

Impeachment power of the legislature and executive unaccountability in Nigeria: Between rhetoric and practice

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Abstract

Nigeria's governance structure comprises three arms of government: the legislature, executive and judiciary. The Constitution vests each arm with specific roles in consonance with the doctrine of separation of powers. Reciprocal checks and balances in the governing system is an important feature of separation of powers. The legislature checks the other organs, and vice versa. The goal is to ensure accountability in governance. One way by which the legislature ensures accountability of the executive is through the impeachment process. This power is vested in a bicameral legislature at the federal level – the National Assembly (NASS). This paper, a desk review, appraises the impeachment power of the National Assembly as provided for in the Constitution. It examines the extent to which this power has been employed to ensure the accountability of the executive under the present democratic dispensation. It argues that the National Assembly has failed to utilise its power of impeachment because it has been compromised due to its own accountability deficit. It recommends, among others, that the NASS should strive to conduct the business of the Assembly in a manner that preserves the integrity of the legislature and avoids conflicts of interest. This way, it can muster the moral strength and political will needed for the pursuit of impeachment of the executive.

Keywords: accountability, executive, impeachment, legislature, National Assembly, separation of powers

Introduction

The power of impeachment, theoretically, is one of the most effective oversight tools worldwide. It is a powerful legislative armoury in ensuring governmental accountability^[1]. Accountability simply means the obligation of a person to answer for duties performed^[2]. In effect, where a person is obligated to give account of his or her duties, a failure to do same is a breach of duty, which has consequences. A strict enforcement of such consequences will promote accountability in the execution of duties. For the executive, one of such consequences is impeachment. According to the United States (US) House Judiciary Committee in its report on the grounds for impeaching the President under Article II, Section 4 of the Constitution-Impeachment is a constitutional remedy for addressing serious offenses against the system of government. It serves as an ultimate check on executive misconduct, or its effect, which is substantial in nature and which subverts the structure of government or undermines the integrity of the office or the Constitution itself^[3].

The Nigerian Constitution empowers the National Assembly

(NASS) to investigate and remove the President or Vice-President from office, if indicted by a panel set up for that purpose, for gross misconduct in the performance of his or her duties^[4]. Beyond occasional threats by the NASS, this power has never been effectively invoked at the federal level^[5]. This provokes the question as to why the reluctance by the NASS to harness such yielding tool, especially since there are widespread claims of unaccountability of the executive^[6]. How effective has the NASS been in investigating allegations of the executive's misconduct and holding it to account? This paper argues that the NASS has failed to utilise its power of impeachment because it has been compromised due to its own accountability deficit. To overcome this problem of accountability deficit, members of the NASS must strive to conduct the business of the Assembly in a manner that preserves the integrity of the legislature and avoids conflict of interest or even appearances of such conflict.

The paper comprises five parts, besides this introduction and

¹ Alissa Hurlbut, 'The president is impeached; but what does it mean?' Newschannel3 (Wednesday, 8 January 2020) <<https://wwwmt.com/news/local/the-president-is-impeached-but-what-does-that-mean>> accessed 19 March 2020.

² Richard Mulgan, "'Accountability': An Ever-Expanding Concept?" <https://crawford.anu.edu.au/pdf/staff/richard_mulgan/MulganR_02.pdf> accessed 10 May 2020.

³ Microsoft Encarta 2009. See Encarta, Definitions, History & Facts <<https://www.britannica.com/topic/Encarta>> accessed 09 September 2020; GPO-HRACTICE-104-27.pdf <www.gpo.gov> accessed 09 September 2020.

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 143(2) and (5).

⁵ This is in contrast with the plethora of cases of state governors who have been impeached, such as the novel case of Balarabe Musa of Kaduna State; Murtala Nyako of Adamawa State; Ayodele Fayose of Ekiti State; and Dieprieve Alamieyeseigha of Bayelsa State, among others. Rashidi Ladoja of Oyo State; Joshua Dariye of Plateau State; Peter Obi of Anambra State were also impeached, but were subsequently reinstated via judicial pronouncements nullifying the impeachments. See Senator Rashidi Ladoja v INEC & Ors [2007] NGSC; Michael Dapianlong & Ors. v Joshua Dariye & Ors. [2007] NGSC 148; and Peter Obi v INEC & Ors. (SC 123/2007) [2007] NGSC 180.

⁶ Michael Ogeidi, 'Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis' [2012] IJNS 25.

the conclusion. Part II examines the doctrine of separation of powers. The goal of the doctrine is to prevent abuse of power and advance good governance. The effective utilisation of the power of impeachment can help realise this goal. The knowledge of the likelihood of the deployment of impeachment brings about that sensibility in the executive of his or her subjection to the direction of the law noted by Montesquieu⁷. Part III provides the meaning and significance of impeachment. Part IV examines the powers of impeachment of the NASS and its procedure under the Constitution. Part V examines the accountability rating of the executive in the light of some specific actions. Part VI addresses the core theme of this paper, which is the extent to which the NASS has employed its impeachment powers to achieve governmental accountability and enhance good governance.

The Doctrine of Separation of Powers

Separation of powers is a fundamental doctrine in political theory and constitutionalism. The term was coined by Charles-Louis de Montesquieu, an 18th century French Social and Political philosopher⁸. It stems from the suspicion and distrust of power in governance⁹. It aims at preventing abuse of power and advancing good governance through the means of checks and balances and decentralisation of powers among the tiers of government. Aristotle describes separation of powers as the three elements in a Constitution: the deliberative, the officials and the judicial elements¹⁰. He posited that these elements are determining factors for the proper arrangement of the Constitution¹¹. John Locke emphasises that “it may be too great a temptation to human frailty to grab at power, for the same persons who have the power of making laws, to have also in their hands the power to execute them...”¹². These words reinforce the need for a sovereign state to have its powers shared between its organs of government to act as checks and balances.

Unlike in monarchical government, separation of powers is not absolute as they are delineated among the three organs of government. The legislature enacts laws, the executive implements the laws, and the judiciary interprets the laws and adjudicates on disputes¹³.

Separation of powers is in two folds: separation of powers between the Federation and the States, and separation of powers between the three arms of government¹⁴. This paper focuses on the latter. The Constitution defines the relationship and the boundaries of the legislature, executive

and judiciary. It expressly provides for their powers, establishment and duties in sections 4, 5 and 6 of Chapter I, Chapters V, VI, and VII, respectively. It ensures that each arm is independent of the others. In *Bendel State v The Federation*¹⁵, honourable Justice Obaseki, JSC, opined that “...each of the three departments of Government - Legislature, Executive and Judiciary - should be kept completely independent of the others so that the act of each shall not be controlled by or subjected directly or indirectly to the coercive influence of either of the others”¹⁶.

It is impossible to have an absolute separation of powers. Montesquieu argues that though the three arms of government must be separated and entrusted to different people, there must be a balance of power among the separated arms of government to be achieved through the fused mechanism of ‘checks and balances.’¹⁷ Effective oversight, while demanding that each arm asserts its authority, requires a measure of mutual cooperation. As a matter of fact, each arm of government functions within a larger political system. It is linked with other institutions in various ways and, in consequence, its decisions often reflect the inter-relationships¹⁸.

Executive officials, for instance, help shape the agenda of the legislature and implement its legislation. The Judiciary is called upon to clarify the meaning of legislation or pronounce on its legality, including constitutionality. In effect, the Judiciary can both check legislative rascality and executive lawlessness¹⁹. In its relationship with the executive branch and the Court, the legislature may not have the final word in relation to its legislation²⁰. This, consequently, creates a complex relationship between the three arms of government, in which a balance of governmental powers must be realised for good governance and avoidance of chaos²¹.

It has been opined that though separation of powers exists for convenience and efficiency, it would not be out of place if the powers are not separated²². True as this view may be, the factor eroding it is the impunity concentration of power breeds. The prevention of accumulation of political power by one arm of government is the force behind the doctrine of separation of powers. Decentralisation of power can be achieved where more persons or institutions are involved in the exercise of a certain power or task²³. For instance, a bicameral legislative system is less concentrated than a unicameral legislative system. This is what informs separation of functions which checks, balances and

⁷ Charles Louis de Secondat, Baron de Montesquieu, Complete Works, vol 1 The Spirit of the Laws [1748] <<https://oll.libertyfund.org/titles/montesquieu-complete-works-vol-1-the-spirit-of-laws>> accessed 05 August 2020.

⁸ Baron Montesquieu, The Spirit of the Laws, Anne M Cohler, Basia C Miller and Harrod S Stone (eds) (Cambridge University Press, 1989) xxv.

⁹ Abraham Awolich, ‘The Challenge of Constitutionalism and Separation of Powers Doctrine in South Sudan’ (2016) The SUDD Institute: Policy Brief II <https://www.jstor.org/stable/pdf/resrep11018.pdf?ab_segments=0%2Fbasic_SYC-5152%2Fcontrol&refreqid=search%3A31ae12fcb9f3e0d5b01ea9b46bbce9#page=1&zoom=auto,-8,-72> accessed 10 May 2020.

¹⁰ Aristotle, The Politics, Translated by B. Jowett, with introduction, analysis and index by H.W.C. Davis, Oxford, Clarendon (1963) 13.

¹¹ *ibid.*

¹² John Locke, Two Treatises of Government, Peter Laslett ed (Cambridge University Press, 1988) 364.

¹³ Montesquieu (n 8).

¹⁴ Awolich, (n 9).

¹⁵ (1982) 3 NCLR 69.

¹⁶ *ibid.*

¹⁷ B de Montesquieu, The Spirit of the Laws Vol. 1, Thomas Nugent trans. (J Nourse 1777) 221-237.

¹⁸ Olorunibe Mamora, ‘Executive/Legislative Synergy in Governance’ paper presented at the Training Course on Legislative Strategic Planning and Management, organised by the Nigerian Institute of Advanced Legal Studies, Lagos, May 2012, 1.

¹⁹ See, for instance, Atiku Abubakar v A-G Federation (2007) 3 NWLR (Pt 1022) 601, 646 and 648; A-G Federation & Ors. v Atiku Abubakar (2007) 8 NWLR (Pt 1035) 117, 155.

²⁰ K Abayomi, ‘A Critical Analysis of the Legislative Process in Nigeria’ <http://nigerdeltacongress.com/articles/a_critical_analysis_of_the_legis.htm> accessed 21 January 2013.

²¹ Military Government of Lagos State v Ojukwu (1986) 1 NWLR (Pt 18) 621, 633, per Kayode Eso, JSC; also Kadiya v Lar (1983) 2 SCNLR 268.

²² Richard Pierce, ‘Morris v Olson, Separation of Powers, and the Structure of the Government’ [1988] SCR 1-48, 6.

²³ Elizabeth Magil, ‘The Real Separation in Separation of Powers Law’ [2000] VLR Vol 86 1127-1198, 1157.

decentralises power^[24]. When this is done, efficiency in governance is achieved^[25].

Having looked at the tenets of the doctrine of separation of powers, the question may be whether these tiers of government are truly separate, and their powers evenly distributed. Impeachment may appear to be an exception to separation of powers,^[26] given the circumstance and, especially, as such power cannot be exercised when the tables are turned. The legislature may seem to have the upper hand over the executive^[27].

Meaning and Significance of Impeachment

Impeachment is a major institutionally recognised legislative mechanism for holding the executive accountable. The Nigerian Constitution should have been the most appropriate source for a definition of 'impeachment', since it is the primary source for this paper. The word 'impeachment' is used in the sections dealing with the remuneration and discharge of functions of the President and Governor^[28]. However, the Constitution does not define the word; it employs the use of the word 'removal' in the sections relating to the impeachment of the President or the Governor of a State^[29]. What then did the framers intend by the use of the word 'removal'? Could the word 'impeach' in addressing issues of removal of the President from office connote something different from removal?

The proviso to section 84(5) states that "...Provided that such a person was not removed from office by the process of impeachment or for breach of any provision of this constitution." This implies that impeachment is one of the processes by which a President or Vice President may be removed from office^[30]. Similarly, section 146(1) provides that

The Vice-President shall hold the office of the President if the office of the President becomes vacant by reason of death or resignation, impeachment, permanent incapacity or removal of the President from office for any other reason in accordance with section 143 or 144 of this Constitution.

This again shows that the President will be removed from office if he or she is impeached. Clearly, 'impeachment' and 'removal' are not synonyms; the latter is simply the result of the findings on the former. This could be likened to a trial and a sentence; in this case, 'impeachment' is the trial, while 'removal' is the sentence. That said, this paper will use both terms interchangeably, in line with common practice. To impeach is to charge with a crime or misconduct, especially to formally charge a public official

with a violation of the public trust^[31]. Impeachment is a criminal proceeding against a public officer, before a quasi-political court, instituted by a written accusation called "articles of impeachment"^[32]. It is the administration of the legislature's *lex parliament*^[33]. It is the mechanism that the legislature uses to question a public officer or chief executive for wrong doing in the course of performing his or her duties^[34]. Impeachment ensures the accountability of a particular government. It serves as a weapon for controlling and ensuring that persons in public office are accountable to the citizens^[35].

The significance of impeachment could also be seen from its impact on the impeached. As observed by Perez-Linan, "Impeachment transforms the luck of the most successful politician in the country into a model of defeat. Presidents are deprived of honor and power, deserted by former allies and voters, prosecuted as ordinary citizens, and many times incarcerated or forced into exile."^[36] This should elicit the consciousness of the imperative of an accountable governance in any discerning executive.

Examining the Power and Procedure of Impeachment under 1999 Constitution

This part looks at the power of impeachment and how it should be exercised as provided by the Constitution.

A. Power of Impeachment

The powers of the legislature may be broadly classified as representative powers, law making powers and oversight powers^[37]. Legislators act as representatives to the constituents they represent. This allows their constituents to participate in governance^[38]. The legislators' response to the needs of the people usually takes the form of law-making. The power of the NASS to make, amend or repeal laws for the Federation may be said to be its core mandate^[39]. In applying the concept of checks and balances, the NASS exercises its oversight functions on the activities of the executive arm of government^[40]. This is also known as

³¹ Black's Law Dictionary, 9th Ed, 820.

³² *ibid*; also *Inakoju v Adeleke* (2007) 1 SCNJ 1, [2007] 4 NWLR (Pt 1025) 423.

³³ The law of parliament. *Abdulkadir Balarabe Musa v Anta Hamza* (1982) 3 NCLR 245.

³⁴ J M Shafritz, *The Dorsey Dictionary of American Government and Politics*, Chicago (Dorsey Press 1988) 275.

³⁵ Adeoye Akinnanya, 'Impeachment of Governor Abdulkadir Balarabe Musa of Kaduna State' in Adeoye A Akinnanya and Gordon Idang (eds), *Nigerian Government and Politics, 1979-1983* (Wosen Publishers 2002) 204.

³⁶ Anibal S Pérez-Liñán, *Presidential Impeachment and the New Political instability in Latin America* (Cambridge University Press 2007) 1.

³⁷ 1999 Constitution, ss 4 and 88; Oyelowo Oyewo, 'Constitutionalism and the Oversight Functions of the Legislature in Nigeria' (African Network of Constitutional Lawyers Conference, Nairobi, Kenya, April 2007) 7-9 <www.publiclaw.uct.ac.za/usr/public_law/Nairobi/Oyewo_constitutionalismOversightNigeria.doc> accessed 13 September 2020. Also Oyelowo Oyewo, 'Constitutionalism, Good Governance and Corruption: Challenges and Prospects for Nigeria' <<http://www.enelsyn.gr/Papers/w161Paper%20by%20Prof%20Oyelowo%20Oyewo.pdf>> accessed 13 September 2020.

³⁸ See 1999 Constitution, ss 48, 49 and 69.

³⁹ Sections 4 and 88 of the 1999 Constitution empower the NASS to make laws for the peace, order and good governance of the Country. See, generally, the Constitution ss 4 and 9.

⁴⁰ The Constitution provides for a broad range of cases that are subject to the NASS exercising its oversight powers. Section 80(3) and (4) vests the NASS with the controlling power over public funds. No money can be withdrawn from public funds without recourse to the prescription or an Act of the NASS. The power of investigation under section 88 is a key

²⁴ The Judiciary, for example, is one arm of governance that is made up of specialised professionals.

²⁵ Magil (n 23).

²⁶ Berger Raoul, *Impeachment: The Constitutional Problems* (Harvard University Press 1974)118.

²⁷ It may be argued, though, that this is balanced by the provision of section 308 of the Constitution which makes chief executives immune to prosecution during their period in office as against their counterparts in the legislature. Such impeachment powers of the legislature will act as a check for high handed chief executives.

²⁸ 1999 Nigeria Constitution, ss. 5, 124(5), 146(1) and (3) and 191(1) and (3).

²⁹ *ibid*, ss 143 and 188, respectively.

³⁰ Better said, impeachment is removal from office without his/her consensus. See C Eze, 'A Critical Appraisal of the Procedure for the Impeachment of Elected Public Officers under the 1999 Nigerian Constitution' [2007] *Unizik L J* 112.

'Executive oversight.' One of such oversights could result in impeachment^[41].

The Constitution empowers the NASS to remove the President or Vice President if found guilty of gross misconduct in the performance of the duties of his or her office^[42]. The first problem with this provision is its approach to defining what constitutes gross misconduct, which it defines as "a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts, in the opinion of the National Assembly, to gross misconduct."^[43] It is unhelpful and inappropriate to define a word with the word being defined. Secondly, this definition is quite vague. What exactly amounts to a grave violation or breach of the provisions of the Constitution; or a misconduct of such nature as amounts to gross misconduct?

This definition is open to varied interpretations depending on the whims of the NASS^[44] This is more so as it is the NASS that has the sole power to determine what constitutes gross misconduct or a conduct that warrants impeachment^[45] as has been confirmed by the Court of Appeal^[46] This provision is unlike Article II, section 4 of the US Constitution, which specifies the grounds for impeaching the President in providing that "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Conviction of, Treason, bribery, or other high Crimes and Misdemeanours"^[47]. This definition provides specific offences from which the accompanying general terms can be inferred applying the *ejusdem generis* rule.

Though, the interpretation of 'gross misconduct' is at the mercy of the legislators, it is helpful to know that an impeachment can only stand where it is based on the infringement of a known and established law^[48] As seen from the cases of the governors who were impeached, their offences ranged from mismanagement and theft of public funds, money laundering and corruption to abuse of office^[49]. All these are offences in various legislation of Nigeria

oversight function that the National Assembly exercises on matters on which it has powers to make laws. It also conducts the affairs of such person or authority that administers the laws of the NASS or disburses funds appropriated by it. Furthermore, the power of the executive to appoint persons to specific offices is hinged on the confirmation of the senate. Some of such offices as provided by the Constitution include: section 86(1), the appointment of the Auditor-General is subject to the confirmation of the Senate; section 147(2), the President can only appoint persons confirmed by the senate to be ministers; section 231(2), the appointment of the Chief Justice of Nigeria is also subject to the confirmation of the Senate, and likewise to the office of the President of the Court of Appeal, Chief Judge of the Federal High Court, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory and the President of the Customary Court of Appeal of the Federal Capital Territory as provided in sections 238(1), 250 (1), 261(1) and 266(1) respectively.

⁴¹ 1999 Constitution, s 143.

⁴² *ibid* s 143(1) and (2).

⁴³ *ibid* s 143(11).

⁴⁴ *Ogbuagu v Ogbuagu* (1981) 2 NCLR 658; *Anya v A-G, Bornu State FCA/K/141/82*.

⁴⁵ Likewise, state governors under sec. 188(11).

⁴⁶ *Abaribe v Abia State House of Assembly* [2002] 14 NWLR (Pt788) 466, 474 CA.

⁴⁷ Article II Section 4, Constitution Annotated, Library of Congress, <<https://constitution.congress.gov/browse/article-2/section-4/>> accessed 14 September 2020.

⁴⁸ Blackstone William, Commentaries on the Laws of England (Oxford 1765-1769) Vol. 4, 259

⁴⁹ (N 5).

^[50]. The courts, in interpreting the provision of the Constitution in *Inakoju v Adeleke*,^[51] expanded the definition of gross misconduct to include grave violation or breach of the provisions of the Constitution, breach of oath of allegiance, corruption, false declaration of assets, breach of oath of office, and so on.

The reading of the provision of section 88(2) (b) strengthens the NASS's powers of investigation, particularly as it relates to unaccountability. It provides:

The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to –

- a. Make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
- b. Expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

The section emphasises that such investigative powers of the legislature are exercisable when it is to expose corruption, inefficiency, waste or funds unaccounted for. This in turn unfolds their power to impeach where the findings of such investigation prove a case of gross misconduct. It is then safe to brand a proven case of financial unaccountability or mismanagement an impeachable offence as provided for by law.

In some climes such as the United States, this power is believed to be somewhat political and is exercised over offences such as breach of public trust committed by public servants^[52]. Being elected representatives of the people, the legislature should not abuse the power of impeachment in a bid to check the abuse of powers by the executive.

B. Procedure for Impeachment

The procedure to be followed for the impeachment of the President is clearly outlined in section 143 of the Constitution. The ground for impeachment which is a predicate to the procedure must be constitutional^[53]. The process is triggered by a written notice containing allegations of gross misconduct by the President or the Vice President^[54]. This notice must be signed by at least one-third of the members of the NASS^[55] and presented to the Senate President^[56]. Thereafter, the Senate President must, within 7days of the receipt of the notice, serve a copy of it on the holder of the office and every member of the NASS^[57].

By this step, the officer to be impeached is put on notice of allegations against him or her. This is also where other members of the house, who were not signatories to the notice, particularly when it is politically motivated, are put on notice. Like in judicial proceedings, service of notice is a sensitive issue and must be adhered to. Though the

⁵⁰ Money Laundering (Prohibition) Act; Economic and Financial Crimes Act; Code of Conduct for Public Officers; etc.

⁵¹ (2007) 4 NWLR (Pt 1025) 423.

⁵² Story Joseph, Commentaries on the Constitution of the United States (Da Capo Press 1970) Vol. 11, Section 744, 217.

⁵³ See 1999 Constitution, s 143(2).

⁵⁴ *ibid*.

⁵⁵ *ibid*. Consequently, a notice signed by 10 members of a house made up of 32 members is invalid, *Inakoju & Ors. V Adeleke & Ors.* (N 32).

⁵⁶ Constitution, *ibid* s 143(2) (a).

⁵⁷ *ibid* s 143(2) (b).

Constitution is silent on the mode of service, substituted service will not suffice, except where personal service is impracticable^[58].

The house must, within 14 days of the presentation of the notice, by a motion, resolve whether the allegation should be investigated^[59]. This resolution must be devoid of any debate whatsoever and the motion to carry out the investigation must be supported by at least two-third majority of members of each house of the NASS^[60]. Within seven days of the motion being passed, the President of the Senate requests that the Chief Justice of the Country appoints a panel constituted of seven persons who are not members of the public service, political party, legislative house, and are of unquestionable integrity^[61]. Failure of the Chief Justice to adhere to these requirements can be challenged in court and tagged procedural breach which can nullify the proceeding^[62]. Note that the panel is guided by the procedure laid down by the NASS when exercising the stipulated powers and functions^[63] while the courts are prohibited from entertaining any questions relating to the proceeding^[64].

It is trite that regardless of the procedure adopted, it must be one laced with the tenets of natural justice. Besides the procedure adopted, the venue where the impeachment proceedings are conducted is of utmost importance. By implication of the Constitution and case law, all proceedings must be done in the NASS. Anything done to the contrary is null as all legislative acts must be conducted in the NASS^[65].

The duration of the inquest and findings of the panel must not exceed 3 months^[66]. Where such findings reflected in a report shows an unproved allegation, the proceeding comes to an end. Where the allegation is proved, the house shall consider it within 14 days. The report of proved allegation can only stand against the President or Vice President where two-third majority of members of each house adopts the report. Where this is done, the President or Vice President stands removed from office with immediate effect^[67]. Note that throughout the process, the office holder being investigated must be given fair hearing as stipulated in section 143(6).

In comparison to the Nigerian position, the American impeachment process comprises, firstly, the impeachment proceedings, which is handled by the House of Representatives and, secondly, the impeachment trial by the Senate of the United States Congress^[68]. Members of the House of Representatives prosecute^[69] while the Senate proceeds on trial where the House of Representatives have a simple majority vote on the articles of impeachment. In

other words, in the US, one house impeaches while the other conducts the trial to decide if a removal from office is inevitable^[70]. This is unlike the Nigerian position where both houses conduct the process and if the President or Vice President is impeached, he or she stands removed.

Similarly, in contrast to the provisions of the Nigerian Constitution where the only role the Chief Justice of Nigeria plays is to constitute the 7-man panel,^[71] the Chief Justice of the United States presides over the proceedings^[72]. The role of the Chief Justice is merely akin to that of a moderator; he has no power to influence the proceedings or decision in any way. Though the Senate Impeachment Committee is in charge of the proceedings and gathering of evidence, conviction or acquittal is determined by two third majority votes of members^[73]. A conviction of the President in an impeachment proceeding earns him a removal from office or foreclosure from holding public office^[74]. In the latter case a simple majority vote is needed. Note that after the impeachment proceedings, criminal action can be brought against the President^[75].

Concern about the likelihood of the presence of bias on the part of the Chief Justice of Nigeria or the Chief Judge of a state in the constitution of the seven man investigative panel has been expressed on the ground that they are appointees of the President or Governor, respectively^[76]. In view of this, it is suggested that Nigeria may consider adopting the US model where the House of Representatives conducts the impeachment proceedings and the Senate the impeachment trial while the Chief Justice merely moderates^[77]. This will help to foster proper separation of power by allowing the legislature to be in control of the process and restricting the judiciary to its adjudicatory role as the need arises.

The procedure of impeachment outlined in section 143 of the Constitution may be subject to judicial review irrespective of the provision of subsection (10) excluding the court from entertaining any question on the proceedings. Such exclusion applies only where the NASS complies with all the procedures provided by the Constitution. There can be a judicial review where the procedure for removal is faulty^[78]. This was not usually the case until recently when

⁵⁸ See *Inakoju & Ors. v Adeleke & Ors* (n 32).

⁵⁹ 1999 Constitution, s 143(3).

⁶⁰ *ibid* s 143(4).

⁶¹ *ibid* s 143(5).

⁶² *Alamiyeseigha v Igoniwari* [2007] NWLR 524.

⁶³ 1999 Constitution, s 143(7)(a).

⁶⁴ *ibid* s 143(10).

⁶⁵ See *Akintola v Aderemo* (1962) All NLR 440, 443; See also *Inakoju & Ors. v Adeleke & Ors.* (n 32); *Danladi v Taraba State House of Assembly and 6 Ors.* [2014] 11 SCNJ 134, 154.

⁶⁶ 1999 Constitution, s 143(7)(b).

⁶⁷ *ibid* s 143(9). See *Inakoju & Ors. v Adeleke & Ors* (n 32) where Justice Niki Tobi outlined these requirements.

⁶⁸ United States Constitution Art I s 3.

⁶⁹ It is clearly referred to as a criminal proceeding before a quasi-political court, Henry C Black, *Black's Law Dictionary* (West Publishing Co 1990) 753.

⁷⁰ Dakas C J Dakas 'The Jurisprudence and Politics of Impeachment in Nigeria: The Dariye Impeachment Saga in Perspective' in M O U Gasiokwu (ed) *Law, Politics and Diplomacy in Contemporary Nigeria* (Chenglo Limited 2010) 307-308. Most States in the US also adopt this procedure for impeachment of Governors. Article II section 23, Constitution of the State of Ohio provides inter alia: "The House of Representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachments shall be tried by the Senate; and the senators, when sitting for that purpose, shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the senators." Even then, the process is often not free from politics. As seen in President Trump's impeachment trial, the House of Representatives had Democrats in majority while the Senate were more of Republicans. To a large extent this influenced the result of the proceeding as the President is a Republican.

⁷¹ 1999 Constitution s 143(5).

⁷² United States Constitution Art I s 3(6). This applies only to the President and not State Governors.

⁷³ *ibid*.

⁷⁴ *ibid* Art I s 3(7).

⁷⁵ *ibid*.

⁷⁶ Jide Ogunsakin, 'Evaluation of Impeachment Proceedings under the Constitution of the Federal Republic of Nigeria 1999' (2015) 34 *Journal of Law, Policy and Globalisation* 140.

⁷⁷ This can only apply at the federal and not the state level due to the absence of a bicameral legislature in the states.

⁷⁸ This was what led to the reinstatement of governors Rashidi Ladoja (Oyo State); Joshua Dariye (Plateau State); and Peter Obi (Anambra State) after

the justiciability of impeachment proceedings was affirmed [79].

In *Anya v Attorney-General, Bornu State and Anor.*,^[80] the Federal Court of Appeal, relying on *Black's Law Dictionary* held that a misconduct is "an unlawful behaviour by a public officer in relation to the duties of his office, wilful in character or acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act." Consequently, the legislature has no power to regard as a misconduct what is clearly not so in law^[81]. In the same case as well as in *Ogbuagu v Ogbuagu*^[82] the Court held that the determination as to whether or not the President or Governor is guilty of a contravention of the Code of Conduct is a matter exclusively within the power of the Code of Conduct Tribunal. The House of Assembly has no power to embark on such determination. As concluded by Popoola,

If we accept the view that the Assembly has no power to regard as a misconduct what is clearly not so in law, it follows that any such determination is amenable to judicial control. A decision or step in the impeachment process that contravenes mandatory constitutional provision is also not a determination of the House that can be shielded from judicial review^[83].

Once the laid down procedure is complied with, the court can neither overturn the removal of any affected officer nor sit on appeal over the decision of the legislature. The Court of Appeal has equated the power of the NASS and states Houses of Assembly on impeachment with that of a court. In *Abaribe v Abia State House of Assembly*^[84] the Court declared: "A state house of assembly is not an inferior tribunal but is equal to the judiciary or the court in the power-sharing characteristic of a federal constitution where there is separation of powers."

they were impeached. The judicial pronouncement nullified the impeachment procedure (n 5).

⁷⁹ The courts had viewed the impeachment of a governor or the President as political with constitutional backing built on the doctrine of separation of powers and so avoided delving into matters of such nature. See *Musa v Hamza* (1982) 3 NCLR229 (FCA); also Ben Nwabueze, Nigeria's Presidential Constitution 1979-83: The Second Experiment in Constitutional Democracy (Longman 1985) 339. It seemed the legislature took advantage of the judiciary's stand point and acted with impunity as it relates to impeachment. The judiciary had to rise to the occasion and ensure that all constitutional procedures were followed to the letter. See *Adeleke & Ors v Oyo State House of Assembly & Ors* (2006) JELR 48689 CA. where members of Oyo State House of Assembly met in a hotel, as against the constitutional provision, to issue a notice of allegations against the governor of the State. This procedure was challenged at the High Court and the Court of Appeal and, subsequently, the Supreme Court, which held the removal to be unconstitutional.

⁸⁰ Unreported, Suit No. FCA/K/141/82. Also A O Obaseki, JSC (Rtd) 'Constitutional Structure and the Position of the Judiciary-Interpretative Jurisdiction of the Courts and Interpretation of Other Statutes' in 1990 Judicial Lectures: Continuing Education for the Judiciary (MIJ Professional Publications Ltd 1991) 13-14 (stating four basic rules of interpretation of statutes).

⁸¹ Other cases in which the court intervened to nullify impeachment of governors on the basis of the legislature's non-compliance with laid down procedures include those of Joshua Dariye of Plateau State as held in *Hon. Michael Dapianlong & Ors v Chief (Dr) Joshua Chibi Dariye & Anor* (2007) All FWLR (Pt 373) 81; *Inakoku v Adeleke* (2007) 4 NWLR (Pt 1025) 423, among others.

⁸² (1981)2 NCLR 658.

⁸³ A Popoola, 'The Politics of Impeachment: the Nigerian Experience' in D A Guobadia and E Azinge (eds), *Current Themes in the 1999 Constitution: A Tribute to Hon. Justice S.M. A. Belgore* (Nigerian Institute of Advanced Legal Studies 2007) 262.

⁸⁴ [2002] 14 NWLR (Pt788) 466, 474 CA.

With all these procedures in place, and the attempted and successful cases of impeachment of governors, one wonders why there has been no serious attempt on any president of Nigeria^[85]. Could it mean that all the presidents and vice presidents are impeccable or that the provisions of the Constitution on impeachment do not suffice?

How accountable is the executive?

The executive arm of government is saddled with the major responsibility to govern. The power to carry out such responsibility is vested in the President at the Federal level and the Governor at the State level^[86]. In carrying out these duties, the executive is required to be accountable. Nwabueze refers to accountability as the mechanism put in place for review and probable sanction of abandoned responsibility^[87]. Indeed, accountability is a boost for public confidence and the standard of conduct the executive must maintain in office. As a matter of ethics, the government is required to deal with matters of public interest with a high level of accountability, especially in a democratic setup^[88].

Accountability issues of the executive handled by the legislature usually falls under 'gross misconduct'. In describing 'gross misconduct' within the boundaries of section 143(11) of the Constitution, Akande referred to it as "any offence constituting criminal offence punishable under the criminal law of the land."^[89] Using the celebrated case of *A.G. Lagos State v A.G. Federation*^[90] as an example, the President was alleged to have failed to disburse statutory allocation due to Lagos State. The reason was that, Lagos State created new Local Government Councils without complying with the provisions of the Constitution. The Supreme Court held that the act of the President was unconstitutional, null and void. It would be recalled that the President at the time still withheld the funds of the Lagos State Government, contrary to the Court's pronouncement^[91]. What more could be an act of gross misconduct and unaccountability?

With the Fourth Republic as the basis for analysing the executive's accountability,^[92] there has been an unending

⁸⁵ The closest attempt was President Olusegun Obasanjo masterminding the 'Judicial Impeachment' of his Vice- President, Atiku Abubakar. It was held that such powers to impeach rest on the NASS and not the judiciary, *A-G. Federation & 2 Ors. v Alh Atiku Abubakar & 3 Ors.* [2007]4 SCN 456.

⁸⁶ See generally s 5 and ss 130-220.

⁸⁷ B O Nwabueze Nigeria's presidential constitution, 1979-1983: The second in constitutional democracy (Longman 1985) 45.

⁸⁸ Howard Whittom, 'Implementing Effective Ethics Standard in Government and the Civil Service' <www.oecd.org> accessed 09 September 2020, Godwin Kwemarira, Joseph M Ntayi and John Munene, 'Accountability and Public Interest in Government Institutions' 2019 International Journal of Public Administration, DOI: 10.1080/01900692.2019.1672187

<https://www.researchgate.net/publication/336444089_Accountability_and_Public_Interest_in_Government_institutions> accessed 09 September 2020.

⁸⁹ J O Akande, *Introduction to the Constitution of the Federal Republic of Nigeria 1999* (Spectrum Books Ltd 2000) 244. This simply means that any misdemeanour, felony or capital offence committed by such chief executive is a gross misconduct. This ranges from misappropriation and abuse of office under the Criminal Code Act, Cap C38 LFN 2010, to Money Laundering under the Money Laundering (Prohibition) Act, Cap M18 LFN 2010 etc.

⁹⁰ NSCQR 2004.

⁹¹ 'Aondoakaa under Attack Over Lagos Council Areas', *The Nation Newspapers*, (Friday August 7, 2009) 1-2.

⁹² The focus on the Fourth Republic is because most of the examples given at the state level fall within the same period.

list of issues ranging from the controversial insertion of section 80(1) of the Electoral Law 2001, inter communal crises and even threats to work without the legislature^[93]. The above mentioned examples were neither resolved nor did they provoke an impeachment proceeding. Of Obasanjo's presidency, it was said, The transition from Military dictatorship to civil democracy presented its own challenges. The first challenge was the notion of an imperial presidency that had little regard for the constitution. I refer here to General or Chief Olusegun Obasanjo. In fairness to him, he had good ideas but disdained the rule of law and constitutionalism. His eight years was characterized by electoral fraud, impunity, disrespect for court decisions, abuse of human rights etc. . . . Although democratically elected as President, Chief Obasanjo presented himself in good military tradition as a General that brooked no opposition and took no prisoners... At the end of General Obasanjo's 8 years, it became clear that something dramatic was needed to defend the rule of law^[94].

When the mantle of power was handed over,^[95] the narrative was not different. One area the President Goodluck Jonathan administration failed to account for was the endemic power generation problem of the country. Like the Obasanjo's era, billions of naira went into the power sector in a bid to reform it, but, ironically, power generation took a turn for the worse^[96]. Similarly, the President awarded the contract for the construction of refineries in three states of the nation which turned out to be shrouded in uncertainty^[97]. The irony is that in the latter case, it was a member of the House of Representative that raised the alarm of questionable inactivity in the construction of the refineries^[98]. Was it sufficient just to raise an alarm when there are adequate mechanisms in place to address such acts?

The security and welfare of citizens is the primary purpose of government^[99]. A government must be held accountable and made to face the consequences where found guilty of neglecting this responsibility.

Over two decades into the fourth republic, the lives of the citizens are at risk as a result of kidnapping in the south-east, religious/ethnic killings in the north, farmer/herders clashes resulting to killings in the middle belt and south-east/south-west, and the Boko Haram menace in the country^[100]. Onifade et al attribute the basis of such insecurity to

lack of institutional capacity resulting in government failure, inter agency rivalry, ethno-religious conflicts, non-prosecution of perpetrators, among others^[101]. Juxtaposing this state of affairs with the provisions of section 14(2) (b) of the Constitution, there is a clear failure of the government to sufficiently address the welfare and security needs of the citizenry. This is a catastrophe exacerbated by failure to account for the huge defence allocation in the annual budget over the years, as seen in the table below, as well as the lives of the citizens routinely lost to insecurity^[102]. This clearly amounts to gross misconduct that should be accounted for.

Table of Allocation to Defence from 2008 to 2018^[103]

Table 1

Year	Budget (N)	Allocation to Defence (N)	Percentage
2008	2.213 trn	444.6 billion	20.09%
2009	3.049 trn	233 billion	7.64%
2010	5.248 trn	264 billion	5.03%
2011	4.972 trn	348 billion	7.0%
2012	4.877 trn	921.91 billion	18.90
2013	4.987 trn	1.055 trillion	21.16%
2014	4.962 trn	968.127 billion	19.51%
2015	5.068 trn	388.459 billion	7.67%
2016	6.061 trn	429.128 billion	7.08%
2017	7.444 trn	465.87 billion	6.26%
2018	9.12 trn	580.145 billion	6.36%
Total	58.001 trn	6.098 trn	10.51%

Where insecurity arises as a result of conflict, the judiciary usually has a role to play. However, where the rule of law is disregarded and decisions of the court are flagrantly ignored, the government should be made to give account of its gross misconduct^[104]. It should be held accountable for failure to uphold the provisions of the Constitution that it swore to uphold and defend.

One of the ways to do this is through impeachment. Yet the National Assembly turns a blind eye on such misconduct as opposed to State assemblies. There seems to be a fundamental problem with the legislature invoking its impeachment powers at the Federal level. Executives at the Federal level must also be held accountable as they are merely stewards to the electorate which they were elected to

⁹³I M Abada, *An Assessment of Public Accountability in Nigeria Under Obasanjo's Regime* (Vantage Pub. 2004) 27.

⁹² Olisa Agbakoba, 'How the Nigerian Bar Association Promotes and Defends the Rule of Law in Nigeria' <<http://www.ibanet.org/Document/Default.aspx?DocumentUid=B55061AD-9CCB-4A7E-9900-884FDEC50C2D>> accessed 28 August 2020.

⁹⁵ The Olusegun Obasanjo administration handed over to the Musa Yar'Adua administration in 2007. Goodluck Jonathan took over as the President in 2010 due to the demise of President Musa Yar'Adua.

⁹⁶ Nicholas Ibekwe, 'Nigeria's 2015 Transition: Jonathan's failures, achievements in five year' <<http://www.premiumtimesng.com/features-and-interviews/183866-nigeria2015-transition-jonathans-failures-achievements-in-five-years.html>> accessed 19 August 2020.

⁹⁷ *ibid.*

⁹⁸ *ibid.* Hon. Abass Tajudeen observed that concrete work had not begun on the refineries when the proposed completion date of the project was around the corner.

⁹⁹ See 1999 Constitution, s 14(2)(b).

¹⁰⁰ This is one of the major issues the President Mohammad Buhari Administration has been criticised for. On insecurity, See Comfort Onifade, David Imhonopi and Ugochukwu Moses Urim, 'Addressing the Insecurity Challenge in Nigeria: The Imperative of Moral Values and Virtue Ethics' (2013) 13(2) GJHSSPS.

¹⁰¹ *ibid.*

¹⁰² In 2016 alone 1,832 deaths were linked to terrorist activities, Clifford Ndujihe, 'Security: FG spends N6trn on defence in 11 years', Vanguard Newspaper Online <<https://www.vanguardngr.com/2018/07/security-fg-spends-n6trn-on-defence-in-11-years/>> accessed 28 August 2020.

¹⁰³ *ibid.*

¹⁰⁴ Like other administrations, Nigerians have witnessed the President Buhari led administration's assault on the Judiciary in many ways. The recent case of the invasion of the court by officers of the Department of State Security (DSS) in a bid to re-arrest Omoleye Sowore came as a rude shock and a desecration of the court room, the removal of former CJN, Walter Onnoghen, in contravention of the procedure laid down in s 292(1) (a) (i) of the Constitution, countless disobedience to court orders against the Federal Government, among others. Business Day 'Why we cannot ignore the persistent disregard for the rule of law by current administration – JRP' <<https://businessday.ng/legal-business/article/why-we-cannot-ignore-the-persistent-disregard-for-the-rule-of-law-by-current-administration-jrp/>> accessed 22 August 2020; also Adekoya and Candide Johnson <<https://guardian.ng/features/governments-assault-on-rule-of-law/>> accessed 22 August 2020; Akinrinade Adewuyi, 'Executive Versus Judiciary: A Case Study for CJN Walter Onnoghen' <https://www.researchgate.net/publication/339377102_EXECUTIVE_VE_RSUS_JUDICIARY_A_CASE_STUDY_OF_CJN_WALTER_ONNOGHEN> accessed 22 August 2020.

serve. The Constitution gives sovereignty to the people from whom the government derives its power and authority ^[105].

The National Assembly and the Rhetorics of Impeachment

It would have been out of place some decades back to question the accountability of leaders. But the tides have changed and most citizens have become aware and seek to exercise their right to question expenditure and other activities of government through their representatives in the legislative houses.

It has been established that the NASS can impeach the chief executive for acts which specified details fall under gross misconduct as seen in section 143 (2)(b) of the Constitution ^[106]. This gives the legislature the constitutional backing to ensure that the executive is accountable and has regard for the rule of law, especially as it relates to financial impropriety. The power of the NASS to initiate impeachment proceedings can also be drawn from its power to control public funds and conduct investigation under sections 80 and 88 of the constitution ^[107]. All funds and moneys disbursed must be well accounted for and the NASS is to “expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.” ^[108]. This aims at curbing misappropriation or embezzlement, serves as a check on the executive’s expenditure and, in turn, provides the NASS with approving powers for the nation’s budget and monetary claims ^[109]. This minimises, to a large extent, occasions of ‘budget padding’, corruption, unaccountability and other related acts which can lead to a call for impeachment where required. The executive is required to give horizontal account of its dealings, through institutions, as an update and where there is suspicion or reports of unaccountability or defective service delivery ^[110].

Impeachment should not be seen as a political opposition tool but as a tool that checks the unaccountability of a sitting government ^[111]. It puts an end to a particular administration of a government but ensures continuity ^[112] as the next in line takes over the office ^[113]. Impeachment is in no small way a tool that curbs unaccountability and arbitrary exercise

of power ^[114].

With this clear and enormous power of the legislature to impeach, coupled with the glaring evidence of accountability deficit of the executive, it is surprising that over the years, since this democratic era, other than mere threats of impeachment, no President or Vice President has actually been impeached. The most serious attempt came during Obasanjo’s first term in office ^[115] when, apparently, the NASS was more miffed by the President’s lack of respect for it – ‘arrogance and impolite behaviour’ - than by the fact that he had gravely violated constitutional provisions. This accounts for why an apology and negotiations were enough to appease and prevent the members from carrying through with the impeachment ^[116]. They had originally anchored their threat of impeachment on a violation of constitutional provisions and acts inimical to the wellbeing of the Country. The question is, does an apology make right grave violations of constitutional provisions by the President? ^[117]

The NASS also twice threatened that it might commence impeachment proceedings against President Goodluck Jonathan. One of the occasions related to Senate resolution S/Res/033/02/13 of 13 February 2013 asking the President to sack the Chairman of the Pension Reform Task Team, Abdulrasheed Maina, from the Federal Civil Service. The President’s non-compliance with the demand angered the NASS, which interpreted it as “a gradual move by the executive to undermine the legislature.” ^[118] The Minority Whip, Samson Osagie, captured the anger of lawmakers pointing out that “the 1999 Constitution envisaged the relevance of the legislature in a democracy when it gave lawmakers the power to impeach the President” ^[119].

President Muhammadu Buhari has equally witnessed series of impeachment threats. One instance was by members of the House of Representatives in May 2018 over unauthorised expenditure of 400million dollars outside the budget approved by the NASS. The issue was, however, resolved over a closed door meeting between the then Senate President, Dr Olubukola Saraki, and Speaker of the House, Yakubu Dogara; and President Muhammadu Buhari at the Aso Villa ^[120]. The latest threat occurred in July 2020 when the opposition party, Peoples Democratic Party (PDP) caucus in the House of Representatives gave a four weeks ultimatum of its intention to commence impeachment

¹⁰⁵ 1999 Constitution, s 14(2)(a).

¹⁰⁶ Which provides “... stating that the holder of the office of President or Vice President is guilty of gross misconduct in the performance of the functions of his office, details of which shall be specified...”

¹⁰⁷ Though it is one thing for investigation to be carried out and another for the findings of such investigation to be communicated to the members of the public as is seldom done.

¹⁰⁸ 1999 Constitution, s 88(2)(b).

¹⁰⁹ Suzzy Ofuani, ‘Powers and Privileges of Parliament in Nigeria: An Examination of the Legislative Power to Investigate and the Freedom of Speech’ in Epiphany Azinge and Suzzy Ofuani (eds) Nigeria’s Legislative Process (Nigerian Institute of Advanced Legal Studies 2012) 232.

¹¹⁰ There are basically two types of accountability as propounded by O’Donnell, Guillermo O’Donnell, *Dissonances: Democratic critiques of Democracy* (Notre Dame University Press 2007) 95 Horizontal accountability here is making use of available institutional mechanisms and measures (such as the legislature) after elections to check accountability. Vertical accountability is where the citizens use the electoral process (voting) to change leaders that are unaccountable.

¹¹¹ Pérez-Liñán (n 36) 2.

¹¹² *ibid.*

¹¹³ Where the President dies, resigns, or is removed from office, the Vice President becomes the President for the rest of the term, 1999 Constitution, s 146.

¹¹⁴ K Awotokun, *Governance and Legislative Control in Nigeria: Lessons from the Second and Third Republics* (International Scholars Publications 1998) cited in Omololu Fagbadebo and Suzanne Francis ‘Impeachment as an Accountability Measure in a Presidential System? Views from Nigeria’s Fourth Republic’ (2014) (3)2 *African Journal of Governance and Development*, 21.

¹¹⁵ For a detailed run down of the allegations see Popoola (n 83) 245-246.

¹¹⁶ O Aguda, J (Rtd) ‘National Assembly’s Oversight Functions and Fair Hearing’, *The New Jurist* <<https://newjurist.com/national-assemblys-oversight-functions-and-fair-hearing.html>> accessed 15 August 2020.

¹¹⁷ *ibid.* Also S Oyovbaire, ‘Executive- Legislative Relations’ in D A Guobadia and E Azinge (eds), *Current Issues in the 1999 Constitution: A Tribute to Hon. Justice S. M. A. Belgore* (Nigerian Institute of Advanced Legal Studies 2007) 182, alleging that the threat may be connected with the President’s tussle with the Assembly over the huge sums voted by the latter for itself.

¹¹⁸ John Ameh, ‘Reps back Senate: Demands Sacking Maina’ *Punch Online* <<http://www.punchng.com/news/rep-back-senate-demand-sacking-of-maina/#comments>> accessed 20 February 2013.

¹¹⁹ *ibid.*

¹²⁰ William Bozimo, ‘The Impeachment Threat of President Buhari’, <<https://www.independent.ng/the-impeachment-threat-of-president-buhari/>> accessed 15 August 2020.

proceedings if the calculated blackmail against the NASS and insecurity in the country are not checked. The blackmail is apparently a reference to “the behaviours of appointees of the Executive arm who continue to show disrespect for the constitution”^[121].

The NASS’s position is different from what obtains, for instance, in the US, which operates a similar presidential system as Nigeria. There, the Congress closely oversees the activities of the executive to avoid cases of unaccountability. Though the US’s process of impeachment is more rigorous than that of Nigeria, and impeachment is not common, for the Congress, the deployment of the power has not ended as a mere threat, but in actual impeachment of three presidents at the House of Representatives and trial in the Senate^[122].

Doubtlessly, one of the pitfalls of the legislature investigating the executive is the legislature’s dependence on the resources of the state while vested interest shroud accountability, forgetting that the interest of the country must always come first^[123]. Another militating factor is the weakness of Nigeria’s political system. This makes a finding of wrongdoing against the executive arm inconsequential in terms of bringing down the government through impeachment or the non-return of the government of the day through the subsequent electoral process. It has been rightly observed by Fagbadebo and Francis that the result of electoral processes in Nigeria hardly has any bearing with the performance or failures of political office holders^[124].

The nature of Nigeria’s politics is such that party rules and dictates take pre-eminence over prevailing laws and government policies, thus, often rendering existing legal framework on relevant issues ineffective. The fact that there is no viable opposition equally helps to foster this practice. The ruling party, whether People’s Democratic Party (PDP) or the All Progressive Congress (APC) is usually the chief architect of this practice. It holds an overwhelming majority in the NASS. The highest abuse of official powers flows from its members in both the executive and the legislature at the national level. In utter disregard for the rule of law, it dictates who contests and who ‘wins’ elections from among its members at the various levels, including the leadership of the NASS^[125]. It is, therefore, not surprising that members

of the NASS cannot stand up to the executive in the face of incessant infractions.

A further eroding factor is the thorny issue of ethnicity, which has so divided the country that even when there are glaring grounds for impeachment, any such move will be interpreted along ethnic lines. Members of the Presidents ethnic group will resist the attempt because they would not want power to shift to another ethnic group. Such ideology should be alien to our political practices as we strive to have a political system driven by ideology rather than ethnicity because ethnicity is a weapon of mass destruction^[126].

Additionally, there is a failure on the part of the NASS to recognise and appreciate the potentials of the Assembly, as derived from the constitutional and legal powers vested in it, for the realisation of an accountable executive^[127]. This failure is due largely to corruption, lack of good faith and a sense of direction on the part of members of the Assembly. There is equally a lack of probity on the part of the members, which reinforces their sense of helplessness, thus contributing to their lack of political will to institute an impeachment process against an erring President or Vice President. This is exacerbated by the fear on the part of members that a move to impeach the President may likely result in the President unleashing the Economic and Financial Crimes Commission against them, knowing fully well that their hands are not clean.

The following is a bad testament of the relationship between the NASS and the executive. With reference to the May 2018 threat of impeachment, it has been observed that in the course of the closed-door meeting between the President and the leaders of NASS, they must have been compelled to hold their peace because

Both leaders are standing on sinking sands as the story of the missing Mace that rocked the Senate chambers recently had cast a dark shadow over the head of the Senate President, Dr. Bukola Saraki. The seeming Cat and Mouse affair in the NASS smacks of mutuality of blackmail tactics between the Executive and Legislative Arms of government^[128].

The situation is clearly not better under the present leadership of NASS, going by the recent lamentation of the PDP caucus in the House of Representatives that the executive is taking the legislature and judiciary prisoners in order to hijack and supplant them into obsequious rubber stamps arms, thus subverting the Constitution^[129]. Admittedly, their wimpy lamentation may be inexcusable because the continuously increasing sordid state of the NASS is a self-inflicted malaise for which the members have, through the years, been collectively responsible. A NASS which successive appointees of the executive walk out on within a few weeks in the course of its oversight function^[130] has certainly lost control as this shows the depth of the appointees’ disdain for the members of the

¹²¹ Yusuf Akinpelu, ‘PDP reps threaten to impeach Buhari over corruption, insecurity’, Premium Times (21 July 2020) <<https://www.premiumtimesng.com/news/top-news/404238-pdp-reps-threaten-to-impeach-buhari-over-corruption-insecurity.html>> accessed 15 August 2020. Part of the grouse of the representative was that within the past few weeks three appointees of the executive: a Permanent Secretary in the Ministry of Labour; Festus Keyamo, Minister of State for Labour and the Acting Managing Director of the Niger Delta Development Commission (NDDC) had walked out on the Committee of the House during the exercise of its oversight function.

¹²² ‘What to Know about US Presidents Who’ve Been Impeached’, Time (March 27, 2019) <<https://time.com/5552679/impeached-presidents/>> accessed 13 September 2020.

¹²³ H A Kifordu, ‘Political Elite and the Vicissitudes of Accountability in Nigeria’ [2010] SAJPS 28.

¹²⁴ Fagbadebo and Francis, (n 114) 21.

¹²⁵ A clear manifestation of this is seen in the cases of Engr. Charles Ugwu & Anor v Senator Ifeanyi Ararume & Anor (2007) 12 NWLR (Pt 1048) 367; [2007] 6 S C (Pt 1) 88 and Rt. Hon Chibuike Amaechi & Anor v INEC & 2 Ors (2008) 5 NWLR (Pt 1080) 227; (2008) All FWLR (Pt 407) 1 in which the situation was saved only by the intervention of the court. This and Ararume’s cases are analysed in detail in N J Udombana, ‘The Rule of Law and Judicial Application in Nigeria’ in E Azinge and B Owasanoye (eds), Rule of Law and Good Governance (Nigerian Institute of Advanced Legal Studies 2009) 338-374. See also Abubakar v Attorney-

General of Federation (2007) 6 NWLR (Pt 1031) 626; (2009) All FWLR (Pt 456) 1.

¹²⁶ Marcel Rutten and Sam Owuor, ‘Weapons of Mass Destruction: Land Ethnicity and the 2007 Elections in Kenya’ (2009) 27(3) Journal of Contemporary African Studies, DOI: 10.1080/02589000903118904

¹²⁷ The Constitution and other laws such as the Electoral Act, 2010, the Legislative House (Powers and Privileges) Act, Cap L12 LFN 2010 and the National Assembly Service Commission Act, Cap N7 LFN 2010 delineate the purpose, ambit and procedure for the exercise of legislative powers.

¹²⁸ William Bozimo (n 120).

¹²⁹ Akinpelu (n 121).

¹³⁰ *ibid*

Assembly.

There is, however, merit in the call of the caucus on the leadership of the NASS to take back the independence of the legislature from the executive and stop making statements like “I will approve whatever GMB asks for; better to be a rubber stamp and get what we want”^[131]. Such a compromised Assembly cannot hold the executive accountable through impeachment or any other means for that matter. It is, therefore, safe to say that though impeachment is a remedy to executive unaccountability, and has been effectively used by the legislature in other jurisdictions,^[132] it has been a lame power in the hands of a compromised NASS. Under the NASS, executive misconduct has thrived unchecked because the NASS has failed to maintain clean hands. The Assembly will, therefore, do well to heed the call to sanitise itself so that it can deliver the dividends of good governance to the citizens it represents.

Recommendations and Conclusion

Executive accountability is required, among others, to ensure that money is spent in accordance with defined rules; guard against abuse of power; and ensure performance. These reasons are essentially a reflection of the fundamental requirements of democracy^[133].

Where the executive is found wanting, on rare occasions public protest by the citizens compels the executive to be accountable to its citizens and the legislature to investigate

an alleged case of unaccountability^[134]. The failure of the legislature to exercise its impeachment powers and other powers capable of holding the executive accountable diminishes the values of democracy^[135]. It is, therefore, imperative and recommended that such powers be invoked where the need arises.

This paper has examined the doctrine of separation of powers, the meaning and significance of impeachment, the NASS powers of impeachment, the accountability rating of the executive, and the rhetoric of impeachment by the NASS. It has established that impeachment is a useful tool for the realisation of an accountable executive, thus serving as an antidote to executive unaccountability. It has equally established that the NASS is constitutionally empowered to impeach the President or Vice President in appropriate cases, provided it follows due process. Whilst, however, in other climes, the power of impeachment has been put to effective use in checking erring executives, the NASS has completely failed to utilise its enormous powers in this regard. Nigeria has, thus far, been unable to reap the benefit of good governance arising from the utilisation of this useful tool. Several reasons have been adduced for this failure. The summary of these reasons is that beyond the undue influence of political party allegiance and ethnicity, the members of the NASS also suffer from accountability deficit and, so, lack the boldness to impeach the executive for its lack of accountability.

To overcome its problem of corruption, lack of good faith and a sense of direction, members of the NASS should strive to conduct the business of the Assembly in a manner that preserves the integrity of the legislature and avoids conflicts of interest or even appearances of conflicts of interest. Members of the NASS should also recognise and appreciate the potentials of the Assembly, as derived from the constitutional and legal powers vested in it, for the realisation of an accountable executive. This way they can acquire the moral strength for the required self-restraint and political will needed for the pursuit of impeachment of the executive, where necessary.

References

1. Abada IM. *An Assessment of Public Accountability in Nigeria under Obasanjo's Regime*. Vantage Publishers, Ibadan, 2004, 27.
2. Abayomi KA. *Critical Analysis of the Legislative Process in Nigeria*. http://nigerdeltacongress.Com/articles/a_critical_analysis_of_the_legis.htm, 2013.
3. Adekoya, Johnson C. <https://guardian.ng/features/governments-assault-on-rule-of-law/>, 22 august 2020.
4. Adewuyi A. *Executive versus Judiciary: A Case Study for CJN Walter Onnoghen*. https://www.researchgate.net/publication/339377102Executive_Vers

¹³¹ *ibid*.

¹³² Three presidents of the United States – Andrew Johnson, 1868; Bill Clinton, 1998; and Donald Trump, 2019 – have been impeached, though not removed having not been found guilty at the Senate trials. Andrew Johnson's and Bill Clinton's parties, however, lost the succeeding elections to the opposition party. President Dilma Rousseff of Brazil was impeached on 31 August 2017 for violation of budgetary laws, Peter Prengaman and Mauricio Savarese, ‘Brazil's President Rousseff ousted from office by Senate’, Associated Press (31 August 2016) <<https://apnews.com/2440ffe7838b49a4b2cf4bba30eb5c04>> accessed 05 September 2020. Russia's President, Boris Yeltsin was impeached for the second time for violation of the Constitution on 22 September 1993, but managed to retain office after an armed stand off with the Supreme Council, Mikhail Sokolov and Anastasia Kirilenko, ‘20 Year Ago, Russia had its Biggest Political Crisis Since the Bolshevik Revolution’ *The Atlantic* (4 October 2013) <<https://www.theatlantic.com/international/archive/2013/10/20-years-ago-russia-had-its-biggest-political-crisis-since-the-bolshevik-revolution/280237/>> accessed 05 September 2020. Two of South Korea's presidents, Roh Moo-hyun and Park Geun-hye were impeached in 2004 and 2016 respectively for abuse of office, although the former's impeachment was later dismissed by the Constitutional Court, which reinstated him, Youngjae Lee, ‘Law, Politics and Impeachment: the Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective’ (2005)53 *AJCL* 403-432, 419; Choe Sang-hun, ‘Park Geun-hye, South Korea's Ousted President, Gets 24 Years in Prison’ *The New York Times* (6 April 2019) <<https://www.nytimes.com/2018/04/06/world/asi/park-geun-hye-south-korea.html>> accessed 05 September 2020. Pérez-Liñán gives a run down of how in the 1990s and early 2000s an unprecedented wave of impeachments swept through Latin America such that between 1992 and 2004, six presidents went through the impeachment process in which four were removed from office. These included the Brazilian President, Fernando Collor de Mello in 1992 and the Venezuelan, Carlos Andres Perez in 1993 who were accused of corruption, Pérez-Liñán (n 36) 1.

¹³³ R D Behn, *Rethinking Democratic Accountability* (Brookings Institution 2001), citing P Williams and J Taylor, ‘Non-Profit Accountability: Negotiating the Network’ (2012) *Voluntas: Int'l J of Voluntary and Nonprofit Organizations* <<http://rd.springer.com/article/10.1007/s11266-012-9266-0>> accessed 16 July 2020.

¹³⁴ Olalekan Adigun, ‘The Political Consequences of the Protests against Neo-Liberal Reforms in Nigeria: The Case of Occupy Nigeria Movement’ (2018) 4 *JPSLR* 23; Pérez-Liñán (n 36) 2-3.

¹³⁵ Other strong tools for holding the executive accountable, exercisable by the senate, include the power of the purse and power of confirmation of executive nominees. The Legislature taking cognisance of this, on the 20th of October 2020, threatened through the Speaker of the House of Representative, Honourable Femi Gbajabamila, that the 2021 budget will not be signed if it does not contain provisions for the compensation of victims of police brutality and the demands of ASUU. Udora Orizu, *Bill To Hold Erring Operatives Accountable Underway* <<https://www.thisdaylive.com/index.php/2020/10/20/gbajabamila-i-wont-sign-off-on-2021-budget-without-provision-for-victims-of-police-brutality/>> accessed 26 November 2020.

- us_Judiciary_A_Case_Study_Of_Cjn_Walter_Onnoghe_n_ Accessed, 2020.
5. Adigun O. The Political Consequences of the Protests against Neo-Liberal Reforms in Nigeria: The Case of Occupy Nigeria Movement. 2018; 4JPSLR:23.
 6. Agbakoba O. How the Nigerian Bar Association Promotes and Defends the Rule of Law in Nigeria. http://www.ibanet.org/Document/Default.aspx?DocumentUId=B55061AD-9CCB-4A7E-9900-884FDEC50C2D_2020.
 7. Aguda O. (Rtd) National Assembly's Oversight Functions and Fair Hearing the New Jurist. https://newjurist.com/national-assemblys-oversight-functions-and-fair-hearing.html_2020.
 8. Akande JO. Introduction to the Constitution of the Federal Republic of Nigeria 1999. Spectrum Books Ltd, Lagos, 2000, 244.
 9. Akinpelu Y. PDP reps threaten to impeach Buhari over corruption, insecurity *Premium Times*, Abuja, July 21, 2020. https://www.premiumtimesng.com/news/top-new/404238-pdp-reps-threaten-to-impeach-buhari-over-corruption-insecurity.html_2020.
 10. Akinsanya A. Impeachment of Governor Abdulkadir Balarabe Musa of Kaduna State. In Adeoye A Akinsanya and Gordon Idang (Eds), *Nigerian Government and Politics, 1979-1983*. Wosen Publishers, Calabar, Nigeria, 2002, 204.
 11. Ameh J. Reps back Senate: Demands Sacking Maina Punch Online http://www.punchng.com/news/rep-back-senate-demand-sacking-of-maina/#comments_2013.
 12. Aristotle. *The Politics*, Translated by B Jowett, with introduction, analysis and index by H W C Davis. Clarendon, Oxford, 1963, 13.
 13. Awolich A. The Challenge of Constitutionalism and Separation of Powers Doctrine in South Sudan (2016) The SUDD Institute: Policy Brief II. https://www.jstor.org/stable/pdf/resrep11018.pdf?ab_segments=0%2Fbasic_SYC-5152%2Fcontrol&refreqid=search%3Af31ae12fcb9f3e0d5b01eea9b46bbe9#page=1&zoom=auto,-8,-72_2020.
 14. Awotokun K. Governance and Legislative Control in Nigeria: Lessons from the Second and Third Republics (International Scholars Publications 1998) cited in Fagbadebo, O. and Francis, S. Impeachment as an Accountability Measure in a Presidential System? Views from Nigeria's Fourth Republic. *African Journal of Governance and Development*: 21, 2014, (3)2.
 15. Behn RD. Rethinking Democratic Accountability. Brookings Institution, Washington DC, 2001. Citing Williams, P. and Taylor, J. Non-Profit Accountability: Negotiating the Network' (2012) *Voluntas: Int'l J of Voluntary and Nonprofit Organizations*. http://rd.springer.com/article/10.1007/s11266-012-9266-0_2020.
 16. Bozimo W. The Impeachment Threat of President Buhari. <https://www.independent.ng/the-impeachment-threat-of-president-buhari/>, 2020.
 17. Charles Louis de Secondat, Baron de Montesquieu, *Complete Works, The Spirit of the Laws [1748]*. https://oll.libertyfund.org/titles/montesquieu-complete-works-vol-1-the-spirit-of-laws_2020, 1
 18. Dakas CJD. The Jurisprudence and Politics of Impeachment in Nigeria: The Dariye Impeachment Saga in Perspective. In M O U Gasiokwu (Ed) *Law, Politics and Diplomacy in Contemporary Nigeria*. Chenglo Limited, Enugu, 2010, 307-308.
 19. Eze CA. Critical Appraisal of the Procedure for the Impeachment of Elected Public Officers under the 1999 Nigerian Constitution, *Unizik L J*, 2007, 112.
 20. Garner BA. *Black's Law Dictionary*, 9th Ed. Thomson Reuters, St. Paul, Minnesota, 2009, 820.
 21. Hurlbut A. The president is impeached; but what does it mean? *Newschannel3*, New York, 2020. https://wwmt.com/news/local/the-president-is-impeached-but-what-does-that-mean_2020.
 22. Joseph S. *Commentaries on the Constitution of the United States*. Da Capo Press, Boston. Section. 1970; 11:744, 217.
 23. Kifordu HA. Political Elite and the Vicissitudes of Accountability in Nigeria, *SAJPS*, 2010, 28.
 24. Kwemarira G, Ntayi JM, Munene J. Accountability and Public Interest in Government Institutions, 2019. *International Journal of Public Administration*, DOI: 10.1080/01900692.2019.1672187. https://www.researchgate.net/publication/336444089_Accountability_and_Public_Interest_in_Government_institutions_2020.
 25. Lee Y. Law, Politics and Impeachment: the Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective. 53 *AJCL*: 403-432, 419, 2005.
 26. Locke J. *Two Treatises of Government*, Peter Laslett ed. Cambridge University Press, Cambridge, 1988, 364.
 27. Magil E. The Real Separation in Separation of Powers Law. 86 *VLR*: 1127-1198, 1157, 2000.
 28. Montesquieu B. *The Spirit of the Laws*, Anne M Cohler, Basia C Miller and Harrod S Stone (Eds). Cambridge University Press, Cambridge, 1989, xxv.
 29. Mulgan R. "Accountability": An Ever-Expanding Concept? https://crawford.anu.edu.au/pdf/staff/richard_mulgan/MulganR_02.pdf, 2020.
 30. Ndujhe C. Security: FG spends N6trn on defence in 11 years *Vanguard Newspaper Online*. https://www.vanguardngr.com/2018/07/security-fg-spends-n6trn-on-defence-in-11-years/_2020.
 31. Nwabueze BO. Nigeria's presidential constitution, 1979-1983: The Second Experiment in Constitutional Democracy. Longman, Lagos, 1985, 45, 339.
 32. O'Donnell GO. *Dissonances: Democratic critiques of Democracy*. Notre Dame University Press, Notre Dame, 2007, 95.
 33. Ofuani S. Powers and Privileges of Parliament in Nigeria: An Examination of the Legislative Power to Investigate and the Freedom of Speech. In Epiphany Azinge and Suzzy Ofuani (Eds) *Nigeria's Legislative Process*. Nigerian Institute of Advanced Legal Studies, Lagos, 2012, 232.
 34. Ogeidi M. Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis, *IJNS*: 25, 2012.
 35. Ogunsakin J. Evaluation of Impeachment Proceedings under the Constitution of the Federal Republic of Nigeria 1999, 2015; 34 *Journal of Law, Policy and Globalisation*: 140.
 36. Onifade C. Imhonopi D, Urim UM. Addressing the Insecurity Challenge in Nigeria: The Imperative of Moral Values and Virtue Ethics. *GJHSSPS*, 2013; 13(2).
 37. Oyewo O. Constitutionalism and the Oversight Functions of the Legislature in Nigeria (*African*

- Network of Constitutional Lawyers Conference, Nairobi, Kenya, April 2007) 7-9. www.publiclaw.uct.ac.za/usr/public_law/Nairobi/Oyewo_constitutionalism_OversightNigeria.doc_2020.
38. Oyovbaire S. Executive- Legislative Relations. In D A Guobadia and E Azinge (Eds), *Current Issues in the 1999 Constitution: A Tribute to Hon. Justice S. M. A. Belgore*. Nigerian Institute of Advanced Legal Studies, Lagos, 2007, 182.
 39. Pérez-Liñán AS. *Presidential Impeachment and the New Political instability in Latin America*. Cambridge University Press, Cambridge, 2007, 1.
 40. Pierce R. *Morris v Olson, Separation of Powers, and the Structure of the Government*, SCR: 1-48, 6, 1988.
 41. Popoola AA. *The Politics of Impeachment: the Nigerian Experience*. In D. A. Guobadia and E Azinge (Eds), *Current Themes in the 1999 Constitution: A Tribute to Hon. Justice S.M. A. Belgore*. Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria, 2007, 262.
 42. Prengaman P, Savarese M. *Brazil's President Rousseff ousted from office by Senate* Associated Press, New York, 2016. <https://apnews.com/2440ffe7838b49a4b2cf4bba30eb5c04>, 2020.
 43. Raoul B. *Impeachment. The Constitutional Problems*. Harvard University Press, Cambridge, 1974, 118.
 44. Rutten M, Owuor S. *Weapons of Mass Destruction: Land Ethnicity and the 2007 Elections in Kenya* *Journal of Contemporary African Studies*, DOI: 10.1080/02589000903118904, 2009; 27(3).
 45. Sang-hun C. *Park Geun-hye, South Korea's Ousted President, Gets 24 Years in Prison* *the New York Times*, New York, 2019. <https://www.nytimes.com/2018/04/06/world/asi/park-geun-hye-south-korea.html>, 2020.
 46. Shafritz JM. *The Dorsey Dictionary of American Government and Politics*. Dorsey Press, Chicago, 1988, 275.
 47. Sokolov M, Kirilenko A. *20 Year Ago, Russia had its Biggest Political Crisis Since the Bolshevik Revolution the Atlantic*, Boston, 2013. <https://www.theatlantic.com/international/archive/2013/10/20-years-ago-russia-had-its-biggest-political-crisis-since-the-bolshevik-revolution/280237/>2020.
 48. Udombana NJ. *The Rule of Law and Judicial Application in Nigeria*. In E Azinge and B Owasanoye (Eds), *Rule of Law and Good Governance*. Nigerian Institute of Advanced Legal Studies, Lagos, 2009, 338-374.
 49. Whitton H. *Implementing Effective Ethics Standard in Government and the Civil Service*. www.oecd.org, 2020.
 50. William Blackstone. *Commentaries on the Laws of England*. Clarendon Press, Oxford. 1765-1769; 4:259.