cannot be extended as in military dictatorships, to 'any part thereof (of Nigeria) with respect to any matter whatsoever. According to Professor Nwabueze, 'The phrase 'peace, order and good government' does not delimit the purpose for which the power is granted, in the sense that a law must be for peace, order and good government in order to be valid<sup>13</sup>. It is simply, as the Judicial Committee of the Privy Council has held, a legal formula for expressing the widest plentitude of legislative power exercisable by a sovereign legislature, subject to limitations arising from the divisions of powers between a central and regional governments in a federal system such as Nigeria. Thus, the legislative power of the National Assembly in Nigeria is not a power to make law for 'peace, order and good government' generally, but a power to make law for 'peace, order and good government' with respect only to matters specified in the Constitution. The formula, 'peace, order and good government' which is also used by the Constitution to define the legislative power of the State Houses of Assembly, confers no inherent power on the National Assembly to legislate outside the matters so specified as being within its

legislative competence'. In *A-G Abia State v. A-G of the Federation and others*<sup>14</sup>, the case concerning the defective Electoral Act of 2001, the Solicitor-General of the Federation made a claim of sweeping legislative powers on behalf of the National Assembly, namely, that the National Assembly has the power to make laws for the peace, order and good government of Nigeria on any subject matter whatsoever, in any part of Nigeria. This was rejected by the Supreme Court which held that the National Assembly's powers to have laws for the Peace, Order and Good Government of Nigeria, were limited to subjects included in the Exclusive Legislative List. As powers over local governments are conferred on States under Section 7 of the Constitution, the National Assembly could not pass any law to extend the tenure of elected local government officials. That was within the exclusive competence of the States House of Assembly.

## VIII. ROLE OF THE LEGISLATURE IN A DEMOCRATIC SOCIETY

As Nwabueze<sup>15</sup> has noted, the legislature is the distinct mark of a country's sovereignty, the index of its status as a state and the source of much of the power exercised by the executive in the administration of government. The sovereign power of the state is therefore identified in the organ that has power to make laws by Legislation, and to issue 'commands' in the form of Legislation binding on the community. Nwabueze buttresses this argument by pointing out that in our Constitution; the Legislature is dealt with first before the other organs of government. Thus Section 4 deals with Legislative powers, Section 5 with Executive powers and Section 6 with judicial powers. He however points out that the constitutional primacy of the Legislature is not contradicted by the fact that the head of the Legislature is not the first citizen. For the office of President (or Governor) is distinct from that of Chief Executive. It is not the Chief Executive who is the first citizen; it is the president or governor as the case may be; the President, being the Head of State of Nigeria, and by the same token the Governor being the Head of State of his State. It is the President as President who is the first citizen of Nigeria, not the Chief Executive. It is the Governor as Governor that is the first citizen of the State, not because he is the State's Chief Executive. In other words, the President is the first citizen, not by virtue of being the Chief executive but by being the Head of State. The same thing applies to the Governor. This is easily appreciated when we consider a system like the British one in which the office of 1st citizen and Chief Executive are separated. The Queen is the 1st citizen and the Prime Minister is the Chief Executive. In Nigeria, the President and the Governors combine both positions in one person<sup>41</sup>. It is because these two offices of President and Governor symbolize incarnate and embody the State itself that they are protected by immunity from arrest; prosecution or civil suits<sup>16</sup>For, any indignity inflicted on them is an indignity on the state itself. This long detour from my discussion of the status of the Legislature is meant to establish the fact that the head of the Legislature, the first arm of government, is made to take his position behind the President or the Governor as the case may be, because of the position of the former as Head of

State of Nigeria or Head of a State within Nigeria, not because he is Chief Executive. The Legislature is, therefore, the number one arm of government in any democratic state. The current low esteem, in which the Legislature, particularly the national legislature, is held, arises, not from lack of legislative primacy, but from its exhibition of negative values and practices, grossly against the interest of Nigeria and Nigerians. When referring to democratic governance, whether parliamentary or presidential, the organ of government that captures the mind most as epitomizing the concept is the legislature. It is the place where the public sees democracy in action, in the form of debates, and consideration of motions, resolutions and bills. The closest politician to the voter is the representative of his constituency in the legislature. During Military regimes, we still see the judiciary and the executive in action. It is the Legislature that is really missing; for a Supreme Military Council or Provisional Ruling Council is no different from the Military executive. Thus, the most significant phenomenon in a democratic set up is to see the legislature, the assemblies of the people's representatives in action. According to John Stuart Mills<sup>18</sup>, it is the duty of the legislature 'to watch and control the government (executive); to throw the light of publicity in its acts, to compel a full exposition and justification of all of them which anyone considers questionable. 'If effectively discharged, the legislature's critical function would produce an attitude of responsibility and restraint in the executive, which would oblige it to reckon with the possible reaction of the legislature in framing policies and taking decisions. For the Legislature to play its role effectively its own hands must be clean and its house put in order.

#### IX. IMPEACHMENT PROCEEDINGS FOR THE REMOVAL OF THE PRESIDENT AND THE VICE-PRESIDENT

Under the 1999 Constitution, the President and his Vice cannot be subjected to the civil or criminal proceeding during their tenures in office<sup>30</sup>. Notwithstanding the foregoing Constitutional immunity, the national Assembly is constitutionally empowered, in appropriate on deserving cases to initiate impeachment proceeding in order to secure the removal of such office-holder (i.e. the president or the vice from the office if found guilty of gross misconduct in discharge of duties). Section 143 of the 1999 Constitution lists the various conditions and procedures for the removal of the President or his Vice. For the purpose of clarity and exactitudes, the provisions of section 143 are set out as follows:-

- ✓ The President or Vice President may be removed from office in accordance with the provision of this section.
- ✓ Whenever a notice of any allegation in writing signed by not less than one-third of the member of the National Assembly.
  - Is presented to the President of the Senate.
  - Stating that the holder of the office or President or Vice-President is guilty of gross misconduct in the performance of the functions if his office detailed particulars of which shall be specified, the president

of the senate shall within 7 days of the receipt of the notice cause a copy

- thereof to be served on the holder of the office and on each member of the member of the National Assembly and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.
- ✓ Within 14 days of the presentation of the notice to the president of the senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) each House of Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.
- ✓ A motion of the N/A that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-thirds majority of all the members of each House of the National Assembly.
- ✓ Within 7 days of the passing of a motion under the foregoing provisions, the chief justice of Nigeria shall at the request of the president of the senate appoint a panel of 7 person who in his opinion are of unquestionable integrity not being members of any of public service, legislative house or political party, to investigated allegation as provided in this section.
- ✓ The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and to represent before the panel by legal practitioner of his own choice.
- ✓ A panel appointed under this section shall still have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly, and within three months of its appointment report its findings to each House of the National Assembly.
- ✓ Where Assembly the panel reports to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect to the matter.
- ✓ Where the report of the panel is that the allegation against the holder of the office has been proved, within 14 days of the receipt of the report, each house of the National Assembly shall consider the report, and of by a resolution of each House of the National Assembly supported by not less than 43 majority of all the members, the report of the panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.
- ✓ No proceedings or determination of the panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court.
- ✓ In this section- 'gross misconduct' means a grave violation or breach of the provisions of this constitution or a misconduct of such nature as amounts on the opinion of the National Assembly to gross misconduct. The question is what impeachable offences are or 'gross misconduct' Jadesola A.K<sup>31</sup> opines that there are three possible constructions. It is however humbly submitted that the list of what amount to gross misconduct' is endless as the constitution has given the absolute discretion to the



National Assembly to determine what amounts to gross misconduct. This power of determining what a gross misconduct is by the National Assembly is too wide and could be misused at times. Whether in interpreting what a gross misconduct is the members are objective or impartial or that there is possibility of prejudice or bias, it is a pity that whatever the outcome is, it cannot be challenged in a court of law nor entertained.

#### X. IMPEACHMENT OF THE GOVERNORS AND THE DEPUTY GOVERNORS

Under Section 308 of the 1999 constitution<sup>32</sup>, the governor and his deputy are also constitutionally immune from civil or criminal proceedings during their appropriate cases to initiate impeachment proceedings so as to remove the governor or his deputy from office if found guilty of gross misconduct in the discharge of his or duties. Under the 1999 constitution at the state level section 188<sup>58</sup> provides for the removal of the governor or the deputy governor of a state by the state house of assembly.

#### XI. BACKGROUND TO IMPEACHMENT PROCEEDINGS IN NIGERIA

A careful analysis of the history of impeachment, right from when it was first introduced in Britain in the 14th century and its adoption on the different Constitutions of Nigeria to the present 1999 Constitution will show that it does work even if sparingly granted. That there has been instances where Legislative liberty has been abused, the truth must be told that impeachments are not a rush unused power. It has been used successfully to limit fundamental breaches and abuses of public trust. The history of impeachment continues as each country of the world adopts new procedures of impeachment. Defining the word 'impeachment' will be an ideal beginning for a proper consideration of the topic at hand and thus leads us to the definition of impeachment.

#### XII. THE TERM IMPEACHMENT IN PERSPECTIVE

The word impeachment has no precise definition. The Black's Law Dictionary<sup>33</sup> defines it as 'a criminal proceedings against a public officer for crime or misfeasance before a quasi-political person or individual in the form of a written accusation called 'article of impeachment'. According to the Webster's New word Dictionary<sup>34</sup> impeachment is meant to 'challenge the practices of honesty of a public official before the proper tribunal on a charge of wrongdoing'. The Longman dictionary of contemporary English<sup>35</sup> also defined the word 'impeachment as charging a public official with a serious crime, especially a crime against the State. Michael Garhart<sup>36</sup> a commentator and a witness in Bill Clinton's impeachment proceeding said 'Impeachment can be defined in modern and operational meaning as an inherent political process designed to expose and remedy to political crisis subject neither to judicial nor Presidential veto. It is a

unique congressional power that involves both political and Constitutional considerations including the gravity of the offence charged; the harm to the Constitutional order and the link between an official misconduct and duties'. Chief Mike Ozekhome<sup>37</sup> gives an apt definition of impeachment as follows:

*'The word impeachment connotes the practice and procedure by which politically elected persons are constitutionally removed from office by the legislature before the expiration of the tenure of office of such elected persons. It is the modality adopted by the Legislative arm of Government to bring to an end or prematurely determine the tenure of a person's term of office before its due expiration. It is the most powerful weapon in the hands of the legislature, which stands as a sword of Damocles over members of the legislature and executive.'*

Under sections 143 and 188 of the 1999 Constitution of Nigeria, Impeachment offence is 'gross misconduct' and gross misconduct' has been defined as a grave violation or breach of the provision of such a nature as amounts in the opinion of the National Assembly or House of Assembly to gross misconduct<sup>38</sup>. This interpretation leaves much to be desired because the legislative is given wider and blanket power to determine what a gross misconduct is. Thus, any conduct could be interpreted by the legislature as a gross misconduct if he so wishes. Therefore, impeachment can be defined as a legislature's weapon of finding fault or calling to question of a higher Officer e.g. The President or Governors. Definition of impeachment may not be of any significance rather what we should be concerned about is the conduct or offences which may bring about impeachment. Impeachment in a broader sense encompasses the whole network of complexities involved in the process by which erring public Officers are removed from office. This is in line with the position of Seymour M. Lipset<sup>39</sup> whose elaboration relatively captures such complexities according to him impeachment deals within the method by which government Officials may be removed from office when they have been formally accused of crimes or misconduct, it is usually initiated by the lower House of a Legislature and is followed by trial and sometimes conviction by the upper House.<sup>40</sup>

#### XIII. HISTORICAL BACKGROUND OF IMPEACHMENT

Professor Hood Philips<sup>41</sup> reveals that the first recorded case of impeachment occurred in 1376 when two British lords and four commoners were removed. Thus, it can be said that the concept of impeachment originated in England.

The history of impeachment could be said to be old as *Homosapiens* (humanity itself). In all regions and climes, ancient communities had traditional methods of removing erring public Officers. This practice was well entrenched in ancient Greece African Traditional societies were no exemption in its modern usage. However, the history of impeachment could be traced to the 14th century England, 42 when the parliament began to see it as central to the control of King's Ministers so as to hold them accountable. Ever since, impeachment has assumed ubiquitous statutes such that its

provisions can be found in the Constitutions of most countries of the world, even though they were rarely invoked and to that extent largely redundant. The case of United State where only three Presidents have ever been charged with impeachment offences by the House: Andrew Johnson in 1768, Richard Nixon in 1974 and Bill Clinton in 1978 illustrate this reality. The first impeachment that took place in England was of Lord Latimer in 1376, followed by Francis Bacon. The Lord High Chancellor in 1621, the Earl of Strafford in 1641, Archbishop Lord in 1645, Warren Hasting in 1788 and Lord Malville being the last person so far to be impeached in 1805.<sup>43</sup> The history of impeachment in Nigeria, particularly in its formal sense is relatively new. This development is attributable to the fact that the Nigerian State itself is relatively new, coupled with the fact that out of its short history of existence as a politically independent entity, the military has been preponderant in its governance and administration. The first celebrated case of impeachment was initiated on May 13, 1981 with presentation of notice of allegation to Governor Balarabe Musa of Kaduna State, under the 2nd Republic. Investigation into these allegations began on the 21<sup>st</sup>, 1981 with the setting up of the impeachment panel in line with the provision of Section 170(3) of the 1979 Constitution. The impeachment proceeding which began on June 10 1981 witnessed a high turnover of litigation affidavits and counter affidavits. These mostly revolved around the integrity of members of the impeachment Committee and the impropriety of the impeachment allegations. These notwithstanding the Committee forged ahead and ended its proceedings on June 18, 1981 with the eventual impeachment of Alhaji Balarabe Musa as the Governor of Kaduna State.<sup>44</sup> Apart from the impeachment of Balarabe Musa in Kaduna State, the second Republic recorded several other cases of impeachment in Kano State, the Deputy Governor (Farouk Bibi Farouk) was removed on the grounds of his refusal to perform duties assigned to him by the Governor. The Governors of the then Bendel, Cross River and Ondo States were threatened with impeachment proceeding by their State Assemblies (Legislature). In the then Gongola State, impeachment motion was tabled against Governor Abubakar Bada. However, between 1999 – 2003 no Governor was impeached though at least a Deputy Governor from a South Eastern State of Abia was impeached. The situation skyrocketed between year 2003 and 2006 not long after inauguration, the Deputy Governor of Anambra State (Chris Ngige) Deputy Oke Udeh was the first to be impeached under current dispensation Mr. A. Aluko, the Deputy Governor of Ekiti State also suffered the same fate much later.<sup>45</sup> Among the Governors, D.S.P. Alameiseiga of Bayelsa State was the first to be impeached on 9th December, 2002. Senator Rashidi Adewolu Ladoja of Oyo State followed suit on January 2006 in a very controversial circumstance.

#### XIV. IMPEACHMENTS UNDER PRE-1999 CONSTITUTION

To properly appreciate the reason, mode and procedure for impeachment by the legislature under the 1999 CFRN it will be necessary to discuss through the 1963, 1979, and 1989 constitution of the Federal Republic of Nigeria. Here attempt

will be made at a careful perusal of the various sections that provide for the way and manner the President, Vice President Governors and Deputy Governors (where applicable) and of course the key officers of the National and State assembly can be removed from the office before their tenure expires. The various constitutions state explicitly the procedures and requirement necessary for a resolution for an impeachment itself.

#### XV. THE IMPEACHMENT UNDER 1979 CONSTITUTION: AN OVERVIEW OF THE IMPEACHMENT OF ALHAJIBALARABE MUSA

He was sworn in as the first Governor of Kaduna State on October 1st 1979. He was later to go on record as the 1st Executive Governor to be impeached under 1979 Constitution. His problem began when the notice of allegation was presented to the Speaker of Kaduna State House of Assembly on May 11, 1981, having been allegedly signed earlier on that same day. The Speaker apparently served the notice on the Governor (there were allegations that the Governor refused to accept service) within 2 days, during which time all the members of the House were also served with their copies.<sup>46</sup> The ground of impeachment leveled against him includes:

- ✓ I Unconstitutional removal of the Director of Audit – Alhaji Daalhatu Bello, which is a violation of Section 199 of the 1979 Constitution.<sup>28</sup>
  - ✓ II Appointment of Abiduyaziel as Secretary to the Government and Head of Service in complete violation of S.187 and of the 1979 Constitution.
  - ✓ III Unlawfully appointed Board members on a composition different from that stipulated by law.
  - ✓ IV Unlawfully implementing unapproved figures on the 1980 estimates by unconstitutionally increasing the remuneration approved for Special Advisers by the Assembly, per annum.
- On May 26, a day after the 14 days limits, the House resolved that the allegation be investigated and a Committee of 7 persons was quickly inaugurated. Only six members of the Committee were available at the inauguration on June 3rd and indeed, the 7th member did not sit with the panel until a couple of days before it finished its investigations, Balarabe Musa, meanwhile, challenged the following on June 3rd, 1981.
- ✓ The signatories to the notice of the allegation of gross misconduct on the ground that some of the signatories were forged because the signatories were illiterates and could not write.
  - ✓ That some of the members of the panel were members of the public service.
  - ✓ That the Constitution required a 7-man panel and since only six were sworn in, the investigation was null and void.

The AG Chief Judge, before whom the action for an injunction restraining both the House and the Committee from continuing the process in violation of the Constitution held that the court had no such jurisdiction to entertain the matter. It is however worthy of note that the Constitutional provisions relating to impeachment were not *stricto sensu*, complied in the

entire impeachment process. It is submitted that the impeachment was politically motivated as the impeached Governor belonged to a minority party (PRP) that controls the executive in the midst of NPN which dominated the legislature which was the majority party.

#### XVI. PRACTICAL EXPERIENCE OF IMPEACHMENT IN NIGERIA: IMPEACHMENT PROCEEDING UNDER THE 1999 CONSTITUTION

According to Clinton Rossiter<sup>51</sup>, "impeachment is not an inquest of office, a political process for turning out a President whom a majority of the House and two-thirds of the Senate simply cannot abide". It is certainly not, nor was it ever intended to be an extra-ordinary device for registering a vote of no confidence. Impeachment was originally conceived as a check on the executive lawlessness and rascality. Mike Ozekhome<sup>52</sup> asserted that impeachment was borne out of the English parliament's long struggle to strip the King and his ministers of their absolute power and to expand the right of the people. He said further that the purpose of impeachment in that period was to reach persons of the highest rank and power with the crown who by virtue of their elevated positions are above the reach of the ordinary complaint of individuals, which is inherent in the nature of Nigeria as an indivisible and indissoluble sovereign state, impeachment can be likened to the two instruments of a typical Roman warrior; a shield and a sword. The sword; normally used to attack an enemy, while the shield serves the purpose of protecting a person against harm or damage. Impeachment proceeding is therefore used as a sword by the legislative to check the executive lawlessness, rascality and to curb fundamental breaches of the constitution and abuses of public trust. On the other hand, impeachment proceeding is also a shield to the legislators who represent the masses, the society and the nation in general; a shield to prevent the Executive arm of government from growing octopodal powers which it can use to subjugate the masses and the state as a whole. It is often said that power corrupts and absolute power corrupts absolutely. It is therefore imperative for a measure like impeachment proceeding to be put in place to serve as a sword of Damocles over the executive to prevent them from becoming 'power drunk' or dictatorial. Senator Victor Aldoma-Egba (SAN) said 'the impeachment process (proceeding) is in essence, nature and character, a political tool designed to achieve largely political objectives. Though constitutionally provided for, it remains a political weapon in the hands of politicians to be used upon the exercise of political judgment against political office-holders'<sup>61</sup> (emphasis supplied) Thus, it can be submitted that the original intendment of impeachment proceeding to a large extent has been lost. Impeachment proceeding is now initiated, not to achieve the constitutional intendment but to achieve political objectives or for avaricious reasons. In corroborating this assertion, the learned Senior Advocate added that: "the reasons for the deployment or otherwise of the process are political just as are the findings... The process cannot therefore be assessed on strict legal standard<sup>53</sup>. Governor BandeAbubakar, the Governor of the old Gongola state, following the unsuccessful attempt to remove the

impeachment clause from the constitution in the interest of peace. He said further, events in the past have shown that most legislative Houses in the country are using their constitutional powers arbitrarily especially in intimidating Governors.

Furthermore, another important provision of the 1999 constitution which has made impeachment proceedings a sword in the hands of the legislators is the definition of what amounts to impeachable offence. Under Article II, Section IV of the USA constitution, it is provided that 'the President, Vice President...shall be removed from office on impeachment and conviction of treason, bribery or other high crimes and misdemeanor. This definition though broad is not nebulous or too wide when compared with our own relevant provision<sup>55</sup>. Under S.143(11) and S.188(11), 1999 constitution, impeachable offence is tagged 'gross misconduct' and gross misconduct is defined as 'a grave violation or breach of the provisions of this constitution or a misconduct of such nature as amounts in the opinion of the National Assembly or House of Assembly (as the case may be) to gross misconduct'. This interpretation leaves much to be desired; this is because the legislature is given wider and blanket power to determine or interpret what a gross misconduct is. Thus the Presidential visit to his village could be interpreted by the legislature as gross misconduct if it so wishes. Professor Nwabueze<sup>56</sup> while reacting to the impeachment of Governor Ladoja of Oyo state, stated that although the grounds set out in the Nigerian constitution are not restricted to 'high crimes' as the US constitution provides yet the words 'gross misconduct in the performance of the functions of his office' are intended to limit the scope of impeachable offences. He further said that the qualifying word 'gross' which is defined by the New Webster's dictionary of the English language as 'flagrant' or 'enormous', makes it clear enough that impeachment under our constitution is not, nor is it intended to be a political device enabling two-thirds majority of members, because of partisan or factional disagreement or differences elected by millions of voters. Besides, he said, misconduct though not limited to criminal offences of a serious nature has a definite objective meaning in law. The court of Appeal adopting a definition of it in Black's law dictionary<sup>57</sup> has defined it as 'an unlawful behaviour by a public officer in relation to the duties of his office, willful in character'<sup>58</sup>. He concluded by saying that 'misconduct in this objective legal sense must be first established before the discretion vested in the Legislative Assembly to declare it to amount to a 'gross' one can come in to play. Moreover, not every violation of the constitution is an impeachable offence; it has to be a 'grave' one, such as amounts to a willful subversion of or treason against the constitution'. If the submission of the learned profession is right, as I suppose it to be, then the recent impeachment proceeding against some Governors and deputy Governors is simply an abuse, a perversion engendered by a misconception of the true nature and purpose of impeachment as provided under the 1999 constitution. In line with this submission, UcheChukwumerije, a distinguished senator of the federal republic of Nigeria said (and I concur), 'the impeachment weapon which was meant to be the last extreme resort has now been trivialized and reduced to a routine weapon of political vendetta'. He said further, that impeachment is being used to



'deal' with all the Governors on the wrong side of Abuja political affection and Presidential calculation<sup>59</sup>. Taking a look at the foregoing discussion, it suffices to submit that the entire impeachment proceeding under the 1999 constitution has been grossly politicized and tainted with gross constitutional irregularities and often jump-started by personal vendetta. The impeachment proceeding, which was originally intended to be a shield to the general public from powerful political office-holders has now been reduced to a routine weapon of political vendetta (i.e. sword) to be used against perceived political enemies. Though it was constitutionally provided for, it remains a political weapon (sword) in the hands of political judgment against political office-holders.

#### XVII. AN OVERVIEW OF THE IMPEACHMENT OF GOVERNOR DSPALAMIEYESIGHA

The impeachment of DSP Alameyeseigha was an accident waiting to happen. On 9<sup>th</sup> December 2009, Governor DSP Alameyeseigha of Bayelsa state joined BalarabeMusa as the second Governor to be impeached in Nigeria. The punch<sup>60</sup> reported that the federal government on November 23<sup>rd</sup> 2005 commenced the impeachment of the former Governor. A report of the Governor's assets valued at over N 1.7 billion was sent to the state House of Assembly by the Economic and Financial Crimes Commission on the same day. This result formed the basis on which the Assembly served the Governor a notice of impeachment as required by S. 188(2), 1999 constitution, though it was learnt later that an additional allegation was smuggled in<sup>61</sup>. Some of the alleged offences leveled against him are as follows:

- ✓ Owning a multi-million US dollar refinery in Ecuador.
- ✓ Purchasing two properties in London at £2.79 million
- ✓ Buying three properties in Ikoyi and Allen avenue, Ikeja at N850 million
- ✓ Laundry state funds through six companies
- ✓ Acquisition of N1 billion shares in Bond bank
- ✓ Acquiring Chelsea Hotel, Abuja at N1.5 billion etc.

The Chief Judge, Bayelsa state, Emmanuel Igoniware, four days later inaugurated a 7 man probe panel headed by Seren Dokunbo-spitt. The panel worked on an additional ground allegedly smuggled into the said impeachment notice and an interim report was prepared and signed by members of the panel based solely on the additional ground of impeachment. This additional ground was based on the fact of the Governor's jumping bail in the United Kingdom where he was being prosecuted for money laundering. The panel submitted its preliminary report to the House of Assembly and as early as 5am on the 9<sup>th</sup> December 2005, the government House had been condoned off by anti-riot policemen with armed soldiers providing backup. Soon, the state House of Assembly overtly acting on the instruction of the presidency met in Yenogoa with 17 of the 20 members present, allegedly voted in favor of the impeachment of Governor D.S.P Alameyeseigha. As soon as he was impeached, armed soldiers swooped on the creek haven, government House in Yenogoa and arrested Alameyeseigha in the presence of his aged parents and took him to police headquarters, Abuja. The presidency might have achieved its aim but it must be pointed

out that the whole impeachment proceeding was characterized with lack of due process. The impeached Governor himself was heard lamenting as he was taken away thus; "This is unconstitutional, this is against due process, even if I am to be crucified, I should be heard". That complaint of Alameyeseigha strongly depicts the refusal of the panel to grant him fair hearing despite his plea for same in a letter he sent to the panel earlier in the week. The impeached Governor foresaw the likelihood of bias on the part of Dokunbo-spitt panel. He therefore raised an objection to the constitution of the panel, particularly the chairman of the panel, Dokunbo-spitt and Benson Agadagu who was his commissioner for information before he was dropped in the last cabinet reshuffle. Therefore it is submitted that the decision of the panel by disregarding all his complaints amounts to flagrant violation of the rule of law as well as S.36 and Section 188(5) of the 1999 constitution. This view was supported by Chief Wole Olanipekun, SAN, Chief Mike Ozekhome, Prof. Itse Sagary, Chief Mike Okoye and Prof A.B Kasumu, who said his forceful removal, was unconstitutional and therefore lacked the due process of law.

#### XVIII. AN OVERVIEW OF THE IMPEACHMENT OF GOVERNOR LADOJA

The curtain, in the wee hours of January 12<sup>th</sup>, 2006 fell on the reign of Governor Rasheed Ladoja<sup>62</sup> of Oyo state, as eighteen members of the House of Assembly [allegedly loyal to his political godfather, Chief Lamidi Adedibu] impeached him from office and directed that his deputy, Otunba Adebayo Alao-Akala be immediately sworn in as his replacement. Impeachable allegations had earlier been served on the Governor and they include:

- ✓ Fraudulent conversion of public funds
- ✓ Operating a foreign bank account
- ✓ Conflict of interest and dereliction of duty
- ✓ Award of government contract to a company owned by the Governor's son
- ✓ Sponsored physical attack on some anti-Ladoja members
- ✓ Undermining the integrity and constitutional power of the legislature
- ✓ Changing the constitution of the Oyo state council of Obas without an enabling law
- ✓ Undermining the integrity of the judiciary through disobedience of certain court orders
- ✓ Interference in the affairs of the House of Assembly etc.

To pave way for the eventual impeachment of Governor Ladoja, the speaker; Hon. Adeolu Adeleke was allegedly suspended thereby leaving the Deputy speaker; Hon. Taiwo Oluyemi, the mandate to preside over the business of the House. The investigative panel led by Chief Bolaji Ayorinde (SAN) presented its report to the House, telling it that the document was a unanimous findings and recommendations of the panel. The bone of contention over the impeachment of Governor Ladoja is whether the appointment of the panel was legal while there was a subsisting order restraining the acting Chief Judge, Justice Afolabi Adeniran from acting on the request made to him by the 18 lawmakers who were allegedly acting for Chief



LamidiAdedibu. Another contentious issue is what constitutes two-thirds of 32. If 18 lawmakers in a House of 32 can be allowed to remove because of partisan or factional disagreements or differences, a Governor elected by millions of voters in a state like Oyo state, then it is submitted that there was a bad precedent. It means that in the near future, a simple majority in a legislative House can manipulate the suspension of half of the members of the House, get a kangaroo court and pass a resolution impeaching the Governor. An X-ray of the mode adopted by the panel on one hand and the House of Assembly on the other reveals an antithesis of constitutional violation of the rule of fair hearing as entrenched in Sections 36 and 188 of the 1999 constitution.

#### XIX. THE IMPEACHMENT OF DEPUTY GOVERNORS

A comparison of impeachment of Governors on one hand and deputy Governors on the other reveals that the number of impeached deputy Governors clearly exceeded those of the Governors. However, here only a few important cases of impeached deputy Governors will be considered.

#### XX. AN OVERVIEW OF THE IMPEACHMENT OF ABIODUNALUKO

AbiodunAluko was the former deputy Governor of Ekiti state. The Punch<sup>63</sup> reported that with 22 votes in support, two against and one absentia, the Ekiti House of Assembly on Tuesday Sept 27, 2005 removed the deputy Governor MrAbiodunAluko from office. The paper<sup>64</sup> revealed further that his removal followed the adoption of the report of a seven man panel, led by MrKayodeOgundara which investigated the 16 impeachable charges raised by the House According to a summary of the panel's report by the lawmakers; Aluko was reportedly found guilty of three out of the 16 charges. His first allegation was that he was caught in his quest to cause division, a porting added disunity among members of House of Assembly by organizing some members asking them to recruit others to support him against constitutional authority. The second allegation was that he falsely accused the honourable members of receiving a bribe of two million naira each from the executive Governor to impeach him. The 3rd allegation upon which he was removed was that the deputy Governor had severally stated that he was prepared to pull down the government of Ekiti state if his position be threatened. Upon those 3 allegations, AbiodunAluko was removed from office at about 5pm on September 27, 2005. Like all other impeachment proceedings, the deputy Governor claimed that he was not given fair hearing. Prof. ItseSagay (SAN) in his reaction said: 'lawmakers had participated in a major breach of fair hearing as put in place in S. 36 of the constitution. What they have done is illegal'. Femi Falana on his part said 'in their haste, the lawmakers deliberately ignored S.188 (6) of the 1999 constitution which deals with the issues of fair hearing. Going by the circumstances of his impeachment, it is our humble opinion that he was not allowed to defend himself'. Apart from this, those allegations leveled

against him are misconducts but it is one thing for an allegation to be referred to as misconduct and another thing for the misconduct to qualify as a gross misconduct. It is therefore submitted that allegations upon which he was impeached are not gross misconduct that could warrant impeachment.

#### XXI. AN OVERVIEW OF THE IMPEACHMENT OF SEN. BUCKNORAKERELE

Senator BucknorAkererele was a former deputy Governor of Lagos state. She went down into the memory lane as the first deputy Governor to be impeached under the 1999 constitution. She was impeached by the Lagos state House of Assembly, sometime in the year 2000. Her impeachment was allegedly as a result of her disagreement with Bola Ahmed Tinubu on some political matters and not on the fact that she committed acts that amounted to gross misconduct. Her removal was purely political than constitutional, hence the non-compliance with the constitutional provisions dealing with the impeachment of an erring office holder by the 'honourable' members of Lagos state House of Assembly.

#### XXII. AN APPRAISAL OF THE IMPEACHMENT OF OBONG CHRIS EKPENYOUG

Obong Chris Ekpenyoug was the deputy Governor of Akwa-Ibom state. The Punch<sup>65</sup> of 24th June 2005, pg 1-3 reported that 23 out of the 25 members of the Assembly overwhelmingly voted for his removal on June 23rd 2005. His removal followed the deliberations and adoption of the report of the panel. Seven allegations had earlier been leveled against him on June 2nd 2005. He was however found guilty of five out of the seven allegations. These allegations include:

- ✓ The act of slapping which was held to be incompatible with the office of a deputy Governor
- ✓ That he owned a property in Houston US in the name of his 12year old son, which he did not declare before the code of conduct bureau.
- ✓ That he diverted contracts to his companies when he was the chairman of the finance and general purpose committee
- ✓ That he convened a meeting in his House in ObotAkara on Democracy day
- ✓ That he used a venue meant to host the President for a party on his arrival from a vacation in 2004
- ✓ And that he conducted himself in a matter that threatened the peace of the state.

In a swift reaction to his impeachment, he claimed that he was not given the opportunity to defend himself before the panel, however in a show of strength all actions concerning his impeachment, thereby converting the impeachment to resignation. The question that remains unanswered is not why was his impeachment converted to resignation, but the legality and consequence of doing so? Or can the PDP national secretariat reverse a decision of a body legally and constitutionally empowered to perform its functions.

Basically, the reason for the party's objection is that Ekpenyong was not given ample time to physically defend himself by the House, but decided to convict him largely on his written responses earlier submitted to the House. However, what the PDP did not bear in mind is that a person can be convicted of any offence (gross misconduct inclusive) on an oath of a single adult witness without any other confirmation of the witness evidence or by any other circumstances<sup>66</sup>. Therefore, if one witness could testify and prove that Ekpenyong committed an act of gross misconduct, it was enough to 'convict him' The press<sup>67</sup>reported the reaction of a constitutional lawyer by name; Richard Ahonarugbo who described the intervention of the PDP as 'medicine after death'. He said that in the first place, it is not their business to interfere in matters like the impeachment of a Governor or his deputy after the House of Assembly has concluded the matter. He added; 'if the man feels that he was not given a fair hearing, let him go to court and attempt to put aside the impeachment proceeding, the party cannot arrogate to itself the functions of judiciary' In opinion of Prof. TaiwoOsipitan; "despite the anxiety of the PDP on the Akwa- Ibom issue, the party has no constitutional role to play in any impeachment process. It is the exclusive affairs of the House of Assembly. The party cannot interfere or intimidate the lawmakers with the intention to nullify what the state lawmakers have done. A matter of impeachment is the domestic affairs of the House of Assembly under the constitution<sup>68</sup> To Chief Mike Ozekhome, "constitutionally, Ekpenyong was duly impeached as the deputy of Akwa-Ibom state". He however added that "though there is no provision in the constitution of the House to reverse itself on what it could call new facts and it will reflect those now available to show us that we did not have all the facts, we therefore reverse ourselves that the deputy Governor is 'no longer impeached'<sup>69</sup> It is highly imperative to submit here that the middle course arrangement whereby the House of Assembly should rescind itself and give the deputy Governor a safe landing pad, by giving him an opportunity to resign. In my humble opinion, it is not good enough for democracy. Do we have to bend the way when it pleases us and in this case, to save an alleged corrupt official? It is not good for any democratic tendency. At some point, former President Obasanjo sacked former Minister of Education; Prof. Fabian Osuji and former Minister of Housing; MobolajiOsomo in his fight against corruption, it is therefore baffling why the party could not see the impeachment as a window in the fight against corruption rather than politics. Should the party opt to save Ekpenyong, if the House had found him guilty of corruption in line with the President's campaign against corruption?

#### XXIII. CONCLUSION

Impeachment depends largely on the whims and caprices of the Legislature and the constitution, just as it is entrenched in the constitutions of most countries. At one level, impeachment connotes a formal accusation for wrong doing viewed from this perspective; it has been seen as the accusation of a public officer of crimes and misdemeanors in the execution of his duties. Therefore, various Constitutions

provides for the procedures for impeaching the Chief Executive of a State and other Officers. Hence, non-observance of the Constitutional Provision on impeachment renders such exercise futile. The predominant conception before impeachment was introduced was that 'the King could do no wrong' thus the King could not be dealt with. However, it has been successfully used to curb fundamental breaches and abuse of public trust. The Legislation is a measure of checks and balances as enshrined in various parts of the Constitution. It is therefore a potent tool in the hands of the Legislators to create a more responsive and responsible government. Thus, the Legislature is empowered to remove or impeach the executive both at the National and State level. This power of impeachment arguably makes the legislature the strongest of the three governmental institutions.

#### XXIV. RECOMMENDATIONS

Having examined this study meticulously, there is no doubt about the fact that the impeachment proceeding as provided under the 1999 constitution has been grossly misused by our legislators. As Yoruba people would say in their jurisprudence that 'asiwereenyannifiinasoriorule sun' meaning 'it is only a madman that leaves fire on his rooftop and goes into sleep'. In order to avert the imminent danger that may follow a further politicization of impeachment proceeding in Nigeria, the following recommendations will therefore be made accordingly.

- ✓ Firstly, considering the statistics of the impeachment on political office holders since the 1999 constitution came into force, it is glaringly clear that Deputy Governors have been the highest casualties. The reason for this is not far-fetched. The office of the Deputy Governor is an attachment to that of the Governor. Even though the 1999 constitution recognizes it, there are no clear-cut statutory roles for the occupant, he is merely put in office through the goodwill of his benevolent boss the Governor and when the Governor is tired, he may find a way to ease the Deputy out of office. No matter the Deputy Governor's disposition, he or she is essentially a weak patron in the Government house. Section.186 of the 1999 constitution provides for this office but does not give any power at all to the office. It is therefore recommended that there should be an amendment to the constitution to harmonize the relationship between the two offices and specific functions and roles should be assigned to the office of the Deputy Governor viz a viz that of the Vice President.
- ✓ Secondly, under the 1999 constitution impeachment offence is categorized as 'gross violation or breach of the provision of this constitution or a misconduct of such nature' as in the opinion of the National Assembly (or State House of Assembly) amounts to gross misconduct. This interpretation leaves much to be desired. It is highly subjective, this is because the legislative is given wider and blanket power to determine or interpret what a gross misconduct is. It is therefore suggested that there should be an amendment to the provision of S.188 (11) and S.143 (11) of the 1999 constitution in such a way that what

constitutes gross misconduct will be specific though not to be too narrow.

- ✓ Thirdly, agreed that the issue of god-fatherism cannot be totally eradicated in Africa as a whole and Nigeria to be specific, but there should be a limit to what they can and cannot do. They should not be all powerful dictators who enthrone and dethrone at will. As a matter of fact, where it can be proved that a godfather has unduly influenced the removal of a political office holder whether by offering of cash or making a promise of financial reward, such a godfather should be prosecuted for treason and by doing so, it will serve as deterrent to some of the corrupt godfathers who enthrone and dethrone political office holders at their whims and caprices. It is high time we started seeing god-fatherism as an evil and not as a virtue.
- ✓ Fourthly, it has been noticed that many of them go into politics not to serve the masses but to enlarge their private pockets. To them politics is a business venture and not an avenue to serve the electorate who elected them into office. It is therefore suggested that civil education should be introduced into our school curriculum at both primary and secondary school levels, where young men and women will be taught on how to imbibe the spirit of love and service to their fatherland.
- ✓ Fifthly, the level of poverty in Nigeria has attained an astronomical rate to the extent that many people are now practically dying of hunger. As a result of this, the instinct for survival in this country is gargantuan. By virtue of this, many politicians see their office as an avenue to amass wealth, not only for themselves but also for the tenth generation of their unborn children in order to save them from the pangs of poverty. Many politicians therefore see no evil in collecting 'ghana must go' bag filled with money in order to impeach a political office holder. It is therefore suggested that our government should be more serious in their 'fight' against poverty and corruption.
- ✓ Lastly, there have been a lot of debates on the need or otherwise of subsection 10 of both sections 143 and 188 of the 1999 constitution. Some have argued that it is against the principle of fair hearing and therefore repugnant to natural justice while others have supported its retention in our constitution on the premise that it gives impeachment proceeding a political flavor and that to

expunge it from our Grundrism would be to violate the principle of separation of power. However it is strongly recommended that there should be a constitutional review whereby this subsection would be totally expunged from our constitution. The reason for this is that in this part of the world, politics without bitterness could not be outrightly ruled out, it is not impossible that there might be actual errors, omission, forgery or injustice in the impeachment proceeding; either by the legislative or the panel and also the removal of this particular provision that oust the jurisdiction of the court will be in line with the principle of 'checks and balance' inherent in the doctrine of separation of power. This will in turn be a relief to any chief executive facing impeachment who may just be a victim of political circumstance.

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