

Protecting Vested Interests: The Constitutional Dodgeball of 'Impeachment' in Nigeria

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Abstract

To act as a check and in a bid to ensure accountability, the constitution has bestowed on the legislative arm of government the power to remove certain elected political officers from office before the expiration of their tenure. This article undertakes a thorough analysis of the removal provisions under the Nigerian Constitution with the aim of determining its adequacy or any shortcomings contained therein. While adopting qualitative research, this work employed the doctrinal methodology in undertaking an examination of the removal process employed in the United States of America and finding that there is a systemic abuse of the removal process in Nigeria, addressing the shortcomings found in the Nigerian removal process. The relevant case law was also examined to address the judicial attitude to removal proceedings, and necessary recommendations have been proffered to ensure that not only are loopholes plugged but to make certain that the process of removal of elected officers is not wantonly abused and, correspondingly, integrity maintained.

Keywords: Impeachment, Removal Proceedings, Ouster Clauses, Judiciary, Gross Misconduct.

1. INTRODUCTION

Since the inauguration of Nigeria's First Republic in 1963, constitutional provisions have existed for the removal of the president of the Federal Republic of Nigeria. Section 38 of the 1963 Constitution of the Federal Republic of Nigeria delineated the procedure to be followed for the removal of a president.¹

The removal provisions above have been consistently replicated in successive Nigerian Constitutions, even though these have been, with varying degrees of modification, aimed at aligning them with the evolving needs of the nation throughout its developmental stages. Furthermore, beyond the removal provisions concerning the president, subsequent constitutions have also incorporated removal procedures applicable to the Governor within the diverse states constituting the federation.²

Impeachment and the removal from office of highly placed political officeholders³ involve intricate procedures that have been deployed on several occasions by politicians to remove elected officers from political office in various jurisdictions.

The first record of the removal of a highly placed political office holder in Nigeria was carried out at the regional level when Sir Adesoji Aderemi, who was the Governor of the Western Region of Nigeria, removed Chief S. L. Akintola as Premier of the Western Region and appointed Alhaji D. S. Adegbenro in lieu. The removal was purportedly carried out in accordance with the provisions of the 1960 Constitution of the Western Region of Nigeria, which provided that the Governor of the Region could remove the Premier "if it appears to him that the Premier no longer commands the support of a majority of the House of Assembly."⁴ This removal resulted in a court battle between the parties, which was ultimately resolved by the Privy Council in favour of Alhaji Adegbenro.⁵ The first successful

¹ Section 38(1) & (2) of the Constitution of the Federal Republic of Nigeria 1963.

² Sections 132 and 170 of the Constitution of the Federal Republic of Nigeria 1979 and Sections 143 and 188 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

³ E.g. President, Vice-President, Governor, Deputy-Governor, etc.

⁴ Section 33(10) of the 1960 Constitution of Western Region of Nigeria.

⁵ Adegbenro v. Akintola (1963) A.N.L.R 305.

impeachment proceeding against an elected official under Nigeria's Federal Constitution,⁶ This resulted in the removal from office of the said official, which was carried out by the Kaduna State House of Assembly against the then Kaduna State Governor.⁷ in 1981.

There have been numerous attempts in Nigeria over the years, both successful and otherwise, to impeach and remove elected officials from their positions using the provisions provided under the extant constitution. This paper shall examine the legal and practical implications of the impeachment and removal of elected officials, address the *lacunae* in the relevant laws, and propose suggestions to promote a better constitutional and political working atmosphere in Nigeria.

This article is comprised of six parts. Starting with this introduction section, the second section delineates the distinction between removal and impeachment. The third section examines the legal and practical implications of impeachment and removal from political office in Nigeria. The fourth section addresses the problems identified with the removal provisions of the Nigerian constitution. The fifth section proffers solutions to deal with the issues identified in the previous section, and the final section concludes the article.

2. 'REMOVAL' VERSUS 'IMPEACHMENT': WHAT IS WHAT?

There is this oft-held misconception in Nigeria that the term 'impeachment' means the removal of a highly placed political office holder from his/her office. Indeed, one writer refers to impeachment under the Nigerian Constitution as

the removal of the President or the Vice President, Governor or Deputy Governor from office based on allegations of gross misconduct. It is the first and most important

⁶ This was carried out in the second republic in accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1979.

⁷ Alhaji Balarabe Musa.

step to be taken in the process of removing an elected public officer like the President or Vice President, Governor or Deputy Governor.⁸

This misconception lends credence to the notion that the term ‘impeachment’ has a different meaning in Nigeria compared to some other parts of the world. It is worthy of note that the Constitution of the Federal Republic of Nigeria⁹ Does not refer to the removal of the President or Vice-President and a Governor or deputy governor as an impeachment.¹⁰

The general and more widely accepted definition of impeachment toes the line proffered by Black’s Law Dictionary, which defines the term ‘impeachment’ as "The act (by a legislature) of calling for the removal from office of a public official, accomplished by presenting a written charge of the official’s alleged misconduct.”¹¹

The Constitution of the United States of America (USA) in Article II, Section 4 states that, “The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanours.”

Describing what an impeachment is (while referencing the procedure in the United States of America), the Legal Information Institute (LII) provides as follows –

Technically, impeachment is the Senate's quasi-criminal proceeding instituted to remove a public officer, not the actual act of removal. Most references to impeachment, however, encompass the entire process, beginning with the house's

⁸ O W C Duru, ‘Impeachment Under Nigerian Law: A Journey Through the Cases’ (Social Science Research Network (SSRN)). 3.

<https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2154695_code1874278.pdf?abstractid=2154695&mirid=1> accessed on 01/08/2023.

⁹ 1999 (as amended).

¹⁰ Sections 143 and 188, respectively, of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹¹ B A Garner, (Ed.), *Black’s Law Dictionary* (Ninth Edition), (USA: West, 2009). Pg. 820.

impeachment inquiry. By design, impeachment is a complex series of steps and procedures undertaken by the legislature.¹²

Indeed, it has been argued that "the removal of elected public officials in Nigeria under the 1999 Constitution has often been confused with the term impeachment."¹³ and further opined that when the term 'removal' is used to refer to the removal of an elected officer from office, it does not *strictly* mean an impeachment. Impeachment is the initial stage of a two-stage prescribed process that kickstarts the official procedure by the legislative arm of the government for the removal of an elected public official from office.¹⁴

According to Eze, "the term 'removal' when used in the context of removing an elected officer does not necessarily mean the same thing as impeachment. This is because impeachment is the first of two stages in a specific process of a legislative body aimed at removing a public official without that official's agreement."¹⁵

Considering the Black's Law Dictionary definition of the term 'impeachment', the Supreme Court of the Federal Republic of Nigeria, whilst adjudicating over the case of *Inakoju & Ors v. Adeleke & Ors*¹⁶ was of the opinion that the process of removal of political officeholders set out in section 188 of the Nigerian Constitution¹⁷ Did not tally with the impeachment definition provided. The Supreme Court stated as follows –

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 provision of section 188, and the section 188 procedure should simply be referred to as one for removal of Governor and Deputy Governor, not of impeachment.¹⁸

¹² Legal Information Institute (University of Cornell), 'LII Backgrounder on Impeachment' (University of Cornell) <<https://www.law.cornell.edu/background/impeach/impeach.htm>> accessed on 01/08/2023.

¹³ C Eze, 'A Critical Appraisal of the Procedure for the Impeachment of Elected Public Officers under the 1999 Nigerian Constitution' (2007) 1(2) Nnamdi Azikiwe University Law Journal. 112.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ (2007) 4 NWLR (Pt. 1025) 423.

¹⁷ Which deals with the removal of a governor or a deputy governor (and also, by extension, the removal of the president or vice-president as set out in Section 143 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) since the provisions of both sections are substantially similar).

¹⁸ *Inakoju v Adeleke* at 668.

From the foregoing, it is clear that when speaking in strict legal parlance, the term ‘impeachment’ is just one step taken during the two-pronged process for the removal of an elected official and not the act of removal itself. Furthermore, under Nigerian law, the courts have been unequivocal in stating that the removal of an elected official is not impeachment.

3. THE LEGAL AND PRACTICAL IMPLICATION OF IMPEACHMENT AND REMOVAL FROM POLITICAL OFFICE IN NIGERIA

The provisions of the relevant section of the Constitution of the Federal Republic of Nigeria 1999 (as amended)¹⁹ The details of the removal will be dissected and analysed in-depth below. When the provisions of section 143 of the Constitution are examined, four integral steps are decipherable, *viz.*,

- (a) **Notice and Reply**: A notice must be issued to the president of the Senate alleging gross misconduct, and this notice must be signed by one-third of the members of the National Assembly. Where a reply is made by the holder of the office accused of gross misconduct, such reply shall be served on every member of the National Assembly;²⁰
- (b) **Motion**: The Senate and the House of Representatives, which constitute the National Assembly, shall decide by motion of at least two-thirds majority of the members of each house whether the allegation contained in the motion should be investigated or otherwise;²¹
- (c) **Investigation by Panel**: Where both Houses of the National Assembly resolve by the aforementioned motion that the allegation in the notice should be investigated, a Panel shall be appointed by the Chief Justice of Nigeria within seven days of the passing of

¹⁹ Section 143. The discussion of this section of the Constitution and the opinions proffered thereon also apply to Section 188 of the Constitution, which deals with the removal from office of a Governor or deputy governor of a State, as both provisions are similar and only differ in the type of office being held and the geographical spread.

²⁰ The notice must be served on the members of the National Assembly within seven days of receipt by the president of the Senate. However, no timeframe has been prescribed by the constitution for the holder of the office accused of gross misconduct to reply. See Section 143(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

²¹ Section 143(3) & (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

the motion by the National Assembly to investigate the alleged gross misconduct²²
The holder of the office accused of the gross misconduct shall be allowed to defend himself before the panel either personally or through any qualified legal practitioners of his choice;²³

- (d) **Result/Outcome**: Once validly constituted/appointed, the panel has a maximum of three (3) months within which to report its findings to both the Senate and the House of Representatives. Where the allegation of gross misconduct is found not to have been proven by the panel, that would be the end of the matter after it submits its report to both Houses of the National Assembly.²⁴ However, where the panel finds that the allegation has been proven and submits a report to both Houses of the National Assembly stating this, each House of the National Assembly shall consider the report and decide by resolution whether to adopt the report of the panel. The Report of the Panel will only stand adopted if it is supported by at least a two-thirds majority of the members of each House of the National Assembly and where the report is so adopted, the holder of the office who is the subject of the process shall stop holding the office and stand removed from the date of the adoption of the report.²⁵

As detailed as the removal provisions of section 143 of the Constitution might seem, numerous issues are left out, which can be considered loopholes. These will be addressed in-depth subsequently.

The provisions of sections 143 and 188 of the Constitution of the Federal Republic of Nigeria 1999 and the Implications of Impeachment and Removal²⁶

The vesting of the power of removal of an executive holder of an office in the legislative arm of government is a means of checks and balances against the executive arm of government, both at the Federal level and at the State level. The framers of the constitution appreciated the

²² This shall be done upon the request of the president of the Senate and the Chief Justice of Nigeria. Section 143(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

²³ *Ibid.*, s.143(6)

²⁴ *Ibid.* s. 143(8).

²⁵ *Ibid.* s.143(9).

²⁶ These also apply to Section 188 of the Constitution as conducted at the state level with the procedures prescribed therein.

fact that the holder of the highest office in the land (and his/her deputy (vice-president)) would wield enormous power and thus must be checked so as not to abuse the office and powers bestowed to such office and thereby denigrate the most exalted position/office in the land.

The foregoing notwithstanding, it was decided that the process of removing a president or vice-president was not to be taken lightly and in itself should be prevented from abuse or being undertaken frivolously by the legislative arm of government.

In the United States of America, the legislature only triggers the impeachment of a president in very rare instances.²⁷ A clear instance of this in the United States of America was the trial and removal proceedings of President Andrew Johnson by the Senate.²⁸ after he had been impeached by the House of Representatives²⁹ On the grounds that he violated the Tenure of Office Act. During the trial and proceedings, Republican Senator William Pitt Fessenden from Maine voted against the conviction of President Johnson, who was a Democrat. Emphatic in his position to oppose the conviction of President Johnson, Senator Fessenden passionately set forth his views as follows –

To depose the constitutional Chief Magistrate of a great Nation, elected by the people, on grounds so slight would, in my judgment, be an abuse of the power conferred upon the Senate, which could not be justified to the country or the world. To construe such an act as a high distant misdemeanour, within the meaning of the constitution, would, when passions of the hour have had time to cool, be looked upon with wonder, if not with derision.³⁰

²⁷ S L Bloch, 'Assessing the Impeachment of President Bill Clinton from a Post 9/11 Perspective' (2012) in *The Clinton Presidency and the Constitutional System* (Rosanna Perotti, (Ed.), (College Station, Tex.: Texas A&M University Press, 2012). 190-220. It can also be found online at *Georgetown Law Faculty Publications and Other Works*. 1121.

<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=https://www.google.co.uk/&httpsredir=1&article=1000&context=fwps_papers> accessed 16/08/2023.

²⁸ Using powers granted under Article I Section 3 Clause 6 of the Constitution of the United States of America.

²⁹ Using powers granted under Article I Section 2 Clause 5 of the Constitution of the United States of America.

³⁰ Trial of Andrew Johnson, President of the United States, Before the Senate of the United States, on impeachment by the House of Representatives for High Crimes and Misdemeanors (1868) 22; W.H. Rehnquist, 'Grand Inquests: The Historic Impeachments of Samuel Chase and President Andrew Johnson' (1992) at 241. Also cited in Bloch, S.L. 'Assessing the Impeachment of President Bill Clinton from a Post 9/11 Perspective' (2012) in *The Clinton Presidency and the Constitutional System* (Rosanna Perotti, ed., College Station, Tex.:

Indeed, so strongly is the legal opinion that the power to impeach and remove a president is a solemn act which must only be utilised when absolutely necessary that during the period of impeachment proceedings of the 42nd president³¹ of the United States of America was being deliberated upon, a group of 430 US law professors released a jointly signed letter to the Speaker of the US Congress House of Representatives³² In which they unequivocally stated –

The house's power to impeach, like a prosecutor's power to indict, is discretionary. *This power must be exercised not for partisan advantage* [³³], 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.³⁴

The seriousness with which the removal of a highly placed elected political official must be carried out is also applicable in Nigeria. According to Professor Ben Nwabueze –

The procedure for the removal of the president or vice-president by impeachment has been made extremely rigid in order to emphasise the gravity of the matter and to discourage a handful of disaffected members from embarking upon it for frivolous or purely partisan reasons.³⁵

4. THE PROBLEMS WITH SECTIONS 143 AND 188 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

The gravity of the legislature's actions and the implications of the impeachment and removal of highly placed elected officials notwithstanding, the Fourth Republic has seen a rash spate of removal proceedings initiated, especially at the state level in Nigeria. Cases that came

Texas A&M University Press 2012) 190-220. It can be found online at *Georgetown Law Faculty Publications and Other Works*. 1121 <<https://scholarship.law.georgetown.edu/facpub/1121>> accessed 16/08/2023.

³¹ William Jefferson Clinton.

³² Then Newt Gingrich.

³³ Emphasis supplied.

³⁴ Congressional Record (House of Representatives), 'Should President Clinton be Impeached?' (Proceedings and Debates of the US Congress) (06 October 1998) <<https://www.congress.gov/congressional-record/1998/10/6/house-section/article/H9649-3>> accessed 21/08/2023.

³⁵ B O Nwabueze, *Presidential Constitution of Nigeria* (London: C. Hurst & Company in association with Nwamife Publishers, 1982) 142.

before the courts include *Abaribe v. Speaker of Abia State House of Assembly*,³⁶ wherein some members of the state assembly attempted to remove the deputy governor of Abia State from office; *Dapialong v. Dariye*,³⁷ which involved removal proceedings for the Governor of Plateau State, *Danladi v. Dangiri*,³⁸ involving the removal of the deputy governor of Taraba State from office and *Inakoju v. Adeleke*.³⁹ There were also reports of removal proceedings of elected officials in Imo and Benue States in 2018 and Ondo State in 2020.⁴⁰

So often we're such actions and proceedings undertaken with seeming levity and selfish agendas to further party interest that judicial notice was taken of the trend, and this prompted Niki Tobi, JSC., in the case of *Inakoju & Ors v. Adeleke & Ors*,⁴¹ to state as follows –

The plethora of removal proceedings with respect to governors is not only frightening but also 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 conflict, like the way the Englishman sips his coffee on his breakfast table.

In addition to the foregoing, Galadima, JSC in *Danladi v. Dangiri*, raised the issue of the rash of impeachment proceedings undertaken by state assemblies and the disingenuous manner the constitutional power of removal bestowed on the legislative arm of government is wielded. He stated –

This appeal has once again brought to the fore the frequent impeachment of elected politicians we have witnessed in recent times. As serious as the matter is, the legislators have found a veritable weapon to exit the faces of those they don't like. It

³⁶ (2002) 14 NWLR (Pt. 788) 466.

³⁷ (2007) 8 NWLR (Pt. 1036) 332.

³⁸ (2015) 2 NWLR (Pt. 1442) 124.

³⁹ (2007) 4 NWLR (Pt. 1025) 423

⁴⁰ Afe Babalola, 'Impeachment: Genuine or Mischievous' (12 August 2020) *Vanguard* <<https://www.vanguardngr.com/2020/08/impeachment-genuine-or-mischievous/>> accessed 02/02/2024.

⁴¹ *Supra* at 634.

should not be so. The process of impeachment must be strictly and duly observed so as not to thwart the will of the electorate freely expressed at the polls.⁴²

Emphasising the importance and severity of impeachment, Ngwuta, JSC, also stated in *Danladi v. Dangiri* –

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 electorate as expressed at the polls. It has implications for the impeached as well as the electorate who bestowed the mandate on him. Whether it takes one day or the three months prescribed by law, the rules of due process must be strictly followed. If the matter is left at the whims and caprices of politicians and their panels, a state or even the entire country could be reduced to the status of a Banana Republic. The procedure for impeachment and removal must be guarded jealously by the courts.⁴³

From the issues raised above, it is clear that the removal powers vested in the legislatures by the constitution are open to easy abuse by legislators and have been utilised by various factions for reasons other than they were genuinely designed for. Set out hereunder are problems that sections 143 and 188 of the Constitution of the Federal Republic of Nigeria throw up.

- (a) The first issue with the removal provisions of the constitution, as set out under sections 143 and 188, has to do with the scope of powers given to the legislative arm of government. By virtue of sections 143(2)(b) and 188(2)(2) read in conjunction with sections 143(11) and 188(11), respectively, it can be gleaned that the constitution has inadvertently given the legislative arm of government carte blanche to level accusations against requisite members of the executive arm under the nomenclature “Gross Misconduct”. A read of sections 143(11) and 188(11) shows that "Gross Misconduct" means a grave violation or breach of the provisions of the Constitution “*or a misconduct of such nature as amounts in the opinion of the National Assembly*

⁴² Page 170, paras. G-H.

⁴³ Pages 168-169, paras. H-B.

to gross misconduct.”⁴⁴ Thus, while it will be easier to ascertain if there has been a grave breach or violation of the provisions of the constitution, leaving the legislators to pick and choose what, in their opinion, amounts to gross misconduct leaves the phrase open up to indiscriminate use and, indeed, abuse.

The plethora of removal proceedings⁴⁵ That has characterised the fourth republic mostly has their trigger in the legislature's utilisation of the gross misconduct card based on their respective opinions and the observations of the courts in the cases of *Danladi v. Dangiri* and *Inakoju v. Adeleke* about the proliferation of removal proceedings show that the Constitutional provisions on the removal of the selected class of executive holders have not been utilised with the seriousness, solemnity and reverence they were reserved for.

- (b) Sections 143(2) and 188(2) of the Constitution stipulate that the president of the Senate or Speaker of a state House of Assembly shall ensure that a copy of the notice of allegation of gross misconduct.⁴⁶ Any statement of reply is served on each member of the National Assembly or House of Assembly, respectively. Also, sections 143(5) and 188(5) mandate the president of the Senate or Speaker of a state House of Assembly to request the Chief Justice of Nigeria or Chief Judge of a state, respectively, to appoint a Panel of Seven (7) persons to investigate the allegation within seven (7) days of the motion being passed to investigate the allegation(s) in the notice.

The issues that arise with these provisions are the requirements that the Senate President or Speaker of the House of Assembly ensure service of notice and reply on the one hand and request the Chief Justice/Judge to appoint a panel to investigate the allegation(s). These duties imposed on the Senate President and Speaker are of import because they trigger the removal proceedings process. However, what happens if the Senate President or Speaker of the state House of Assembly refuses or fails to have the notice served on the members of the National Assembly or House of Assembly or

⁴⁴ Or House of Assembly of a State.

⁴⁵ Some of which have been referred to above.

⁴⁶ Within seven days of receiving same.

indeed fails/refuses to ask the Chief Justice/judge to appoint a panel? There are no provisions in the constitution for these issues, and indeed, in the case of *Inakoju v. Adeleke*, the Speaker of the Oyo State House of Assembly did not ensure service of the notice nor request the Chief judge of the state to appoint a panel. However, this was because a number of disgruntled members of the State Assembly decided to publish the notice through a newspaper and requested that the Chief Judge set up a panel, which was done and resulted in the attempted removal of the Governor of the state. In this case, the spirit and letter of the removal provisions of the constitution were not duly followed.

- (c) The next issue also relates to sections 143(5) and 188(5). Problems can arise from the requirement of the Chief Justice/Judge to appoint a panel. What happens if the Chief Justice/Judge fails, refuses or neglects to appoint a panel or is even coerced not to appoint a panel? Furthermore, the requirement that the Chief Justice/Judge appoints a panel based on his opinion is highly subjective. The provisions do not set out any objective yardsticks for the qualification or integrity of the panel members to be appointed.
- (d) There is also the problem of time stipulations contained in various sub-sections of sections 143 and 188. What is the effect of a failure to act within the stipulated timeframe set out in those provisions? Does any failure as to time invalidate the removal proceedings?
- (e) Furthermore, no distinct procedures have been set in place under sections 143 and 188 of the constitution with regard to the operation of the panel. Both provisions simply provide that the panel shall have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National/State Assembly. This is highly subjective and leaves a lot of room for the national and state assemblies to manipulate the process.
- (f) Both sections 143(10) and 188(10) oust the courts from exercising jurisdiction over any matter relating to the removal proceedings or outcome of the National Assembly

or panel. The courts have faithfully adhered to this provision over the years.⁴⁷ But there has been a rise in the proliferation of removal proceedings by legislators who clearly abuse and misapply the Constitutional provisions for a myriad of unconstitutional reasons.

5. TACKLING THE ISSUES WITH THE CONSTITUTIONAL PROVISIONS ON THE REMOVAL OF ELECTED OFFICIALS

Having identified pertinent issues in relation to the removal provisions contained in sections 143 and 188 of the constitution, there are possible ways to reduce or eliminate the abuse of the said provisions.

- (a) The scope of powers given to legislators in determining what constitutes ‘Gross Misconduct’ out of the definition provided by the constitution needs to be addressed. The open-ended gift of allowing legislators to pick and choose whatever they want to be gross misconduct is one that is not only highly subjective but also open to abuse. As has been shown above, this non-specific and non-restrictive mandate for the use of gross negligence has given the legislators carte blanche for initiating removal proceedings. Sections 143(11) and 188(11) of the constitution need to be amended to ensure that legislators' powers of removal are utilised honestly. In this regard, the USA approach can shine a light on the road to be taken. Under the Constitution of the USA, "The President, Vice President and all Civil Officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanours."⁴⁸ When deliberating on what actions and behaviour would be grounds for impeachment, the framers of the US Constitution decided against terms that were considered vague and specified treason and bribery as two definite actions. They went further to borrow "High Crimes and Misdemeanours" from the British legal system.⁴⁹ From this, it is clear that the American legislators are

⁴⁷ Balarabe Musa v Kaduna State House of Assembly (1983) ISC NLR: R 94 and Abaribe v Abia State House of Assembly (2002) 14 NWLR (PT 788) 466 are cases that show the courts declining jurisdiction in cases instituted with regards to removal proceedings.

⁴⁸ Article II, Section 4 of the Constitution of the United States of America.

⁴⁹ United States House of Representatives, ‘Impeachment’ *History, Art & Archives* <<https://history.house.gov/Institution/Origins-Development/Impeachment/>> accessed 02/02/2024.

not left to come up with any slight as a ground for impeachment but must work within the narrow and strict confines of the grounds provided within the ambit of the law. Nigeria will benefit from a streamlining of actions and behaviour that will form the grounds of gross misconduct or be the basis of removal proceedings of an elected official.

(b) The constitution does not provide what should happen if the provisions of sections 143(2), 143(5), 188(2) and 188(5) of the constitution are not complied with. In *Inakoju v. Adeleke*, the legislators seeking to remove the Governor chose to advertise the notice of allegation instead of duly following the Constitutional service provisions as the Speaker of the Oyo State House of Assembly was in support of the Governor whom they sought to remove. Checks and balances have to be put in place to ensure that the Senate President or Speaker of the State Assembly complies and acts with the provisions of the constitution. This can be done in a number of ways, *viz*:

- (i) The first method that can be adopted is to amend the constitution to provide for a procedure to be adopted where the Clerk of the National/State Assembly (or other appropriate designated officer) serves the notice of allegation as prescribed where the Senate President or Speaker of the State Assembly fails to do so within the stipulated timeframe and be charged with requesting the Chief Justice/Judge to set up a panel if/when President or Speaker of the State Assembly fails to do so within the stipulated timeframe.
- (ii) The second method that can be adopted is to amend the constitution to provide for a procedure to be adopted where the members who signed the notice of allegation select a designated representative who will be charged with the service of the notice of allegation as prescribed where the Senate President or Speaker of the State Assembly fails to do so within the stipulated timeframe and who will also request the Chief Justice/Judge to set up a panel if/when President or Speaker of the State Assembly fails to do so within the stipulated timeframe.

In both instances provided above, the rights and powers of the Senate President or Speaker of the State Assembly to act should expire and terminate if they fail to act

within the timeframe as prescribed under the constitution, and the next phase, as set out above, is triggered.

- (c) With regards to the obligation of the Chief Justice/Judge appointing a panel to investigate, it is recommended that where the Chief Justice/Judge fails to do so, the Nigerian Bar Association (which is a body set up and recognised by statute) is empowered and mandated to so act to appoint the panel. The National Judicial Commission (NJC) or State Judicial Commission would have been the preferred alternative. However, these are headed and heavily influenced by the Chief Justice or Chief Judge at the Federal and State levels, respectively. Similar to the previous suggestion, the rights and powers of the Chief Justice/Judge to act should expire and terminate if they fail to act within the timeframe prescribed under the constitution, and the next phase, as set out above, is triggered.

Furthermore, vesting the powers of appointment of the panel of persons based on the opinion of the Chief Justice/Judge opens up the appointment process to personal bias and manipulation. There should be set rules or yardsticks for such appointments.⁵⁰ It is important that the persons so appointed be professionals of unimpeachable integrity who understand the issues at stake, and it is suggested that the Chief Justice/Judge be mandated to consult with and appoint the panel from professional bodies (or with institutions) like the Nigerian Bar Association (NBA), the Association of National Accountants of Nigeria (ANAN)/the Institute of Chartered Accountants of Nigeria (ICAN), The Chartered Institute of Bankers of Nigeria (CIBN), the National Human Rights Commission, the appropriate Ministry of Justice, the office of the Accountant-General, High ranking police officers (past or present) not below the rank of Commissioner of Police, the appropriate Ministry of Finance and Judges/Justices (present or retired).⁵¹ Laying firm guidelines for the calibre and professional

⁵⁰ This could be done by amending the constitution or adopting firm rules of procedure for removal proceedings by the National Assembly or House of Assembly of a State.

⁵¹ The bodies or establishments to be consulted in making up the composition of the panel can vary but must be determined by the nature of the allegation for which removal of the elected official is sought. For example, an allegation of rape/sexual abuse might involve the appointment of a police officer, legal practitioner, judge, Human Rights Commission etc., but won't involve an accountant, banker or finance ministry. Likewise, an allegation bordering on corruption/financial misappropriation or theft might involve the appointment of a police officer, legal practitioner, judge, accountant, finance ministry, etc., but will not involve the Human Rights Commission. In all cases, the NBA, the appropriate Ministry of Justice and Judges/Justices should be consulted and/or appointed

qualifications of persons who could be appointed to the panel as set out under sections 143(5) and 188(5) of the constitution, ensures that the process is handled by people who have a good grasp and understanding of the allegation and the issues at stake.

- (d) The next issue to be dealt with is with regard to the time stipulations set out under sections 143 and 188 of the constitution. What happens where there is non-compliance with the (i) The first time stipulation is found under sections 143(2) and 188(2) of the constitution wherein the president of the Senate/Speaker of the State House of Assembly is required to ensure the service of the notice of allegation on the holder of the office and on each member of the National Assembly/ State Assembly **within seven (7) days of the receipt of the notice.** (ii) The second time stipulation is set out under sections 143(3) and 188(3), which mandate that each house of the National Assembly or the State Assembly must resolve by resolution **within fourteen (14) days of the presentation of the notice** to the Senate President or Speaker of the State House of Assembly if the allegation should be investigated. (iii) The third time stipulation is found under sections 143(5) and 188(5) of the constitution and provides that the Chief Justice/Judge has to appoint a panel to investigate the allegation within **seven (7) days of the passing of a motion.** (iv) Another stipulation of time can be found within the provisions of sections 143(9) and 188(9), which mandate that **within fourteen (14) days of receipt of the report,** there should be consideration of the report of the panel by the National/State Assembly where the allegation the panel investigated has been proved. (v) The final time stipulation provision can be found in sections 143(7)(b) and 188(7)(b) and mandates that the panel must report its findings to each house of the National Assembly or State House of Assembly respectively within three (3) months of its appointment. This final time stipulation is arguably the most important of them all and has been expressly referred to by the Supreme Court of Nigeria. In *Danladi v Dangiri*,⁵² The court made reference to the fact that the panel has three (3) months to conduct its investigation.⁵³

to the panel as the process involves an investigation and quasi-trial, which have to deal with fair hearing and the taking/calling of evidence.

⁵² Supra.

⁵³ Per Onnoghen, JSC, at 170.

With regards to the time stipulations addressed in (i) and (iii) above, which deal with sections 143(2) & (5) and 188(2) & (5), these can be taken care of with the recommendations made in (b)(i) & (b)(ii) above.

On the issue of the second time stipulation set out under sections 143(3) and 188(3), it is suggested that where the houses of the National Assembly or State Assembly fail to resolve whether or not the allegation should be investigated within fourteen (14) days as mandated by the constitution, the notice of allegation should abate as the provisions of the constitution have not been complied with. The same should apply to any non-compliance with the timeframe provisions of sections 143(9) and 188(9).

Though there have not been any express judicial decisions with regard to the validity of the investigation of a panel that operates past the three-month deadline set out in sections 143(7)(b) and 188(7)(b), it is reasonable to infer and suggest that (like in election petition cases) non-compliance with regards to concluding the investigation within the three (3) months frame given under the constitution should be fatal to any decision reached by such panel and should result in the setting aside of any such decision that might emanate out of the stipulated time frame and indeed invalidate the entire proceedings.

- (e) It is recommended that the National Assembly and State Assemblies come up with set objective rules of procedures and guidelines to be adopted during removal proceedings as set out under sections 143 and 188 of the constitution. This will reduce and/or eliminate any abuse or incidences of prescribing subjective procedures to further or protect individual/party interests. In the United States of America, there is the "Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials", which is adopted by the Senate when sitting in trial over impeachment cases. These rules are firm, and everyone is aware of the rules and procedures applicable, thus eliminating doubt and truncating the utilisation of any subjective procedures that are not provided expressly in the rules.
- (f) With regard to the ouster clause under sections 143(10) and 188(10), it is clear that the constitution was unequivocal about prohibiting the courts from looking into or

entertaining any matter regarding the proceedings or decision of the panel or National/State Assembly with regards to removal proceedings of designated elected officers.⁵⁴ As has been stated previously, the courts faithfully adhered to this provision and declined jurisdiction when matters involving removal proceedings were instituted before them. The courts declined jurisdiction in the cases of *Balarabe Musa v Kaduna State House of Assembly and Abaribe v Abia State House of Assembly*, citing the ouster clauses in the relevant provisions of the constitution for declining jurisdiction.

Whilst it is imperative that the revered doctrine of separation of powers is upheld and the independence of each arm of government is protected, the safety net of checks and balances is one that has been Constitutionally recognised the world over and is necessary to ensure that every arm of government does not become a law unto itself and can be held accountable for its actions.

The prohibition of the courts by sections 143(10) and 188(10) of the constitution from looking into any matter regarding removal proceedings will not be the subject of comments or scrutiny in a mature democracy in which the rule of law reigns supreme. Unfortunately, what has emerged in Nigeria, especially in the fourth republic, is a system in which political actors trigger and use the removal procedure set out in the constitution for personal or nefarious reasons and often circumvent the provisions of the very constitution that bequeaths on them the powers of oversight via removal of specified elected officers for acts amounting to gross misconduct. Niki Tobi, JSC, in the case of *Inakoju & Ors v. Adeleke & Ors*,⁵⁵ Commented on the frequency of legislators' removal proceedings. He said, "The plethora of removal proceedings in respect of Governors is not only frightening but also capable of affecting the stability of Nigeria." A similar observation was made in the case of *Danladi v. Dangiri*, wherein Galadima, JSC, stated, "This appeal has once again brought to the fore the frequent impeachment of elected politicians we have witnessed in recent times. As

⁵⁴ That is the President, the Vice-President, Governors and Deputy-Governors.

⁵⁵ *Supra* at 634.

serious as the matter is, the legislators have found a veritable weapon to exit the faces of those they don't like. It should not be so."⁵⁶

The abuse of the removal proceedings provision by legislators proved crucial for the courts, as the Supreme Court decided that it was time to stop the wanton desecration of the constitution. In *Inakoju & Ors v. Adeleke & Ors*, the Supreme Court addressed the issue of the provisions of section 188 of the Constitution and its ousting of the jurisdiction of the courts –

The entire section 188 sub-sections 1-11 must be read together. 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 favour of the House of Assembly.⁵⁷

Also, in *Dapialong v. Dariye*,⁵⁸ the Supreme Court was unequivocal in its stance on the ouster of courts in matters of removal proceedings. It stated –

It is true that section 188(10) of the 1999 Constitution ousts the jurisdiction of the courts in respect of the impeachment of a Governor or Deputy Governor, but that must be subject to the rule that the legislature or the House of Assembly complied with all the Constitutional requirements in section 188 needed for the impeachment as the courts have jurisdiction to determine whether the said Constitutional requirements have been strictly complied with or not.⁵⁹

In addition, the Supreme Court in another case⁶⁰ stated –

⁵⁶ *Supra* at 170, paras. G-H.

⁵⁷ *Supra* at 697-698.

⁵⁸ (2007) 8 NWLR (Pt. 1036) 332.

⁵⁹ *Supra* at

⁶⁰ *Danladi v. Dangiri* (*Supra*)

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 electorate as expressed at the polls. It has implications for the impeached as well as the electorate who bestowed the mandate on him. Whether it takes one day or the three months prescribed by law, the rules of due process must be strictly followed. If the matter is left at the whims and caprices of politicians and their panels, a State or even the entire country could be reduced to the status of a banana republic. The procedure for impeachment and removal must be guarded jealously by the courts.⁶¹

From the foregoing, it is clear that the apex court has taken the firm stance that whilst the judiciary is willing to abide by the ouster clauses set out in sections 143(10) and 188(10) of the constitution, it will only decline to entertain the matter where legislators abide with the relevant provisions of the constitution regarding the removal of elected officers.

Whilst many might hold the view that the Supreme Court has adopted a position that is at polar opposites with the express mandate of the constitution and thus is violating the constitution instead of upholding it, it can be validly argued that in addition to the letter of the constitution, the spirit of the constitution as envisaged by its framers is upheld. It does not stand to any logical reason that any person or authority should be able or allowed to ride roughshod over the express provisions of the constitution and then seek to find sanctuary under an ouster clause when they have failed to comply with the other mandatory provisions of the same section of the Constitution.

By entertaining suits regarding removal proceedings, the Supreme Court has engaged in judicial activism, and it is submitted that the actions of the Supreme Court are necessary to protect Nigeria's nascent democracy and prevent the country from degenerating into chaos. Moreover, by virtue of section 6(6)(a) of the constitution, the judicial powers vested in the courts shall extend, notwithstanding anything to the contrary in the constitution, to all inherent powers and sanctions of a court of law. This might be the

⁶¹ Per Ngwuta, JSC, at 168-164, paras. H-B.

Constitutional *imprimatur* for the courts to seize control of what was degenerating into a free-for-all abuse of Constitutional processes.

It is proposed that the courts continue to act as mindful watchdogs and protect the constitution until the nation matures enough to be able to handle the responsibilities, duties and obligations our legislators are charged with.

6. CONCLUSION

This paper has navigated the provisions of removal proceedings set out under the Constitution of the Federal Republic of Nigeria (as amended) and has found that the constitutional provisions are inadequate to protect the mandate of the electorate, are open, and have often been subjected to abuse by politicians. It also found that the removal provisions are not robust enough to ensure the requisite separation of powers is maintained between the legislative and executive arms of government without the legislative arm overreaching its powers to check the executive. The shortcomings identified also include issues relating to the time stipulation provisions, service requirements and ouster clauses, amongst other knotty problems.

In order to better understand the removal process, the procedure adopted in the United States of America was looked at, and numerous caselaws were analysed and utilised in buttressing arguments made. Finally, workable recommendations were put forward to address the problems with the removal provisions under the constitution to ensure that removal proceedings are handled with the seriousness they deserve and to safeguard the constitution from abuse.