

**ENSURING ACCOUNTABILITY IN GOVERNANCE THROUGH IMPEACHMENT
IN NIGERIA: LESSONS FROM SOUTH KOREA^{1*}**

Abstract

Accountability in governance is very paramount to the growth and development of a given society. Where the government is not held accountable by the people the dividends of democracy will erode the people and this will in turn have negative implications in the society's economic growth. One of the ways of ensuring accountability in governance is through the process commonly known as impeachment. This article made enquiries into how impeachment has been used by the legislators in Nigeria to ensure that there is accountability in governance by the executive. The article also highlighted impeachment in South Korea to find if there is any lesson Nigeria can learn from there. The research methodology employed is doctrinal and the sources of data used are primary sources of data which are the Constitution of the Federal Republic of Nigeria 1999(as amended); Constitution of South Korea; relevant statutes and case laws, while secondary sources of data used were textbooks from learned scholars, journal articles and internet materials. The research found that legislators in Nigeria have not used the power of impeachment in order to ensure accountability in governance, the research also found that South Korean legislators have risen up to the occasion to use impeachment to check the excesses in government and to ensure accountability. The research recommended that Nigerian legislators both at the federal and state levels should endeavour to use impeachment in appropriate cases, by following the procedure laid down in the Constitution to hold erring executives accountable; it was further recommended that the Constitution should be amended to empower the people to compel the legislators to initiate impeachment proceedings against an elected executive when they have reasons to believe the elected executive has committed gross violation of the Constitution or committed acts that amounted to gross misconduct.

Keywords: Accountability, Impeachment, Governance, Nigeria, South Korea

1. Introduction

In a democratic society, the people through election give their mandate to leaders to govern them. These leaders are expected to be held accountable for their stewardship to the people and where they are found wanting, the people have the right, using the appropriate channel, to withdraw the mandate or not to renew the mandate at the expiration of the leaders' term in office. In Nigeria, there are various avenues through which the people can hold their leaders accountable; the process of terminating the term of office of legislators called recall; challenging the actions and policies of government in power in court; through the principles of checks and balances wherein the arms of government are expected to hold one another accountable on behalf of the people. One of the ways under the principles of checks and balances by which the executives can be held accountable in governance is through the use of impeachment. Where a chief executive or his deputy is found wanting in the area of accountability, the legislature can set up impeachment procedure and remove him or her from office before the expiration of his or her term in office.

In Nigeria, there has never been an impeachment of the President or Vice President, however, several governors and deputy governors have been impeached and removed from office in Nigeria. The power of impeachment, instead of being used to ensure accountability in Nigeria, has been procedurally abused and in most instances have been used to settle political scores and to witch-hunt either a governor or a deputy governor, whereas there are deserving circumstances where the power of impeachment would have been used to ensure accountability in governance and to remove a chief executive or the deputy that is found wanting but the legislators fail to initiate impeachment proceedings. There are also instances where the legislators have genuine cases of impeachment and actually initiated the proceedings for impeachment but those impeachments could not stand when tested in court because they were flawed procedurally. In South Korea, two presidents have been impeached, the first was found innocent by the country's Constitutional Court while the other was removed by the Constitutional Court upon being found guilty as charged in the impeachment. Also recently a judge was impeached in South Korea few days to his retirement and was accordingly charged before the Constitutional Court for impeachment trial.

This article will look at what accountability in governance entails, how it works in Nigeria with more emphasis on impeachment. The article will also highlights corruption cases involving ex-leaders who have served their

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term for acts which ordinarily should have warranted impeachment proceedings while they were still in office. The article will also look at impeachment in South Korea to find out whether there is any lesson that Nigeria can learn from there in order to strengthen our impeachment proceedings and to ensure accountability in governance.

2. Accountability in Governance

For every country to grow and develop, the leadership of that country must be held accountable to the people. The result of non-accountability are numerous, it ranges from poor infrastructural development to lack of growth in the economy and corruption in public offices. Therefore, for a country to grow and develop, it must have strong institutions that will ensure that those in government are at all times held accountable for their stewardship. Accountability can be either horizontal or vertical,² vertical accountability represents the exercise of voting power of the citizens to change leaders through the electoral process.³ In a democratic society where there are free and fair and credible elections, the government in power or the ruling political party is put to accountability test when they seek to retain power at subsequent elections. Horizontal accountability occurs in-between elections through institutional mechanisms.⁴ This institutional mechanism hinges on the principle of checks and balances.

To better drive home the point, it is imperative to look at the principles of checks and balances and how it works in Nigeria. Checks and Balances is a constitutional concept that gives powers to each branch of government to serve as watchdog to the other arms of government and to ensure that they do not overstep the boundaries of the powers allocated to them by the Constitution or any other law. Checks and balances presupposes the donation of powers to each arm of government to interfere in deserving circumstances with the exercise of powers of another arm of government to ensure it is acting within the confines of the law. This article will highlight the principle of checks and balances as contained in the Constitution of the Federal Republic of Nigeria.

Powers of the Legislature to check the other arms of government

The legislature has the powers to approve some acts of the executive before they can be carried out. Some of the instances include; the president shall not declare war between Nigeria and another country without the resolution of the National Assembly at a joint session.⁵ No member of the armed forces of the federation shall be deployed on combat duty outside Nigeria except with the approval of the Senate.⁶ The National Assembly has the powers to conduct investigations into the conduct of affairs of any person, ministry or government department.⁷ The executive presents and defends its budget proposals for the year before the legislature and without the legislature passing same into law it cannot be implemented. The National Assembly can invite a Minister of the Government to come to the floor of the house and explain the conduct of his affairs in office.⁸ The Legislature has the power to screen and confirm the appointments of Ministers of the Government and some other Executive appointees. A treaty entered into by the Executive with another country or other countries will not have a force of law in Nigeria except it is ratified by the Legislature.⁹ The legislature also exercises quasi-judicial powers through the powers of removal of the President or Vice President in the case of the National Assembly,¹⁰ through the process popularly known as impeachment and the Governor or Deputy Governor on the case of the House of Assembly of a state.¹¹ This is the area which this article will dwell on extensively. The Senate must approve or confirm the appointment of all Supreme Court Justices; heads of other federal courts¹², the House of Assembly of a state also exercises the same powers over the heads of states courts. They can also present an address to the president for the removal from office of the heads of any federal court.¹³

² O. Fagbadebo & S. Francis, 'Impeachment as an Accountability measure in a Presidential System: Views from Nigeria's Fourth Republic' *African Journal of Governance and Development*, Vol. 3(2), PP. 16-34.

³ *Ibid.*

⁴ *Ibid.*

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), section 5(4) (a).

⁶ *Ibid.*, section 5(4) (b).

⁷ *Ibid.*, sections 88 & 89. Similar powers are conferred on the Houses of Assembly of states by section 128.

⁸ *Ibid.*, section 67.

⁹ *Ibid.*, section 12(1).

¹⁰ *Ibid.*, section 143.

¹¹ *Ibid.*, section 188.

¹² *Ibid.*, sections 231(1), (2); 238(1); 250(1).

¹³ *Ibid.*, section 292(1) (a).

Powers of the Executive to check the other arms of government

The Executive can withhold its assent to a bill of the Legislature.¹⁴ The President (the Governor in the case of a state) shall have the power to issue proclamation for the holding of the first session of the National Assembly (or the House of Assembly in the case of a state).¹⁵ The Executive plays a role in the appointment and removal of judges. It is the Executive that appoints judges with the recommendation of the National Judicial Council, a Council which is also one of the Federal Executive Bodies.¹⁶ The Executive can also remove a judge from office by acting on the address of the Legislature or by the recommendation of the National Judicial Council.¹⁷ It is the President or Governor that administers Oath of Office on judges before they can carry out their functions.

Powers of the Judiciary to check the other arms of government

The judiciary can declare an Act of the National Assembly or a Law of the State House of Assembly unconstitutional, null and void for being made in excess of the powers granted to the Legislature by the Constitution. In *A.G. Abia State & 35ors v A.G. Federation*¹⁸ the Supreme Court declared null and void the provisions of the Electoral Act 2001 which extended the tenure of Local Government chairman from three years to four years. The Court held that the provisions run contrary to section 7 of the Constitution which empowered the state to make laws in respect of the Local Government. In *House of Assembly, Bendel State v A.G. Bendel State*¹⁹ the plaintiff/respondent by an originating summons filed action claiming against the defendant/appellant inter alia: that the entire provisions of section 2 of the Local Government (Amendment) Law 1982 were inconsistent with the provisions of the 1979 Constitution, that the Legislature of Bendel State had no power to enact into law the bill titled 'A Bill for a Law Establishing Local Government Councils' to enable it create local government councils, and an injunction restraining the defendant and its functionaries from taking further steps in the process of enacting the bill into law. The Court of Appeal held inter alia, that a Bill which has not received the Governor's assent is not yet a law, and confers no rights or obligation on any person or authority. It is no more than an expression of intention to make a law, such as the provisions contained in the Bill under consideration and until such intention materialises in the form of a law, it binds nobody. In *A.G. Lagos State v. A.G. Federation*,²⁰ in that case, the Federal Government issued a circular mandating the withholding of statutory allocation of states that created new Local Government Areas. The Supreme Court held that the enactment of Law No. 5 of 2002 by the Lagos State House of Assembly was not sufficient to give life to the new Local Government Areas until the National Assembly passes the consequential Act amending section 3(6) and Part I of the first schedule to the Constitution. The Court further held that the President has no power vested in him to suspend or withhold for any period whatsoever the statutory allocation due and payable to Lagos State Government in respect of the 20 Local Government Areas for the time being but the new Local Government Areas created which are not yet operative are not entitled to benefit from the federation account. In *Inakoju v. Adeleke*²¹ the Supreme Court held that, in respect of section 188(10) of the Constitution which ousted the jurisdiction of the court to entertain the proceedings of the House of Assembly in relation to impeachment of a Governor or Deputy Governor, the court will have jurisdiction to entertain such matters if the legislature fail to follow the procedure laid down in subsection (1)-(9) of Section 188.

The best way to ensure accountability in governance is by ensuring that the principles of checks and balances are strictly adhered to, including the proper initiation of the process of impeachment in appropriate cases. There are some corruption cases involving former governors in Nigeria some of which led to convictions in court and others which were either charged to court but no conviction secured or did not get to be charged to court. In each of these cases, the legislature did not initiate impeachment procedure while those governors were in office to hold them accountable through impeachment investigations in the exercise of their oversight function in line with the principles of checks and balances. These cases includes; Jolly Nyame, the ex-governor of Plateau State (1999-2007) who was found guilty of misappropriation of funds and sentenced to 12 years imprisonment in a case that went up to the Supreme Court. James Ibori of Delta State (Governor 1999-2007) was convicted and sentenced in London for money laundering, monies he misappropriated when he was governor. Theodore Orji of Abia State (2007-2015), EFCC initiated investigation on allegation of mismanagement of about 27 Billion Naira

¹⁴ *Ibid*, sections 58(4); 100(4).

¹⁵ *Ibid*, section 64(3); 105(3).

¹⁶ *Ibid*, sections 231; 238; 250; 261; 266; 271; 276; 281.

¹⁷ *Ibid*, section 292; Paragraph 21(b) of the Third Schedule to the Constitution.

¹⁸ (2002) 6NWLR (Pt.763) P.264.

¹⁹ (1984) 5 NCLR 161 CA.

²⁰ (2004) 18 NWLR (pt. 904) P.1.

²¹ (2007) LPELR-1510(SC).

against him in November 2018, there was no charge filed against him in court.²² Danjuma Goje of Kebbi State (2003-2011) was arrested by EFCC over allegations of embezzlement of public funds to the tune of 5 Billion Naira. The case was charged to court before Justice Babatunde Quadri of Federal High Court Jos. The case was subsequently dropped by the Attorney General of the Federation. Aliyu Wammako of Sokoto State (2007-2015) was invited by EFCC over allegation of embezzlement of the sum of 15 Billion Naira. The case was never charged to court. Timipre Sylva of Bayelsa State (2007-2012) was accused by EFCC of money laundering to the tune of 19.2 Billion Naira. He was charged for using three proxy companies to siphon the funds. Sylva was also prosecuted for another separate 6 Billion Naira fraud case. By 2015 the cases against Sylva were struck out. Sullivan Chime of Enugu State (2007-2015), EFCC began probe of mismanagement of state funds and allegation to have a part of 23 Billion Naira fraud that also involved former Minister of Petroleum Resources Diezani Allison-Madueke. The case did not see the light of the day. Ali Modu Sherif of Borno State was probed for over 300 Billion Naira state funds mismanagement by his government. He was first arrested in June 2015 and granted bail. The case was later abandoned. Godswill Akpabio of Akwa-Ibom (2007-2015) was probed for embezzlement of the sum of 108 Billion Naira. He was arrested and quizzed in October 2015 by EFCC, the case did not see the light of the day.²³ Gbenga Daniel of Ogun State (2003-2011) was investigated by EFCC for allegedly diverting state funds and also false declaration of assets to the tune of 211.3 Million Naira. He was arraigned in 2012 by EFCC on a 32-count charge bordering on misappropriation of over 200 Million Naira, criminal breach of trust and abuse of office.²⁴ The case seems to be at the defence stage in court.

Orji Uzor Kalu of Abia State (1999-2007) was earlier convicted by a Federal High Court and sentenced to 12 years imprisonment over allegations of 7.1 Billion Naira fraud. The conviction was, however, upturned by the Supreme Court on the ground that as at the time of the judgment, Justice Mohammed Idris the trial judge that was hearing the case, has been elevated to the Court of Appeal and that the President of Court of Appeal lacks the power to assign him to continue hearing the case at the Federal High Court. The Supreme Court ordered that the case be sent back to the trial court for retrial. During his term in office as Vice President of the Federal Republic of Nigeria, Atiku Abubakar was accused by the Senate of diverting more than 100 Million Dollars in public funds to private interest. The Senate set up an investigating panel which found that Atiku Abubakar helped divert the sum of 145 Million Dollars from Nigerian government accounts to banks, the report called for his prosecution.²⁵ He could not be prosecuted in court as a sitting vice president in view of the immunity clause provided for in section 308 of the Constitution of the Federal Republic of Nigeria 1999(as amended). Surprisingly, the National Assembly did not initiate impeachment proceedings to further investigate the matter and if there is merit in it to remove the vice president from office.

3. Impeachment in Nigeria

According to Kenton,²⁶ Impeachment is the formal process of bringing charges against a high-ranking government official, in a bid to remove him or her from office. Impeachment can also be defined as an accusation of a public official before an appropriate tribunal for misconduct in office; to challenge the credibility of; to bring an accusation against; to call into question; to cast an imputation upon; to call into account.²⁷ Ikhariale states that impeachment denotes a constitutional process designed to remove a president who has been found guilty of provable acts which, in the thinking of the legislators, amounted to 'gross misconduct'.²⁸ Impeachment is the steps taken to accuse, with the aim of removal from office, an office holder for contraventions of the Constitution and other acts which amounts to impeachable grounds. In Nigeria, the Constitution did not use the word 'impeachment' in relation to removal from office of Chief Executives and their deputies, rather it made provisions for the way and manner such officers can be removed from office by the Legislature. However, in common parlance, impeachment is used to describe the entire process leading to the removal of a chief executive or the deputy. This article will refer to impeachment in that sense.

²²'Revealed: Eight Ex-Governors whose over 500 Billion Naira Corruption Cases have been swept under Carpet' *Sahara Reporters*. Available at <http://saharareporters.com/2021/04/16/revealed-eight-ex-governors-whose-over-n500billion-corruption-cases-efcc-have-been-swept-under-carpet> Accessed on 20 July 2021.

²³ *Ibid*.

²⁴I. Odoh, 'Alleged N200m Fraud: Court dismisses Gbenga Daniel's No-Case Submission' *Business Day*, 17 May 2019. Available at <https://businessday.ng/uncategorized/article/n200m-fraud-court-dismisses-gbenga-daniels-no-case-submission/amp/> Accessed on 20 July 2021.

²⁵'Nigerian Vice President faces Corruption Charges' *The Guardian*, 28 February 2007. Available at <https://theguardian.com/world/2007/feb/28/1> Accessed on 20 July 2021.

²⁶ Impeachment, available at <https://www.investopedia.com/terms/i/impeachment.asp> accessed on 20 July 2021.

²⁷E. Madunagu, *Impeachment in Nigeria*, available at http://www.nigerdeltacongress.com/articles/impeachment_in_nigeria.htm accessed on 20 July 2021.

²⁸M. Ikhariale *The Impeachment Myth versus The Nigerian Reality*, available at http://www.nigerdeltacongress.com/iarticles/impeachment_myth_versus_the_nige.htm accessed on 20 July 2021.

The legal framework of impeachment in Nigeria is the Constitution of the Federal Republic of Nigeria 1999 (as amended). The 1979 Constitution which was operative during the Second Republic also made provisions for impeachment. Section 143²⁹ provides for the removal of the President and Vice President while Section 188 makes similar provision for the Governor and Deputy Governor. Although as stated earlier the relevant sections did not make use of the word ‘impeachment’, however, the word ‘impeachment’ was mentioned elsewhere in the Constitution pointing to the fact that the draftsmen envisaged impeachment while making the provisions in sections 143 and 188 of the Constitution. The word ‘impeachment’ was used in sections 146(1) & (3) and 191(1) & (3). Section 146(1) provides that the Vice President shall hold the office of the President in the event of death, impeachment, resignation or permanent incapacitation or the removal of the President from office for any other reason in accordance with section 143 or 144 of the Constitution.³⁰ Section 84 (5)³¹ provides for the pension of the President or Vice President which shall be for life, however, a President or Vice President who left office through impeachment is not entitled to the same pension.³² From these provisions of the Constitution, it can be deduced that the draftsmen of the Constitution envisaged a situation where the President, Vice President, Governor or Deputy Governor can be impeached from office, hence the use of the word ‘impeachment’ as one of the grounds wherein a Vice President or Deputy Governor can take over power as President and Governor respectively. Therefore it can be argued that the draftsmen meant both impeachment and removal from office when they made the provisions of sections 143 and 188 of the Constitution. Although the phrase ‘...for any other reason in accordance with section 143 or 144 of the Constitution.’ seems to create ambiguity, as it is drafted in a way to look like impeachment and permanent incapacitation are distinct from reasons in accordance with section 143 and 144 of the Constitution. However, there is no other provision of the Constitution that talks about impeachment of the President and Vice President so as to justify its distinction from section 143; in the same vein, section 144 talks about removal of the President or Vice President by the Executive Council on grounds of permanent incapacitation. It is therefore submitted that the inclusion of the phrase for ‘any other reason in accordance with section 143 or 144 of the Constitution’ is unnecessary surplusage on the part of the Constitutional draftsmen. Sections 143 & 188 provide for procedures and steps to be taken in the removal of a President, Vice President, Governor or Deputy Governor from office. The procedure will be discussed step by step.

Step 1

A notice of allegation in writing signed by one-third of the members of the National Assembly (in the case of President or Vice President) or one-third of the members of a State House of Assembly (in the case of a Governor or a Deputy Governor), stating in details particulars of gross misconduct in the performance of the functions of the office of the office holder. The notice in writing shall be presented to the President of the Senate (in the case of the President or Vice President) or the Speaker of the State House of Assembly (in the case of a Governor or Deputy Governor). Upon receipt of the notice of allegation, the presiding officer mentioned above shall within seven days of receipt of the notice; serve the notice on the holder of office and on each member of the National Assembly or State House of Assembly.³³

Step 2

Within 14 days of the presentation of the notice of allegation to the President of the Senate or the Speaker of a State House of Assembly, whether or not there is a reply by the office holder; each of the two Houses of the National Assembly or in the case of a state, members of the State House of Assembly, shall by a motion without debate, resolve whether or not the allegation should be investigated. The required vote needed for the allegation to be investigated is two-third majority of members of each of the Houses of the National Assembly or State House of Assembly.³⁴

²⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

³⁰ *Ibid*; section 191(1) gives same right to the Deputy Governor of a state. Subsection (3) of sections 146 and 191 provide that when a Vice President or Deputy Governor leaves office by death, impeachment, resignation or permanent incapacitation, or removal in accordance with section 143 or 144 of the Constitution, the President or Governor shall appoint another Vice President or Deputy Governor, subject to approval by the National Assembly or House of Assembly of the state.

³¹ *Ibid*.

³² Section 124 (5) makes a similar provision for the Governor or Deputy Governor. The State House of Assembly is empowered to make laws pertaining to the pensions of Governors and Deputy Governors but anyone that left office through impeachment will not be beneficiary of such pension.

³³ *Ibid*, section 143 (2); 188 (2).

³⁴ *Ibid*, section 143 (3) & (4); 188 (3) & (4).

Step 3

Within seven days of the passage of a motion that the allegation should be investigated, the President of the Senate or the Speaker of the State House of Assembly shall request the Chief Justice of Nigeria or the Chief Judge of the State to appoint a seven-man panel, consisting of persons who in his opinion are persons of unquestionable integrity, who are not members of the public service, legislative houses or political party, to investigate the allegation. During the investigation, the office holder shall be granted fair hearing, and has the right to either defend himself personally or through a legal practitioner of his choice.³⁵

Step 4

The Panel shall have powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly or State House of Assembly. The Panel shall within three months of being constituted, submit its findings to each House of the National Assembly or to the State House of Assembly. The process of impeachment will terminate where the Panel finds the office holder not guilty of the allegation against him.³⁶

Step 5

Within 14 days of the receipt of the report of the Panel, the National Assembly shall by a resolution of two-third majority of members of each House, adopt the report of the Panel; same is applicable in the State House of Assembly in case of a state office holder, once the resolution is adopted, the office holder stands removed from office.³⁷ The jurisdiction of the court is ousted from determination of the Panel or the National Assembly or State House of Assembly.³⁸ The Constitution did not clearly state what conduct amounts to gross misconduct for the purposes of impeachment, it merely stated that gross misconduct is a grave violation or breach of provisions of the Constitution or anything which in the opinion of the National Assembly or the State House of Assembly amounts to gross misconduct.³⁹ There have been impeachments of some governors and deputy governors in Nigeria, some of these impeachments raised allegations of that would have ordinarily amount grave violation of the Constitution and gross misconduct but because those impeachments proceedings were not carried out with the motive of ensuring accountability in government, and because those impeachments were procedurally abused, the courts have to intervene and set them aside. This article will look at some of those cases.

4. Some Instances of Impeachment of Governors in Nigeria**Impeachment of Joshua Dariye as Governor of Plateau State**

The Plateau State House of Assembly is made up of 24 members; 14 out of the 24 members including the Speaker and Deputy Speaker cross carpeted to the Advanced Congress of Democrats (ACD) from the Peoples Democratic Party (PDP), the platform on which they were elected. The 14 members were made to vacate their seats by the virtue of the provisions of the Constitution.⁴⁰ On 5 October 2006, the Governor was served with notice of allegations of gross misconduct thereby initiating a process of impeachment by the remaining 10 members of that House of the Assembly. The notice was signed by eight out of the 10 members. The summary of the allegations of gross misconduct against the Governor is:⁴¹

- a. Money laundering and economic crimes leading to arrest and detention of the Governor in the United Kingdom having been found with the sum of #90,000,000.00 in cash and lodgments in the banks.
- b. Operation of at least 8 U.K. bank accounts contrary to the provision of the 5th schedule, part 1, item 3 of the 1999 constitution.
- c. Purchase of flat 28 Regents Plaza Apartment, 8 Greville Road, London NW6, through State funds contrary to the provision of section 15(5) of the 1999 Constitution.
- d. False declaration of assets contrary to the code of conduct for public officers in the 5th schedule, part 1 item II of the 1999 Constitution.
- e. Jumping bail in the United Kingdom for which an international warrant of arrest was issued against the Governor and was consequently declared wanted.

³⁵ *Ibid*, section 143 (5) & (6); 188 (5) & (6).

³⁶ *Ibid*, section 143 (7) & (8); 188 (7) & (8).

³⁷ *Ibid*, section 143 (9); 188 (9).

³⁸ *Ibid*, section 143 (10); 188 (10).

³⁹ *Ibid*, section 143 (11); 188 (11).

⁴⁰ Constitution of the Federal Republic of Nigeria 1999, section 109(1)(g) provides that a member of a House of Assembly shall vacate his seat in the House if he leaves the political party that sponsored his election and became a member of another political party, provided that his membership of the latter party is not as a result of a division in the political party he previously belonged to or of a merger of two or more political parties or factions of which he was previously sponsored.

⁴¹ *Dapianlong & ors v Joshua Dariye & Anor (No. 2)* (2007) 8 NWLR (Pt. 1036) P. 332.

- f. Payment of Plateau State Government Ecological funds by the Governor in the sum of #1,161,162,900.00 and #82,600,000.00 respectively into his private account.

With the cross carpeting of 14 members that included the Speaker and the Deputy Speaker, Dapianlong⁴² became the Speaker of the House, he invited the Chief Judge to set up a seven man panel to investigate the allegations of gross misconduct against the Governor. The Panel after deliberation and investigations submitted its report to the Plateau State House of Assembly and the said report was adopted by the House on 13 November 2006 resulting in the removal of the Governor from office. The Governor approached the court to seek redress. The appellants, as defendants in the trial court, filed a preliminary objection and a counter affidavit to the originating summons. One of the grounds of objection was that the court lacks jurisdiction to entertain the suit in the light of section 188(10) of the Constitution. The trial court opted to take the preliminary objection and the substantive originating summons together, this ruling led to the appeal by the defendants to the Court of Appeal. The Court of Appeal dismissed the appeal of the appellants as well as their preliminary objection and invoking its powers under section 16 of the Court of Appeal Act, it heard the originating summons on the merit and granted all the reliefs sought by the respondents (plaintiffs at the trial court) and nullified the impeachment/removal of Governor Joshua Dariye as Governor of Plateau State. The Supreme Court dismissed the appeal and upheld the judgment of the Court of Appeal which nullified the impeachment. Hon. Justice Pius Aderemi JSC⁴³ in the concluding part has this to say about the allegation leveled against the Governor and the need to follow due process of the law:

I shall end this discourse by saying that the allegations leveled against the 1st respondent as contained in the records, are despicable to the highest degree. If proved in accordance with the laws of our land; by the cardinal principle of morality, justice and democratic government that an offender guilty of crime should be sentenced by the court to such penalty as his merits, the 1st respondent must not be allowed to run away from justice. But before this can be done, due process of law must be followed from the beginning to the end. An act may be morally reprehensible unless there is a law properly enacted which makes that act punishable for it, a judge, indeed, any court of law is hamstrung to sentence and punish perpetrator.

This concluding dictum of Aderemi JSC emphasised the need for the House of Assembly to follow the stipulated procedure in its impeachment proceedings so that in the appropriate case, a Governor or Deputy Governor who has genuinely committed acts of gross misconduct will not remain in office just because of failure of the Legislature to adhere strictly to the provisions of the Constitution relating to impeachment or removal of a Governor or Deputy Governor.

Impeachment of Governor Murtala Nyako

On 15 July 2014, Governor Murtala Nyako of Adamawa State was impeached and removed from office of Governor. 17 out of the 25 members of Adamawa State House of Assembly adopted the report of the seven man panel that investigated the allegations of gross misconduct leveled against the Governor. The Governor and his deputy were alleged to have committed some financial impropriety.⁴⁴ Unsatisfied about the impeachment and removal from office, Nyako went to court to seek redress. At the Court of Appeal, on 11 February 2016, it was held that Nyako was not granted fair hearing during the impeachment proceedings before the seven man panel therefore the entire process was null and void. The Court ordered that Nyako be accorded all the benefits accruing to the office of the Governor throughout his tenure and be paid all his entitlements. The Court, however, couldn't grant the reliefs seeking reinstatement as Governor, his tenure having elapsed.⁴⁵ Nyako, was later charged to court for alleged 29 Billion Naira fraud. In these two cases discussed above, even though the legislature in each case initiated process of impeachment, they did not follow the procedure as prescribed by the constitution.

5. Impeachment in South Korea

In South Korea, legislative powers are vested on the National Assembly which is a unicameral legislative house.⁴⁶ The President, the Prime Minister, members of the State Council, heads of Executive Ministries, Judges

⁴² Ist appellant in *Dapianlong & ors v Dariye & Anor* supra.

⁴³ *Supra*.

⁴⁴ Sani Tukur, 'Adamawa Assembly Sacks Governor Murtala Nyako' *Premium Times News* 15 July 2014. Available at www.premiumtimesng.com/news/164959-update-adamawa-assembly-sacks-governor-murtala-nyako.html Accessed on 21 July 2021.

⁴⁵ 'Why Appeal Court Nullified Adamawa Governor's Impeachment' *Pulse News* 11 February 2016. Available at www.pulse.ng/news/politics/murtala-nyako-why-appeal-court-nullified-adamawa-governors-impeachment/2tq10fl Accessed on 21 July 2021.

⁴⁶ Constitution of the South Korea, article 40.

of the Constitution Court, Judges, members of the Central Election Management Committee, members of the Board of Audit and Inspection, and other public officials designated by law can be impeached by the National Assembly were they have violated the Constitution or other laws in the performance of official duties.⁴⁷ The impeachment proceedings can be initiated by a motion proposed by at least one-third of the total members of the National Assembly and the motion, in the case of other officers, shall be passed by a simple majority vote of the total members of the National Assembly. However, where the President is to be impeached, it shall require the concurrence of at least two-third of the total members of the National Assembly.⁴⁸ Any person against whom a motion for impeachment has been passed shall be suspended from exercising his power until the impeachment is adjudicated.⁴⁹ A decision on impeachment shall not extend further than removal from public office. However, it shall not exempt the person impeached from civil or criminal liability.⁵⁰ The Constitutional Court adjudicates on impeachment and for someone impeached to be removed from office, six out of the nine adjudicators of that Court must render a decision to remove the impeached person from office.⁵¹

South Korea has witnessed the impeachments of two presidents but only one was removed from office while the other survived impeachment trial at the Constitutional Court. Roh Moo-Hyun was the President of South Korea from 2003 to 2008. After taking oath of office in 2003, Roh Moo-Hyun found himself in the midst of a financial scandal after several of his aides were accused of accepting illegal campaign donations. In March 2004 he was impeached by the National Assembly on allegations of election law violations and economic mismanagement, he was suspended from office pending the determination of the impeachment trial at the Constitutional Court. In May 2004, the Constitutional Court overturned the impeachment holding that the offence was too minor to justify impeachment.⁵² Park Geun-hye became the first female president of Republic of Korea in 2013. She allegedly conspired with her childhood friend Choi Soon-sil to collect tens of millions in bribes from companies like Samsung.⁵³ On 9 December 2016, the National Assembly impeached her, with 234 members out of the 300 members of the House voting in favour of her impeachment, the vote was done by secret ballot, which result indicated that nearly half of the 128 lawmakers in Park Geun-hye's party, Saenuri had joined the opposition in voting for her impeachment. She was suspended from office, pending the determination of her impeachment trial before the Constitutional Court.⁵⁴ On 9 March 2017, the Koreans Constitutional Court in a unanimous judgment removed Park Geun-hye from office as president after finding her guilty of the charges of impeachment leveled against her.⁵⁵ The ousted president was later on 6 April 2018 convicted and sentenced to 24 years in prison for abuse of power, coercion and bribery. The Court further imposed a fine of 18 billion Korean (approximately 17 million US dollars) on her.⁵⁶

In February 2021, it was the turn of a judge to be impeached in South Korea. The National Assembly in that country passed a bill of impeachment against Lim Seong-geun, a senior judge at the Busan High Court, who was involved in a judicial scandal under the previous administration.⁵⁷ The National Assembly with 179 votes in favour of the impeachment and 102 votes against the impeachment.⁵⁸ His trial commenced at the Constitutional Court despite his retirement as a judge on 28 February 2021. Lim was indicted in 2019 on charges of abuse of power and obstruction of other judges' exercising of rights after allegedly meddling in several trials presided by them between 2015 and 2016 while working as a senior judge at Seoul Central District Court.⁵⁹ One of those instances was accusation of exerting his authority to step in and influence a libel case filed by the former

⁴⁷ *Ibid*, article 65(1).

⁴⁸ *Ibid*, article 65(2).

⁴⁹ *Ibid*, article 65(3).

⁵⁰ *Ibid*, article 65(4).

⁵¹ *Ibid*, articles 111 & 113.

⁵² L. Murray (ed.), 'Roh Moo-Hyun, President of South Korea' *Britannica*. Available at <https://www.britannica.com/biography/Roh-Moo-Hyun> Accessed on 21 July 2021.

⁵³ C. Sang-Hun, 'South Korea Removes President Park Geun-hye' *The New York Times*, 9 March 2017. Available at www.nytimes.com/2017/03/09/world/asia/park-geun-hye-impeached-south-korea.amp.html Accessed on 21 July 2021.

⁵⁴ Choe Sang-Hun, 'South Korea Enters Period of Uncertainty with President's Impeachment' *The New York Times*, 9 December 2016. Available at www.nytimes.com/2016/12/09/world/asia/park-geun-hye- Accessed on 21 July 2021.

⁵⁵ *Ibid*.

⁵⁶ B. Padden, 'Impeached South Korean President Sentenced to 24 Years in Prison' *VOA News*. Available at www.voanews.com/east-asia-pacific/impeached-south-korean-president-sentenced-24-years-prison%3famp Accessed on 21 July 2021.

⁵⁷ 'First Judge Impeached in S. Korea's Modern History' Hank Yoreh. Available at www.hani.co.kr/arti/english_edition/e_national/982065.html Accessed on 13 July 2021.

⁵⁸ *Ibid*.

⁵⁹ 'Impeachment Trial to begin Next Week for Judge in Abuse of Power Case' *Yonhap News Agency* 17 February 2021. Available at <https://m-en.yna.co.kr/view/AEN20210217009300315> Accessed on 13 July 2021.

government against a Japanese journalist in 2015.⁶⁰ In February 2020, a Seoul Court acquitted Lim of the power abuse and other charges but still acknowledged his unconstitutional act of meddling in trials.⁶¹

6. Lessons from South Korea

In South Korea the process of impeachment comes before removal from office after an impeachment trial, that is to say, the National Assembly first of all impeaches while the Constitutional Court tries the impeachment and where it finds the official guilty, it removes from office, while in Nigeria there are no two separate bodies dealing with impeachment and then impeachment trial. It is just one step procedure in Nigeria which might cumulate in removal of the erring official from office. South Korea has successfully impeached two presidents, even though the first one was acquitted by the Constitutional Court, the second was not only removed by the Constitutional Court thereby terminating her term in office prematurely, she was also prosecuted in court for corruption while in office. This will serve as a deterrent to other leaders in the country to know that they will not only be pushed out of office if found guilty of financial mismanagement and other forms of non-accountability in governance, they can also be prosecuted thereafter and jailed. Nigeria should be more proactive in the area of accountability in governance.

7. Conclusion

Accountability in governance is very paramount for any country's growth and development. When those in governance are held accountable it will lead to the achievement of dividends of democracy and economic growth and will also curb official corruption and mismanagement of public funds. One of the ways of ensuring accountability in governance is through the exercise of the powers of impeachment. Impeachment when effectively used and laid down procedure as stipulated by law strictly followed will ensure that the people do not have to wait until the next election to sack non-accountable leaders especially in Nigeria where the immunity clause in section 308 of the Constitution bars civil or criminal proceedings being instituted against the president, vice president, governors and deputy governors, impeachment becomes the only way to remove them from office and get them stripped of their immunities so that they can be accordingly prosecuted. Waiting for an elected executive to leave office at the end of his term in office before holding them accountable for their stewardship has proven not to be very effective, first, these officials have at that stage done a lot of harm to the growth and development of their areas of leadership, second, most of those cases do not see the light of the day and you see those officials vie for other offices or get appointed to various offices. There is need for our legislators both at the federal and state levels to rise up to the occasion in the exercise of their oversight functions and use the power of impeachment in appropriate cases to ensure accountability in governance. The legislators should desist from using impeachment just as a tool to settle political vendetta and appease godfathers. They should not shy away from using it in deserving circumstances because of party affiliations with the executive. The Constitution should be amended to give the people the power to compel the legislators initiate impeachment proceedings against any elected executive who they have reasons to doubt his accountability or who has grossly violated the Constitution or committed acts that amounts to gross misconducts. Our legislators especially the National Assembly should take a cue from the South Korean example.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*