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## **Impeachment and Impunity under the Nigerian Constitution: A Case Study of Adamawa State**

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### **Abstract**

The spate of impeachment in recent times in Nigeria had been a cause for worry and a serious threat to our nascent democracy. This paper examined the impeachment process provided under the 1999 Constitution of the Federal Republic of Nigeria as amended with particular reference to Adamawa State. It critically identifies the flaws in the impeachment procedure adopted by some State Houses of Assembly in exercise of their power of impeachment under the constitution. The doctrinal method of research was adopted in this paper. It was found that the impeachment of the governor of Adamawa State in 2014 was irregular and highly political rather than borne out of the commission of any impeachable offence. The constitution did not adequately define an impeachable offence, which has played into the hands of unruly Houses of Assembly to interpret any action of the governor as impeachable. This unfortunate gap has however been repeatedly cautioned by the Supreme Court, which eventually declared the action of the Adamawa House of Assembly unconstitutional, null, void and of no effect. The paper recommended the involvement of the electorate in the impeachment process of the governor or deputy governor by way of referendum as this would reduce incidence of litigation in the whole exercise.

**Keynotes:** Impeachment; removal; house of assembly; governor, constitution.

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### **1. Introduction**

The 1999 Constitution of the Federal Republic of Nigeria as amended came into force in 1999 with the inauguration of the 4th Republic. Ever since the coming into power of the 4th Republic, democracy has been stable; there has been no military intervention or civilian revolution to terminate the government. In other words, the Nigerian government has not witnessed an untoward take-over till date. To that extent, one can rightly conclude that Nigeria has witnessed twenty seven years of unbroken civilian rule or democracy. Further still, the Federal Government of Nigeria at the centre has not witnessed the removal of its President or Vice President by use of force or impeachment. Unfortunately, this is not the case in the thirty six states of the Federation where some of the State Governors and Deputy Governors have been removed from office before the expiration of their tenures with the instrumentality of impeachment between 1999 to date. In all, about six Governors

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and Deputy Governors have been removed from office. In two states, the Federal government declared a State of emergency and appointed Sole administrators to administer the states for sometimes in line with Section 305 of the Constitution. It is pertinent to state that the objective of this paper includes but is not limited to identifying the flaws and impunity with which members of some State Houses of Assembly adopt in impeaching the Governors

## 2. Conceptual Clarification

### 2.1 Impeachment

Impeachment is the process by which charges are brought against government official, which can result in his removal from office.<sup>1</sup> It is the equivalent of 'indictment' in criminal law. It does not mean that the impeached official is guilty but that a mere *prima facie* case has been made which exposes the office to trial to determine the guilt or "otherwise of the officer".<sup>2</sup> The word 'impeach' is derived from middle English 'empecha' meaning to 'impede' or 'accuse' and the Latin word 'Impedicare' which means to 'entangle' or put in "fetters".<sup>3</sup> Therefore, impeachment means the act by which a public official who is accused of any crime is arraigned with the sole purpose of proving or disproving the alleged crime and subsequently ordering the removal of such official if the alleged crime is proved. Impeachment is not an end itself but a means to an end. According to Ozekhome:

The word impeachment connotes the practice and procedure by which political elected persons are constitutionally removed from office by the legislature before the expiration of the tenure of office of such person.<sup>4</sup>

For Ogunsakin, impeachment means "to accuse a public officer or politician of committing a serious crime especially against the state".<sup>5</sup> In the Nigerian context, impeachment is used interchangeable with the word 'removal', but this is not necessarily true in other jurisdictions. Indeed, impeachment is not removal but a step towards removal. That is why in USA, an official who is found guilty of impeachment is not removed from office until he is tried and found guilty of the offence he is accused of before he will be finally removed. A good recent example is the case of President Donald Trump of America who was found guilty for impeachment by the House of Representative but survived the removal "at the Senate".<sup>6</sup> The word 'impeachment' is only used in section 146 and section 191 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as referring to the Vice President or Deputy Governor assuming the office of the President or Governor when such officer vacates office by reason of death, resignation, impeachment, permanent incapacity or removal. Impeachment is never used in section 143 and section 188 relating to the proper procedures copiously stated for the removal from office of the

<sup>1</sup> Alan Hirsh, *A Citizen's Guide of Impeachment*, (Writers Publishing Cooperative, 1998) 23.

<sup>2</sup> M.A. Krasner, et al., *American Government Structure and Process* (Macmillan Publishing Co. Inc. New York 1977) 57-58; Dan Plesch, 'There is always Impeachment', *The Guardian Newspaper*, January 28, 2004; P.C. Bobbitt, 'Impeachment: A Handbook', *The Yale Law Journal Forum*, November 26, 2018, 518, 528, available at: [https://yalelawjournal.org/pdf/Bobbitt\\_hj11z3um.pdf](https://yalelawjournal.org/pdf/Bobbitt_hj11z3um.pdf).

<sup>3</sup> Andy Hollandbeck, 'In a Word: Our Impeachment Error', *The Saturday Evening Post*, November 14, 2019, available at: <https://www.saturdayeveningpost.com/2019/11/in-a-word-our-impeachment-error/>.

<sup>4</sup> M. Ozekhome, 'The Impeachment Process in the Third Arm of Government', in O.A.Oyinlove (ed.) *Roles of Legislature in Impeachment Proceeding under the 1979 Constitution*, 12, cited in C.C. Igwlarification and Historical Foundation of the Roles of Judiciary in Promoting Democratic Governance in Nigeria', (2025) 13(2) *Global Journal of Politics and Law Research*, 129.

<sup>5</sup> J. Ogunsakin, 'Evaluation of Impeachment Proceedings under the Constitution of the Federal Republic of Nigeria 1999', (2015) 34 *Journal of Law, Policy and Globalization*, 131.

<sup>6</sup> J.D. Rattey, 'Impartial Justice: Restoring Integrity to Impeachment Trials', (2021) 49 *Pepp. L. Rev.* 123.

President, Vice President, Governor and Deputy Governor in the Constitution of the Federal Republic of Nigeria.

The Supreme Court distinguished the concept of removal from office and impeachment in Nigeria in the case of *Inaikoju and Ors v. Adeleke and Ors*<sup>7</sup> where the apex court held:-

The word 'impeachment' is used freely and indiscriminately by the parties. The two courts below also used the expression freely, though not indiscriminately. Where do they get the word in section 183 of the Constitution, I ask? It is clear from the section I have stated above that there is no such word in the section. And so I ask once again, where do all counsel and the courts get the word?... Section 188 is not so worded. The section covers both civil and criminal conducts. Therefore, the word should simply be referred to as one for removal of Governor, not impeachment, not to be used as substitute for the removal provision of section 188 and section 188 procedure should simply be referred to as one for removal of Governor not impeachment.

The above decision clearly showed that the word impeachment is not to be used interchangeably with removal from office because they mean different things. The same interpretation applies to section 143 for the removal of the President and Vice President. Therefore, the word impeachment should not be confused with removal from office under the Nigeria Constitution since they are not one and the same thing. Lending his voice, Jide Ogunsakin, stated,

While they are frequently used interchangeably in academic commentaries and legal publications, 'impeachment' and 'removal' are not exactly the same; the word impeachment should not be used as a substitute for the removal provision of section 188. We shall call a spade its correct name spade not machete because it is not one.

Accordingly, impeachment should not be seen as synonymous with removal from office. It is only a process or step by which a public officer is removed from office. In Nigeria therefore, impeachment is the act, process or steps taken by the legislature in removing a public official from office but the actual removal is made when the legislative house has secured a two-third majority of votes cast on the floor of the house after the public officer has been found guilty of the misconduct leveled against him.<sup>8</sup>

## 2.2 Gross misconduct

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 (or House of Assembly), to gross misconduct.<sup>9</sup> The Supreme Court in *Inaikoju's case* elaborately explained what amounts to gross misconduct, which is subjective to such conduct as the National Assembly or House of Assembly of a State considers as gross misconduct. Thus, impeachment is wielded as a sword of demagogue by the legislative arm to clip the wings of the executives.

<sup>7</sup> (2007) 4 NWLR (Pt. 206) 427 at 669

<sup>8</sup> See *Jimoh v. Olawoye* (2003) 10 NWLR (pt. 828) 307.

<sup>9</sup> Section 143 and 188 Constitution of the Federal Republic of Nigeria as amended.

## 2.3 Flaws

‘Flaws’ mean a mistake in something. That means that it is not correct or does not work correctly or a weakness in somebody's character.<sup>10</sup> It suggests that the character of the legislature that sit to apply impunities in impeachment processes is weak, incorrect and full of mistakes leading to the entire process being declared null and void and inconsequential by the Court.

## 2.4 Impunity

‘Impunity’ means if a person does something bad and he is not punished for that which he has done against existing norms and values.<sup>11</sup>

## 3. History and Development of Impeachment in Nigeria

Thousands of years back, rulers or Kings ruled their subject with disdain and without regard to the way their subjects feel. The kings were absolute rulers hence the condemnation from John Locke an English Philosopher of the 15th Century who preached Constitutionalism as a way of “taming recalcitrant rulers”.<sup>12</sup> According to Locke in his social contract theory: (a) the sovereign must not exercise arbitrary powers over the lives and fortunes of his people; (b) the sovereign should not acquire its citizen's property without his consent and adequate compensation paid for such acquisition.<sup>13</sup>

Adding his voice, a French Philosopher Baron de Montesquieu in his work the ‘Spirit of the Laws’ enunciated the doctrine of separation of powers among the three arms of government namely: the executive, the legislature and the judiciary so as to check absolute and tyrannical rule and accentuate “human rights violations”.<sup>14</sup> By Montesquieu's postulation, where the legislature makes laws, the executive executes the law while the judiciary interprets the law, abuse of powers will be drastically reduced and people's rights and liberty guaranteed. However, to smoothen the engine of governance, A.V. Dicey formulated the doctrine of “checks and balances” whereby the three arms of government work in harmony to checkmate the activities of each other.<sup>15</sup> The concept of separation of powers is prominent in a presidential system of government as practiced in Nigeria from 1979 till date. According to arms Nwabucze:

Concentration of government powers in the hands of one individual is the very definition of dictatorship and absolute power is by its very nature capricious and despotic.<sup>16</sup>

The concept of impeachment as provided under section 188(1-11) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) evolved in a democratic setting as a way and means of

<sup>10</sup> A.S. Hornly (ed.) *Oxford Advanced Learners Dictionary*, New 8th Edition, (Oxford University Pres) 568.

<sup>11</sup> Ibid.

<sup>12</sup> Rashid Mohammed Ali Al-Hajin, ‘Revolution in John Locke’s Philosophy: The Two Treatises of Government’, (2025) 4(1) *Sana’a University Journal of Human Sciences*, 513, 515.

<sup>13</sup> LawTeacher, ‘The Social Contract Theories of Thomas Hobbes and John Locke’, 2nd February 2018, available at” <https://www.lawteacher.net/free-law-essays/contract-law/the-social-contract-theories-of-thomas-hobbes-and-john-locke.php>.

<sup>14</sup> B. Montesquieu, *The Complete Works of M. de Montesquieu* (London: T. Evans, 1777), 4 vols. Vol. 1. <https://oll.libertyfund.org/titles/montesquieu-complete-works-vol-1-the-spirit-of-laws>

<sup>15</sup> AV Dicey, *An introduction to the study of the law of the constitution* (1945)188-196

<sup>16</sup> Ben Nwabueze, *The Presidential Constitution of Nigeria* (Hurst & Co 1982) 32.

removing the Chief Executive of States. It has become the most portent tool used to keep public officers acting within the boundaries of law and make them act within the confines of rule of law.<sup>17</sup>

The origin of impeachment process dates back to British parliamentary practice in the 14th Century,<sup>18</sup> when in 1376, Lord Latimer was impeached by the British Parliamentary.<sup>19</sup> Impeachment developed because certain officers of government were for various reasons, placed beyond the reach of ordinary courts. Highly placed judicial and executive officers were not subject to the complaints of individuals in the ordinary court. Private persons aggrieved by the actions of such officers turned to parliament for redress. In addressing these complaints as they appear, the House of Common became the accuser while the House of Lords tried the cases against the accused persons “who are the highly placed judicial and executive officers of government”.<sup>20</sup> Even though Britain practiced a Parliamentary system of government, the first case of impeachment was reported in England in 1376 from where America learnt about the concept of impeachment. Today most countries of the world have made provisions in their Constitutions for the removing of government officials especially the Executive from office.

In Nigeria, impeachment can be traced even to traditional/ancient communities. For instance, in Yoruba traditional institution, erring traditional rulers or kings were removed from office by presenting a sacred calabash and ordering him to “drink from it openly”. In some Ibo traditional institutions, chiefs were removed by making him take an oath for their purported wrong doing before the traditional priest at the village square. If they fails to survive the oath within the specified period usually a year, “they stand removed”.<sup>21</sup> Upon independence, Nigeria adopted the British parliamentary system of government from 1960 till 1979 when it transformed to a presidential system of government where the issue of impeachment is prominent and constitutionally provided for. Thus, the first formal impeachment case in Nigeria was recorded in the Second Republic precisely on 8th of May 1981. The victim of first impeachment in Nigeria was Alhaji Balarebe Musa, the Governor of Kaduna State. He was impeached under Section 170(3) of the 1979 Constitution Federal Republic of Nigeria on the ground that he could not form a cabinet, having emerged as governor from a minority party Peoples Redemption Party (PRP), as against the party in total control of the State Assembly the National Party of Nigeria.<sup>22</sup> During the 2nd Republic, the Deputy Governor of Kano State was removed for refusing to perform the duties of his office as assigned to him by the governor while the Governors of Bendel, Cross-River and Ondo States were threatened with impeachment by their various Houses of Assembly.<sup>23</sup> Meanwhile, the concept of removal from office was first introduced in Nigeria in the 1963 Republican Constitution of Nigeria under a parliamentary system of government. Under the constitution, the procedure for removing the President was as contained in section 38 of the 1963 Constitution on ground of misconduct or

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<sup>17</sup> Osinuga, Omoba Oladele Opeolu, *The Impeachment Process, Ouster Clauses, Non-Justiciable Provisions and the Interpretation of Nigeria's Constitution* (August 14, 2010). Available at SSRN: <https://ssrn.com/abstract=1658921> or <http://dx.doi.org/10.2139/ssrn.1658921>

<sup>18</sup> Peter Woll, *American Government Reading & Cases* (5th Edition, Utlle, Brown & Company Canada Ltd.) 102-103.

<sup>19</sup> Chris Monaghan, ‘Impeachment: The American Phenomenon's English Origins’, available at: <https://www.worcester.ac.uk/about/news/academic-blog/humanities-blogs/impeachment-the-american-phenomenon%27s-english-origins.aspx>

<sup>20</sup> Ibid.

<sup>21</sup> O.P. Oke, ‘Examining the Status of Traditional Rulers in the Pre-Post-Colonial Yoruba Society’, (2019) 6(1), *Journal of Living Together*, 234-245

<sup>22</sup> E. Teniola, ‘Impeachment: Penalty for failure and incompetence’, *The Cable*, August 7, 2022, available at: <https://www.thecable.ng/impeachment-penalty-for-failure-and-incompetence/>

<sup>23</sup> J. Adisa & A. Agbaje, ‘Impeachment and the Parliamentary Process in Nigeria's Second Republic (1979-1983)’, (1985) 27(4) *Journal of the Indian Law Institute*, 594.

incapacity to perform the functions of his office.<sup>24</sup> There were no provisions for the removal of the Prime Minister in the 1963 constitution except when the House of Representative is dissolve or the Prime Minister ceases to be a member of Parliament. It is to be noted that the word 'impeachment' was first found in the 1979 Constitution at Section 132 which contain the procedure of the removal of public officers and the circumstances that allow for such removal.<sup>25</sup>

#### 4. Synopsis of Impeachment in Nigeria

We had earlier stated that Alhaji Balarebe Musa, Executive Governor of Kaduna State (1979) was the first elected Governor to be impeached in Nigeria. His offence was more political than criminal abuse of office. He was impeached because the opposition party the National Party of Nigeria (NPN) in Kaduna State had majority of seats in the State House of Assembly as against the ruling party the "Peoples Redemption Party (PRP)".<sup>26</sup> With that strength, the National Party of Nigeria (NPN) impeached him on the 8th of May 1981. He was removed under section 170(3) of the 1979 Constitution of the Federal Republic of Nigeria though the provision and procedure was not complied with *stricto sensu*. The Deputy Governor who refused to assume office and perform the duties of the office of the Governor was also removed subsequently. The Fourth Republic 1999-2007 witnessed cases of impeachment of Governors especially under the administration of President Olusegun Obasanjo.<sup>27</sup> It was alleged that those Governors who suffered political quake were those who opposed the 3rd term bid of President Obasanjo. The roll calls were:-

- i) Diepreye Alamiyeseigha, Executive Governor of Bayelsa State was impeached on 9th December 2005 on allegation of corruption to wit: the mismanagement of public funds, abuse of office and money laundering.<sup>28</sup>
- ii) Ayo Fayose, Executive Governor of Ekiti State was impeached on allegation of mismanagement of public funds and serial killings on October 2006.<sup>29</sup>
- iii) Peter Obi, Executive Governor of Anambra State was impeached on allegation of gross misconduct on 2nd November 2006.<sup>30</sup>
- iv) Joshua Dariye, Executive Governor of Plateau State was impeached on alleged siphoning of public fund and money laundering on 13th November 2006.<sup>31</sup>
- v) Rashidi Adewolu Ladoja, Executive Governor of Oyo State was removed from office by eighteen legislators on alleged misconduct on 12th January 2006.<sup>32</sup>
- vi) Murtala Nyako, Executive Governor of Adamawa State was impeached on July 2014 on allegation of corruption, mismanagement of public funds, abuse of office and money laundering.<sup>33</sup>

<sup>24</sup> Section 38 (2) (a) Constitution of the Federal Republic of Nigeria 1963

<sup>25</sup> Section 132 of the Constitution of the Federal Republic of Nigeria 1979

<sup>26</sup> Teniola (n 22).

<sup>27</sup> M. Lawan, 'Abuse of Powers of Impeachment in Nigeria', (2010) 48(2) *The Journal of Modern African Studies*, 311-338.

<sup>28</sup> Alamiyeseigha Impeached and Arrested. Nigervillagesquare.com. Archived from the original on 9th December 2014

<sup>29</sup> Wole Balogun, Ado Ekiti (15 October 2014). "How we illegally Impeached Fayose-Ekiti ex-lawmakers". *The Sun* (Nigeria). Archived from the original on 16 October 2014.

<sup>30</sup> 'Peter Obi of Anambra State impeached'. Sahara Reporters. 2 November 2006. Retrieved 9 December 2014.

<sup>31</sup> 'Governor Joshua Dariye. Sahara Reporters. 13 November 2006. Retrieved 9 December 2014.

<sup>32</sup> 8 Years After: Untold Story of how Ladoja was impeached as Oyo State Governor revealed Abusidiqu. 27 October 2014. Retrieved 9 December 2014.

<sup>33</sup> Governor Murtala Nyako of Adamawa State Impeached'. Sahara Reporter. 15 July 2014. Retrieved 9 December 2014.

Some Deputy Governors were also removed from office at the instances of their boss, the Governor for insubordination and abuses of office, they are:-

- i) Chief Sunday Nnamani Deputy Governor of Enugu State was in 2013 impeached for alleged establishment of poultry farm in his official residence and abuse of office. The Enugu State House of Assembly “was used to carry out the dirty job”.<sup>34</sup>
- ii) Hon. Simon Abachu; Deputy Governor of Kogi State was sacked by the State House of Assembly in 2018 for abuse of “office and insubordination”<sup>25</sup>.
- iii) Chief Agboola Ajayi, Deputy Governor of Ondo State survived impeachment because the House of Assembly refused to go after him even when the Governor, Rotimi Akeredolu instigated such move against him. Ajayi's offence was that he decamped to the Zenith Labour Party (ZLP), to enable him contest the 2020 “gubernatorial election against his boss, the Governor”.<sup>35</sup>

It is on record that almost all the impeachments carried out by the various Houses of Assembly were done without due diligence “and due process”.<sup>36</sup> Consequently, the Supreme Court found these impeachments as lacking in due process and declared them null, “void and of no effect”.<sup>37</sup> Recently the High Court sitting in Kogi State faulted the procedure adopted in sacking the State Deputy Governor and directed the State Government to pay to him the sum of #180,000,000 (One hundred and eighty million naira) being arrears of his salaries and allowances “stopped by the Government during the impeachment saga”.<sup>38</sup>

## 5. Impeachment of Governor Nyako of Adamawa State as a Case Study

Adamawa State is one of the States carved out of the then Gongola State in 1991. Vice Admiral Murtala Haman-Yero Nyako was born at Mayo-Belwa Adamawa State on 27th August 1943 and in April 2007 became the third elected Governor of the State on the platform of Peoples Democratic Party (PDP). He successfully served out his first tenure; midway to his second tenure the House of Assembly of the State moved against him and his Deputy Bala Ngilari by way of impeachment proceedings in 2014. The hasty impeachment move against Nyako was alleged to be as a result of his defection to All Progressive Congress (APC) and maddening criticism of Goodluck Jonathan Presidency's second term bid.

There is no doubt that earlier attempts by state assemblies to remove their governors or deputy governors succeeded in States like Ekiti, Anambra, Plateau, Oyo, Bayelsa, Enugu and Kogi, only for the courts to quash some of the removals for the punitive manners in which the proceedings were conducted to remove these Chief Executives or their Deputies. Using the Adamawa example, we shall examine the underlisted impunities/flaws as adopted by the State House of Assembly to include: what constitutes gross misconduct; service of processes; lack of fair hearing; composition

<sup>34</sup> O.M. Arinze, C.O. Eze & O Nwaeze, ‘Politics of Impeachment in Nigeria: A discourse on Causes and Implications for Democratic Consolidation’, (2016) 10(1) *Journal of Policy and Development Studies*, 50.

<sup>35</sup> Kargbo Sam, ‘Politics of impeachment’, Daily Independent newspaper Friday, Oct. 10, (2014).

<sup>36</sup> Lawan, (n 27).

<sup>37</sup> I. Mohammed, K.A. Oyinwola, D.U. Dewan & A.M. Sulaiman, ‘An Evaluation of Judicial Intervention in The Impeachment Process in Constitutional Democracies: A Case of Nigeria’, (2023) 11(6) *Global Journal of Politics and Law Research*, 76-88. See also M.A. Oni, ‘Judicial Reivew of Governors’ Ladoja and Obi Impeachment in Nigeria’s Fourth Republic’, (2013) 1(6) *Singaporean Journal of Business Economics, and Management Studies*, 117.

<sup>38</sup> Kayode Lawal, ‘Court of Appeal orders Kogi Govt to pay ex-deputy governor N1bn salaries, entitlements’, The Daily Post, August 22, 2025, available at: <https://dailypost.ng/2025/08/22/court-of-appeal-orders-kogi-govt-to-pay-ex-deputy-governor-n1bn-salaries-entitlements/>

and constitution of the seven man panel; time line of impeachment; forced resignation of the Deputy Governor; impeachment proper and reaction of the electorate; any constitutional remedy?

Section 188(1-11) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) laid down the procedures to be applied in removing a Governor or Deputy Governor of a State. The provision gives the legislative arm of government i.e. the House of Assembly powers to set in motion the provisions as contained in the said section. The House of Assembly is required to religiously apply the provision without more. In other words, the House of Assembly is not expected to introduce any new step or option in executing this function nor is it expected to carry out this constitutional duty with impunity or create flaws to hinge on.

One reason why we chose Adamawa State as a case study is that it was the first time ever a State Governor and his Deputy were simultaneously moved to be impeached by the House of Assembly in the democratic history of Nigeria. In other words, it is the first time section 188 of the 1999 Constitution of the Federal Republic of Nigeria was invoked to remove a sitting Governor and his Deputy from office simultaneously and jointly with its attendant implications. Besides, the hasty impeachment makes their case unique and worthy of discussion. The Adamawa Example is therefore an interesting scenario worthy of discussion. Looking at the flaws and impunities thus:-

*(a) Gross Misconduct - what constitutes it?*

The Constitution failed to properly define what constitutes gross misconduct and thus, indirectly empowered the unruly members of the House of Assembly to determine and tag any administrative lag/mistake or seeming derogation of power as gross misconduct as in the case of Adamawa State. Thus, any form of activity can be garbed as an impeachable offence in the eyes of members of the House of Assembly as far as the constitution is concerned.<sup>39</sup> This gap is a big plus to the House of Assembly and minus to the Executive. For instance, in a letter to the Speaker of the Adamawa State House of Assembly, signed by nineteen legislators dated 18th June 2014, the members alleged the following as 'gross misconduct' of the governor in the performance of his duties warranting the impeachment proceedings to be set in motion towards removing him from office. As alleged by the law makers, there are a total of twenty impeachable offences leveled against the governor some of which include:- diversion of N2.3 billion meant for the payment of workers salaries; corrupt and extra-budgeting award of contracts; overbearing and strangulation of Local Government Areas and diversion of its funds; appointing his wife in government position as chairman Adamawa State Action Committee on AIDS; reckless expenditure of public funds contrary to section 121 of the "Constitution among others".<sup>40</sup> Had cordiality existed between the two arms of government, we expected that a preliminary dialogue should have first been carried out before taking the vicious step of impeachment proceedings.

*(b) Service of Processes*

We are inclined to believe that section 188(2) CFRN presupposes personal service to the holder of the office not to the office of the Governor. In other words, the Clerk of the House of Assembly is expected to serve the Governor personally and not by any other means. Besides, the constitution did not provide for any other type of service not even substituted service. This provision was fouled by the House of Assembly which acted in impunity by directing substituted service. It is even more worrisome when the court relying on constitutional provision ruled that service of notice of

<sup>39</sup> Arinze, C.O. Eze & O Nwaeze (n 34) 53.

<sup>40</sup> Adamawa House of Assembly, 'Notice of Allegation of Gross Misconduct Against the Governor of Adamawa State, Murtala Hammayero Nyarko', The Premium Times, June 2014, available at: <https://media.premiumtimesng.com/wp-content/files/2014/06/Adamawa-impeachment-doc.pdf>

allegations against the respondents must be by personal service, yet the House of Assembly went ahead to take further steps in the impeachment without first resolving the service saga irrespective of the supposedly delay it may take the House of Assembly to get the Governor or the Deputy Governor served personally bearing in mind that they were not running out of time. The supremacy of the Constitution was reaffirmed by the Supreme Court in this direction. In *AG Abia State v. AG Federation*,<sup>41</sup> where Niki Tobi JSC averred,

The constitution of a nation is the *fons et origo*, not only of the jurisprudence but also of the legal system of the nation. It is the beginning and the end of the legal system...in line with this kingly position of the constitution, all the three arms of government are slaves of the constitution, not in the sense of undergoing servitude or bondage, but in the sense of total obeisance and loyalty to it.

Also in *Dapianlong & 5 ors v. Dariye*,<sup>42</sup> Akaahs JCA held that “the impeachment of a governor is a serious business and must not be reduced to child's play”. And also in *Adeleke v. Oyo State House of Assembly*<sup>43</sup> Chukwuma Eneh JCA (as he then was) held that;

A legislative act done in the process of removing a Governor or Deputy Governor is legally passed where it has complied strictly with the procedure prescribed under section 188 CFRN 1999 as amended.

Can the House of Assembly authoritatively and firmly stand to the fact that they strictly complied with Section 188 in removing the Governor. The answer is no. Rather, they acted in impunity as in *Belonwu & 15 ors v. Peter Obi & 1 Or.*<sup>44</sup> On the other hand, we frown at a situation where a Chief Executive of that ranking, should if he has nothing to hide evade service just to create an avenue to frustrate the move by the House of Assembly to continue with the impeachment process. By and large, the Governor as a soldier should not have evaded service if he had nothing to shield or hide. He should have maintained the bravery of a soldier and defended himself. Alhaji Al Makura of Nasarawa State was a good example who stood out to defend himself when the State House of Assembly moved to “impeach him in 2015”.<sup>45</sup>

*(c) Non Appearance before the Panel/Fair Hearing*

The question that begs for answer is whether in the light of illegality, the Governor would have appeared to defend himself as provided for in section 188(6)?<sup>46</sup> Legally, the Governor was right to ignore defense, but politically and just for the purpose of assuaging public outrage, the Governor would have appeared to defend the allegation made against him. In a country like Nigeria, where corruption has been the bane, any allegation against a public officer bordering on corruption need to be challenged frontally by the said officer if not for any purpose than to clear his name.

*(d) Composition and Constitution of the Seven-Man Panel*

What baffles us in this case is why the acting Chief Judge who refused the application of the House of Assembly on substituted service should succumb to constituting a panel to investigate the allegations against the Governor. While there was no service on Governor Nyako in person, as the

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<sup>41</sup> (2002) 6 NWLR (Pt. 763) 204.

<sup>42</sup> (2007) 152 LR CN 155.

<sup>43</sup> (2006) 16 NWLR (pt. 1006) 608.

<sup>44</sup> (2007) 5 NWLR (pt. 1057) 404.

<sup>45</sup> Blessing Olaifa, ‘Nasarawa’s botched impeachment and aftermath’, The Nation Newspaper, August 10, 2014, available at: <https://thenationonline.net/nasarawas-botched-impeachment-and-aftermath/>

<sup>46</sup> 1999 Constitution of the Federal Republic of Nigeria as amended.

law required, the Assembly went on to demand the acting Chief Judge to constitute an investigative panel to probe the allegations against the Governor and his Deputy. Surprisingly, the acting Chief Judge, in disregard of his own ruling went ahead to name a seven-man panel as demanded by the lawmakers.<sup>47</sup>

There were allegations of hard handedness by the Speaker of the House of Assembly against the acting Chief Judge at gun-point to procure the constitution of the investigative panel. The allegation extended to the procurement of membership of the seven-“man investigative panel”.<sup>48</sup> Indeed, the powers and functions of the panel are constitutionally prescribed by the House of Assembly, and thus, it was easy for the Assembly to execute the ploy against the governor. Although, a court of competent jurisdiction had earlier ruled against the setting up of a panel to investigate the Governor, the House of Assembly without first seeking the court to vacate the order, went ahead to direct the acting Chief Judge to constitute the panel.

*(e) Time Frame/Line of Impeachment*

It would appear that there is no time frame within which an impeachment process would end once it begins. Section 188(3) presupposes that the process of impeachment starts rolling within 14 days of the presentation of the notice of impeachment to the Speaker of the House of Assembly who will cause same to be served on the affected Governor or the Deputy Governor. It is immaterial that the respondent i.e. the Governor or Deputy Governor replied to the allegations made against him or not; the House of Assembly shall resolve without debate whether or not the allegation is to be investigated. Section 188(7) provides for 3 months period within which the panel shall report its findings to the House of Assembly. Thereafter, if the panel reports a verdict of false allegation, that is the end of the matter as in section 188(8). But if it reports that the allegations are proved, then the House of Assembly has 14 days from The date of adoption of the report to remove the Governor or Deputy Governor by resolution of the House with 2/3 majority of all the members voting for his removal.

Since time is not specifically allotted within which to start and conclude impeachment of a Governor or Deputy Governor, the question was, if the impeachment was done in good faith and for the interest of the people of Adamawa State as claimed by the House of Assembly, why the rush by the Assembly who took less than one month to conclude all the processes that saw to the impeachment of the Governor? We identify as impunity and arrogance of power on the part of the lawmakers for hurriedly impeaching the Governor within one month and forcing the Deputy Governor to resign.

*(f) Forced Resignation of the Deputy Governor; How Effective?*

Section 306(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides:-

The notice of resignation of the Governor and of the Deputy Governor of a State shall respectively be addressed to the Speaker of the House of Assembly and the Governor of the state.

The interpretation of section 306 is very clear. The Deputy Governor ought to submit his resignation letter to the Governor and not to the Speaker of the House of Assembly because as at the time of 'forceful' resignation of the Deputy Governor, Governor Nyako was still the Governor

<sup>47</sup> Ahmed, "The Area of Illegality in Adamawa' *The Nation Newspaper*, Tuesday July 8, (2014) 3.

<sup>48</sup> News Agency, 'Impeachment: Adamawa House Defies Chief Judge', *The Cable* June, 23, 2014, available at: <https://www.thecable.ng/impeachment-adamawa-house-defies-chief-judge/>

of the State. Accepting the resignation by the Speaker was also another illegality and impunity by the House of Assembly in the whole impeachment saga. This is because Section 306 contemplates that where a Governor resigns he sends his notice of resignation to the Speaker of the House of Assembly whereas in the case of the Deputy Governor he sends his notice of resignation to the Governor.

A twist in the impeachment saga shortly before the Adamawa State Governor was impeached on 15/7/2014 was that his Deputy was forced to resign so as to avoid the shame or consequences of impeachment.<sup>49</sup> In adherence to the threat, the Deputy Governor James Bala Ngilari resigned and subsequently challenged his resignation in the Federal High Court Abuja stating that he did not resign in accordance with the Constitution of Federal Republic of Nigeria 1999 as amended.

Section 306(5) provides,

The notice of resignation of the Governor and of the Deputy Governor of a state shall respectively be addressed to the Speaker of the House of Assembly and the Governor of the state.

The Deputy Governor contended that his letter of resignation was addressed to the Speaker instead of the Governor which rendered the resignation ineffective, null, void and of no effect. The court upheld his contention and declared the resignation null and “void and of no legal effect”<sup>31</sup>. He was reinstated.

*(g) Consequences of Impeachment and the Reaction of the Electorate*

The Governor of Adamawa State was finally impeached on 15th July 2014 when the House of Assembly with eighteen (18) out of twenty five (25) voted for his removal. With the exit of the Deputy Governor by way of resignation, Section 191(2) of the Constitution was invoked to pave way for the Speaker of the House of Assembly to be sworn in, and hold the office for a period of not more than 3 months during which there shall be an election of a new Governor of the State who shall hold office for the unexpired term of office of the last holder of the office.<sup>2</sup>

Shortly before the impeachment that sent Governor Nyako packing, soldiers and other security forces rode in armoured tanks on the Yola street because there was tension and the streets were barricaded to avoid untoward reactions from the electorates. Nevertheless, supporters of the Governor took to the streets of Yola on hearing of the impeachment of the Governor to demonstrate against the impeachment and show solidarity with him.

*(h) Any Constitutional Remedy?*

In the light of all that we have said or analyzed, can the Governor of Adamawa State successfully challenge his removal and/or impeachment from office in court? Section 188 (10) Provides:

No proceedings or determination of the panel or the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court.

This ouster clause tends to shut out the Governor from any legal challenge in court. Indeed, he is foreclosed. However from the lacuna created in the Constitution and the House of Assembly failing to religiously follow the provisions of section 188(1-11) of the 1999 CFRN, as it relates to service

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<sup>49</sup> Soni Daniel, ‘How Adamawa’s Deputy Gov was tricked into resigning’, The Vanguard Newspaper, J 17, 2014, available at: <https://www.vanguardngr.com/2014/07/adamawas-deputy-gov-tricked-resigning/>

of impeachment notice and other infractions, the coast was open for the Governor to approach the court over his impeachment to challenge the process. He indeed challenged the processes that led to his impeachment in court and successfully too. The Governor could therefore rely on the Supreme Court case of AG Abia v. AG Federation (*supra*) and the Court of Appeal cases of Dapranlong v. Dariye (*supra*); Adeleke v. Oyo State House of Assembly (*supra*) to challenge the processes that led to his impeachment.

The Governor in challenging the processes that led to his impeachment as well as the judgment of the Court of first instance i.e. Federal High Court, Yola sought the underlisted six reliefs from the appellate court thus:-

- i) A declaration that the failure of the 1<sup>st</sup> appellant to serve the applicant impeachment notice personally is unlawful, unconstitutional, illegal, null and void as it violates the applicant's fundamental right to fair hearing as guaranteed under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria;
- ii) A declaration that the failure of the 2<sup>nd</sup> respondent to serve the applicant hearing notice personally is unlawful; unconstitutional; illegal, null and void as it violates the appellant's fundamental right to fair hearing as guaranteed under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria;
- iii) A declaration that the setting up of the 2<sup>nd</sup> respondent by the Acting Chief Judge of Adamawa State based on the resolution of the 1<sup>st</sup> respondent after the Order/Ruling by the Acting Chief Judge of Adamawa State stopping the 1<sup>st</sup> respondent from constituting the 2<sup>nd</sup> respondent is, biased; malafide; unlawful, illegal and unconstitutional violation of the applicant's right to fair hearing and fair trial as guaranteed under Section 36 of the Constitution of the Federal Republic of Nigeria;
- iv) A declaration that the setting up and composition of the 2<sup>nd</sup> respondent based on the resolution of the 1<sup>st</sup> respondent during the pendency of a suit and against a subsisting order of the court restraining the 1<sup>st</sup> respondent from setting up the 2<sup>nd</sup> respondent is unlawful, contemptuous, illegal, undemocratic and a flagrant violation of the provisions of the 1999 Constitution of the Federal Republic of Nigeria;
- v) An order nullifying the removal of the Applicant as Governor of Adamawa State on 15<sup>th</sup> July 2014;
- vi) An order reinstating the applicant as Governor of Adamawa State forthwith; and
- vii) Such further order or other orders as this honourable court may deem fit to make in the circumstances of this case.

Though the Governor did not get justice at the Court of first instance; he however got judgment on appeal to the Court of Appeal and to the Supreme Court. He was however refused to be reinstated by reason of effluxion of time, but was ordered to be paid all his genuine entitlements as Governor as at 30/05/2015 when he was due to formally leave office upon completion of his second tenure. That is justice for all. Nyako got the justice he asked for. His impeachment was quashed and declared unconstitutional, invalid, null, void and of no effect. It is a lesson to overzealous House of Assembly members/lawmakers who would cut corners to achieve their selfish interest and embarrass the State.

The question 'where next?' played out at Nasarawa State shortly when the House of Assembly set out to serve notice of impeachment to the Governor a day after the Governor of Adamawa State

was impeached. The move was vehemently challenged by the electorate of Nasarawa State who came out at Lafia, the state capital to protest the impeachment move against their Governor by the House of Assembly of the State. The people of Nasarawa State came out to warn the law makers to stop the impeachment move stating that the same way they elected the law-makers was the same way they elected the Governor.<sup>50</sup>

## 6. Conclusion

In concluding this paper, we opine the position of Ahmed a public affair commentator to reproduce his comment on the drama of illegality in Adamawa thus;

It is now the duty of all well-meaning Nigerians and respecters of rule of law to rise up against this legislative recklessness (underline is mine) which is clouded in several impunities. Impunity thrives when the people are silent and indeed silence is complicity in the midst of lawlessness and wrongdoing. Democracy should not be allowed to be rubbished and ridiculed in this manner because if it is allowed to happen in Adamawa today, no one will know where next.<sup>51</sup>

It was further alleged that the Speaker took the extra-step “of going to the official residence of the Deputy Governor to receive the 'Notice' or 'letter' of the resignation of the Deputy Governor. From the provision of the constitution, it is obvious that the Deputy Governor should have sent his letter of resignation to the Governor and not the Speaker but for the pressure on him from the leadership of the House. This amounts to constitutional breach. The Speaker on his part was not to receive nor act on the notice of resignation that ordinarily ousted his powers. But because he was over-zealous to take-over power, he acted ultra-vires his constitutional powers and definitely has to pay dearly for that act. The Federal High Court Abuja berated the Speaker's assumption of office as Acting Governor of Adamawa State after the forceful resignation of the Deputy Governor thus:-

That the assumption of the Governor's office by the Speaker was illegal and unconstitutional when the Deputy Governor had not signed as provided under §306 (1) (2) (5) of the constitution.

The court further declared as unconstitutional and illegal the swearing in of the then Speaker, the Deputy Governor having not resigned in the eye of the law. In furtherance to the above ruling, the court ordered that the 3rd defendant (Umaru Fintiri) be removed forthwith as Acting Governor of Adamawa State while ordering the Chief Judge (or Acting Chief Judge) or President of the Customary Court of Appeal to swear in the plaintiff i.e. James Ngiliri as the substantive Governor. Also, the proposed by-election by Independent National Electoral Commission was by a consequential order directed to stop forthwith. Meanwhile the suit instituted by the impeached Governor of Adamawa State Murtala Nyako challenging his impeachment in the Federal High Court Yola suffered a set back but on appeal, the Court of Appeal declared his removal from office as unconstitutional, illegal, void and of no effect. The Court of Appeal allowed five of the six reliefs the appellant sought and refused to make an order for his (Governor's) reinstatement because of the constitutional effluxion of time. The second tenure of Governor Nyako expired on 30/05/2015 while the judgment was delivered in February 11, 2016. Even the Supreme Court refused to extend the time lost by Governor Nyako, instead the Court ordered that all his salaries and other entitlements be paid up till 30/05/2015 when he was formally supposed to vacate office.

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<sup>50</sup> Hir Joseph, 'Impeachment: 2 killed as protest rocks Nasarawa', Daily Trust Newspaper, 18 July 2014, available at: <https://dailytrust.com/impeachment-2-killed-as-protest-rocks-nasarawa/>

<sup>51</sup> Ahmed, 'The drama of illegality in Adamawa', The Nation Newspaper, July 8, 2014, available at: <https://thenationonlineng.net/the-drama-of-illegality-in-adamawa/>

## **7. Recommendations**

By way of recommendations, we suggest:-

- i) That the constitution be amended to create room for substituted service in the process of impeachment so that the process will be smooth without any technical hitch as in this case.
- ii) Create a provision that will compel public officer to appear and defend any allegation of corrupt practice and/or enrichment leveled against them once served.
- iii) The electorates should be provided for in the constitution to have the final say on matters of impeachment of a President, Vice President of Nigeria, Governor or Deputy Governor of a state by way of referendum when all the processes contained in Section 188 Constitution of Federal Republic of Nigeria 1999 may have been strictly complied with so as to avoid what played out in Adamawa State.
- iv) The House of Assembly should not be a complainant and at the same time the prosecutor. This informed why they generated the notice of impeachment, voted for service and directed the Acting Chief Judge to constitute the seven man panel. These duties run contrary to the concept of fair hearing of *Nemo Judex in causa sua*. You cannot be a judge in your own cause.
- v) If we truly talk of Concept of Separation of Powers, the constitution should look into these flaws/impunities and make amend. The Chief Judge of a State should be alive to its responsibility and resist to be toyed with by any of the other arms of government. Their ruling or judgment on impeachment should be capable of standing the test of time so that its sanctity and integrity could be sustained. It is the last hope of the nation's democracy.
- vi) The Chief Judge in appointing the 7 man independent panel should do so without fear or favour. They should not refer to the Speaker for guidance as in the case of Adamawa State.
- vii) The Constitutional provisions should be respected by the House of Assembly and never to cut corners to achieve their selfish desires to the detriment of the people that voted for them and the Governors.