

Impeachment as an Accountability Measure in a Presidential System? Views From Nigeria's Fourth Republic

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Abstract

Extant provisions of Nigeria's presidential constitution seek to promote a culture of accountability through a system of checks and balances. Since Nigeria's return to civil rule in May 1999, promotion of good governance through accountability government continues to be a challenge. All indications point to a worsening governance crisis in the midst of abundant resources. Besides, Nigeria's socio-economic performance and visible poor service delivery depict a deepening governance crisis occasioned by mismanagement of public resources. The data collected by means of documents and literature indicates that the presidential system has checks and balances as measures to prevent the abuse of power. Impeachment is the major institutionally recognised legislative mechanism to hold the executive accountable. The puzzle since the inception of Nigeria's Fourth Republic is the failure of the legislature to appropriate this statutory authority to police the execution of public policies in a manner that will conform to the constitutional requirements. While there are requisite constitutional provisions that mandate the legislature to ascertain its power over the executive, indicating Nigeria's commitment to the promotion of good governance, the legislature has failed to appropriate these instruments to stimulate a responsible government that is open to promoting good governance. Using the theories of structural functionalism and elites, this paper argues that this legislative failure to appropriate the instrument of impeachment to instil the culture of responsible executive in policy process engenders the prevailing governance crisis in Nigeria. The paper concludes that a political system where systemic corruption prevails will reduce impeachment to a mere instrument of political vendetta.

Key words: impeachment, governance, corruption, accountability, oversight

Sumário

Disposições existentes na constituição presidencialista da Nigéria procuram promover uma cultura de responsabilidade através de um sistema que permite escrutinar o executivo. Desde o retorno da Nigéria para um governo civil em Maio de 1999, a promoção de boa governação através de prestação de contas continua a ser um desafio.

Todas indicações apontam para uma crise de governação piora no meio de recursos abundantes. Para além da fraca prestação de serviços públicos, o desempenho sócio-económico e visivelmente pobre, representam uma crise de governação ocasionada com má

gestão dos recursos públicos. Dados documentais indicam que o sistema presidencialista tem freios e contrapesos como medidas para prevenir o abuso de poder. Impeachment é o principal mecanismo legislativo institucionalmente reconhecido para responsabilizar o executivo.

O grande desafio que se enfrenta, desde o início da Quarta República da Nigéria, é a incapacidade do legislador em adotar medidas estatutárias para policiar a execução de políticas públicas de uma maneira que estará em conformidade com a constituição. Embora existam disposições constitucionais necessárias que conferem à legislatura com o poder de escrutinar o executivo, não tem havido medidas adequadas, tomadas para promover a cultura de boa governação. Usando as teorias do funcionalismo estrutural e elites, este artigo argumenta que essa falha legislativa apropria-se do instrumento de impeachment para incutir a cultura do executivo responsável no processo político gera a crise de governação na Nigéria. O documento conclui que um sistema político onde a corrupção sistêmica prevalece irá reduzir impeachment a um mero instrumento de vingança política.

Palavras-chave: *impeachment*, governação, corrupção, prestação de contas, supervisão

Introduction

Nigeria returned to civil rule in May 1999 after a long period of military dictatorship¹. Following the acrimonious relationship that characterised the operation of the Westminster parliamentary system in the First Republic, Nigeria adopted presidentialism as the governing system in the Second Republic, 1979-1983 (The Political Bureau 1987). Nevertheless, the practice of this new system also attracted military intervention consequent upon breakdown of law and order after the 1983 general elections (Ayeni and Soremekun 1988; Joseph 1991). The military took over the reins of government on December 31, 1983 until May 29, 1999. Since 1999, attempts to institutionalise a culture of accountability in government in a system of checks and balances continue to be a challenge. All indications point to a worsening governance crisis in the midst of abundant resources (Fagbadebo 2007 and 2009). Constitutional design for most presidential systems usually provides mechanisms for checks and balances. Executive power controlling policy process is often sandwiched by legislative scrutinising measures in order to safeguard the interests of the public (Turley 1999; Bloch 2006). With the principle of shared power as well as an independent base of authority, the presidential system is a design to avert the danger of concentrating power in one individual or institution.

¹ Nigeria gained independence on October 1, 1960. A little over five years, precisely on January 15, 1966, the military took over power in a series of coup d'états. Though this military interregnum ended in 1979, another spate of military coup took place from 1983 and kept the military in power until May 28, 1999.



Notionally, the legislative institution in Nigeria occupies a prominent position as an agent of accountability. In other words, drafters of the constitution constructed the statutory responsibilities of this political branch of government as a way of guaranteeing transparency and accountability². This branch of the government, as in other presidential systems (Huneus et al, 2006; Hochstetler, 2011), is a principal actor in controlling the powers of the executive branch to achieve the desired objectives of the state. Section 13 of the constitution states:

It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution (Constitution of the Federal Republic of Nigeria, 1999 (as amended)).

Section 16 (1) a-d specifically mandates the Nigerian state to:

- (a) Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
- (b) Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- (c) Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy manage and operate the major sectors of the economy;
- (d) Without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy (Constitution of the Federal republic of Nigeria, 1999 (as amended)).

Thus, the expectation of the Nigerian constitution is that the branches of government are responsible for the promotion and attainment of these objectives for the promotion of public goods.

To what extent has the legislative branch in Nigeria harnessed the requisite constitutional instruments to promote the culture of accountability in government as envisaged by the constitution? With presidential system and its safeguard against abuse of power, why does Nigeria's governance crisis seems to be endemic and intractable? This paper seeks to address these questions in six

2 Section 4 of the Constitution of the Federal Republic of Nigeria, 1999 vests the legislative powers of the federal and state governments in the legislature. Beside this, legislative power is the first in the order of listing of the Powers of the Federal Republic of Nigeria in the Constitution. Sections 80-89 and 120-129, empower the legislatures at the federal and states, respectively, to authorise and monitor the disbursement of all funds for government expenditures.

sections. Aside from this introduction, the second section addresses the methodology while section three discusses the place of impeachment in the presidential system. Section four discusses the characteristics of the Nigerian political elites, while section five discusses the legislature and the burden of accountability in Nigeria. Section six discusses impeachment in Nigeria's political system where some of the cases of impeachment in the Second and Fourth Republics are analysed. In section seven, we present and discuss the data on a number of infractions committed by some governors.

Methodology

The paper adopts the qualitative method, which enables 'an interpretive, naturalistic approach to the world' (Denzin & Lincoln, 2011, p. 3). In other words, data evolves from natural settings, with a view to making sense of or interpreting phenomena in terms of the meanings people bring to them. This method is useful in delineating some of the essential qualities of complex social phenomena like governance crisis and the interplay of power in institutional structures of government. Institutional issues like power, authority, conflict, 'involve intricate webs of causes, effects, processes, and dynamics: they are about qualities' (Dougherty, 2002, p. 894).

The paper relies on data from extant literature and empirical evidence of corruption by government officials in Nigeria's presidential system. Data presented is generated mostly from newspaper reports on the various degrees of corruption cases³. These reports are reliable because they are either confessional statements of the affected officials as well as records of judicial proceedings resulting from investigations.

Impeachment in a Presidential System

Inquiry into the role of impeachment requires an analysis of the horizon and design of a presidential system. Presidentialism is an unusual form of democracy and a derivative of the monarchical system (Ahrens 2001; Scheuerman 2005). In a presidential system, the head of state has a pre-established tenure that the legislature cannot discharge by a parliamentary vote (Sartori 1994; Linz 1994; Perez-Linan 2007; 2014; Samuels and Shugart 2010). Most of the modern presidential constitutions

3 Newspaper reports in Nigeria constitute a reliable means of generating data on the pandemic corruption in the political system. The Freedom of Information Law has strengthened the Nigerian media to obtain official information and data from government offices and departments. Nigerian media are whistle blowers in exposing corruption practices in government. Nigerian newspapers report cases of corrupt practices daily while commentators as well as the citizens voice their condemnation and resentments. Unfortunately, the reportage of such unethical practices has not reduced the scourge because of official cover-up of such cases, especially at the judiciary (Fagbadebo, 2007). The rage of public outcry against such acts cannot be sustained once there is a judicial pronouncement or inaction by the legislature. The anti-corruption agencies are underfunded to prosecute landmark cases of graft against government officials; consequently, such cases linger in the judiciary. This becomes problematic when the cases affect prominent political office holders or impinge on their core interests. This has strengthened the arms of the media. For details, see Daniel 2014; Anaba 2014; Chiedozie 2013.



epitomise the notion of separation of powers and the doctrine of checks and balances (Hochstetler 2011). In essence, a shared power is a design to overcome the danger of concentration of power in an individual associated with absolute monarchy. One of the main concerns of a presidential system is how to curb the abuse of these separated powers and punish elected officials involved in misconduct (Kada 2002). One of the mechanisms to mitigate the abuse of power is the legislative authority to remove an erring executive through the impeachment process.

Kim (2008), in his study of some Latin American countries, has discovered that impeachment cases are common in the presidential systems with divided government, fragmented political parties and power imbalance between the legislature and the executive. To him, public discontent about government over poor economic performance and scandals of misconduct by the leaders often propels lawmakers to press impeachment charges. In other words, legislature responds to the demands and preferences of the public, who are usually encouraged by the existing political environment, and this often motivates impeachment cases.

Naoko Kada (2002, p. 2) recognises the importance of impeachment as an 'accountability mechanism' in the face of the burgeoning corruption pandemic. She notes the possibilities of abuse of the impeachment provisions, especially by the opposition groups in the legislature. This, she argues, depends 'largely on the degree and nature of information control during investigation' (Kada, 2002, p.1). Her study does not account for the prevalence of brazen disregard for the rule of law in the face of overwhelming evidence of financial impropriety as found among top political office holders in Nigeria. Why is it difficult for the Nigerian legislature to appropriate the constitutional provisions to arrest the worsening accountability problem?

Political Elites in Nigeria's Presidential System

Scholars have argued that the behaviour of political elites is crucial to democratic stability, especially in transitional political systems (Lopez-Pintor 1987; Malloy 1987). In other words, elite choices determine the nature of democratic transitions and breakdowns. The decision of the actors to exercise their power to stimulate good governance and stability is a function of choice. Political elites, especially those in the legislature, mostly discover this impulse to act in the course of their oversight function. As in the case of some Latin American countries, public protests against the government often compel the legislature to exercise its power of discipline (Kada 2002 and 2003; Hochstetler 2011).

In Nigeria, scholars and writers are of the views that the defining nature of the characteristics of the political elites is abuse of power. Henry Kifordu (2011) says Nigeria's political actors depend largely on state resources for survival. He contends that they exploit and manipulate state institutions for the realisation of their personal ambitions, while vested interests continually encumber accountability (Kifordu, 2010). Richard Sklar and his colleagues aver that 'Nigeria's political titans vie for power and control over the vast spoils of office' and 'sit atop vast, pyramid-structured patronage networks based on regular 'cash and carry' kickback relationships' while

over 70 percent of the people wallow in poverty (Sklar et al, 2006, p. 105). Wale Adebani and Ebenezer Obadare (2011) see Nigeria as a polity where political actors consecrate corruption while they engage in competitive thievery of public funds. The next section presents the evidence to support this assertion in the contemporary dispensation.

The Nigerian elites are more interested in the pursuit of their desired objectives in abeyance to constitutional rules. Richard Sklar, et al (2006, p.100) remarks: 'The great game of politics in Nigeria is perilously rough and at times lawless'. This describes the character of the Nigerian political elites. Powerful 'godfathers' who sit atop vast patronage networks at the local, state, and federal levels dominate the country's political landscape. Political outcomes are primarily a function of titanic struggles among these magnates, who bargain among themselves – and at the expense of the impoverished greater public – within a political context of multiple ethno religious divisions (Sklar, et al, 2006, p. 101).

Because of the prevailing survival instinct (Kew, 2005), political elites seek all avenues to exert control on state power.

Legislature and the Burden of Accountability in Nigeria's Presidential System

The legislative branch as the representative body of the people plays a vital role in governance because it performs important functions that are necessary to sustain democracy in complex and diverse societies (Huneus et al. 2006; Alabi 2009). Why then is it that an accountability problem pervades the political system? Accountability means 'obligation to answer for the performance of duties' (Mulgan, 2011, p 1). This goes beyond mere information but includes the capacity to impose sanctions for failure or abuse of responsibilities as a measure of remedy with a view to rectifying the governance failure through deterrence (Mulgan, 2011).

Guillermo O'Donnell (2008) identifies two types of accountability: horizontal and vertical. Vertical accountability represents the exercise of the voting power of the citizens to change leaders through the electoral process. Jacobson (1989) has argued that a prevailing culture of free and competitive election is sufficient motivation for political leaders to govern responsibly. Nevertheless, when the outcomes of an election have no bearing with the performance of political elites while in office, then the executive and legislative elites might choose to act irresponsibly (Jacobson, 1989)⁴.

4 In developed democracies, election remains a veritable tool to hold political leaders accountable. Leaders in such countries realise the importance of people's power through voting and as such pursue policies capable of placing them in the good records of the public. Unlike developing countries where peoples' votes rarely count, vertical accountability in consolidated democracies provides opposition political party the opportunity to serve as an alternative government in case the ruling party fails the accountability test.



Horizontal accountability,⁵ on the other hand, occurs in between elections through institutional measures and mechanisms (Mulgan 2011; O'Donnell, 2008). The state institution such as the legislature as well as other bodies and agencies charged with the responsibility of conducting oversight activities on government administrations, exercise horizontal accountability. Such institutions have the requisite powers and authority 'to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other institutions of the state that may be qualified as unlawful' (O'Donnell, 2008).

In a presidential system, the legislature has the requisite constitutional authority to hold the executive arm accountable (Adamolekun 2010). Indeed, the concept of separation of power and doctrine of checks and balances are structural designs to ensure the promotion of transparency and accountability in government. With the exercise of oversight power in a system of separated but shared power, the legislature seeks to scrutinise government policies with a view to ensuring effective service delivery.

Central to accountability are the measures for correction to avert adverse consequences. This, accountability mechanisms such as parliamentary oversight and media investigations require the capacity to impose sanctions by the relevant agencies without breaching extant rules. The Nigerian presidential constitution recognises the legislature as the principal institution responsible for enforcing accountability of the executive branch.

One of the constitutional instruments designed to promote the culture of accountability is the legislative power to control and discipline the leadership of the executive branch. In Nigeria, the constitution recognises the importance of the legislature in policy process. Sections 80-89 and 120-129⁶, empower the federal and state legislatures, respectively, to control public funds. Section 120 (1&2) specifies that all the resources of the state should be pooled together as a Consolidated Revenue Fund (CRF). Section 120 (3&4) stipulates that withdrawal from the CRF requires the authorisation of the legislature. Such authorisation is tied to specific projects as reflected in the appropriation law. Section 124 empowers the legislature to fix the remuneration of all political officeholders, including the governor and his deputy. As a measure to ensure legislative control of the finances of the state, section 125 stipulates the annual audit of the accounts of the state by the Auditor-General, who is directly responsible to the legislature.

Of particular interest to this paper is the power assigned to the legislature to have oversight over the activities of the executive with a view to ensuring accountability. Section 128 of the constitution states:

5 Adamolekun (2010) identifies diagonal and the society-drawn horizontal accountability. The diagonal accountability, according to him, connotes the involvement of the citizens directly in enforcing horizontal accountability.

6 These sections provide the same items for legislative actions. This paper will refer to sections 120-129 that deals with the legislative powers of the state legislature to control public expenditures.

(1) Subject to the provisions of this Constitution, a House of Assembly shall have power by resolution published in its journal or in the Office Gazette of the Government of the State to direct or cause to be directed an inquiry or investigation into – (a) any matter or thing with respect to which it has power to make laws; and (b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for – (i) Executing or administering laws enacted by that House of Assembly, and (ii) Disbursing or administering moneys appropriated or to be appropriated by such House. (2) The powers conferred on a House of Assembly under the provisions of this section are exercisable only for the purpose of enabling the House 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 of waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it (Constitution of the Federal Republic of Nigeria, 1999 (as amended)).

Inherent in this provision is the authority of the legislature to exert its control over the executive in terms of sanctions and discipline to induce accountability. Impeachment is one such accountability measure.

Impeachment in Nigeria’s Presidential System

Section 188 of the 1999⁷ constitution of Nigeria set out the procedure for the removal of a governor/deputy governor of a state⁸. Impeachment denotes indictment of misconduct. Henry Campbell Black defines it in the United States as:

A criminal proceeding against a public officer, before a quasi political court, instituted by a written accusation called ‘articles of impeachment’; for example, a written accusation by the House of Representatives of the United States to the Senate of the United States against an officer (Black 1968, p886).

7 In the 1979 constitution, the first presidential constitution, this provision is contained in section 132, for the removal of the president/vice-president and section 170 for the removal of a governor/deputy-governor. The difference between the provisions is that in the 1979 constitution, the process begins and ends with the legislature, while the 1999 provisions involve the Chief Judge to set up the panel to investigate the allegation of gross misconduct.

8 A similar procedure for the removal of the president/vice-president is in section 143. In the entire provision for removal of a governor/deputy-governor, president/deputy-president, there is no use of the word ‘impeachment’. The word appears in six places in the constitution. In sections 84 (5) and 124 (5), impeachment is mentioned in respect of disqualification for pension by the president/vice-president and governor/deputy-governor, respectively. Sections 146 (1) & 3(a) and 191 (1) & 3(a), identify impeachment as one of the factors that can disqualify the president/vice-president and governor/deputy-governor, respectively, from continuing in office. The provisions relating to the removal of these officers from office do not contain the word impeachment.



This definition differs from the impression in the Nigerian constitution. In this paper, I use impeachment to denote the removal of a governor/deputy-governor and president/vice-president through a legislative process.

Article II section 4 of the US constitution stipulates the offences that could warrant impeachment to include treason, bribery, or other high crimes and misdemeanours (The Constitution of the United States). Section 188(2b) of the Nigerian constitution defines the offence that could warrant the removal of a governor/deputy-governor to be 'gross misconduct in the performance of the functions of his office' (Constitution of the Federal Republic of Nigeria, 1999, as amended). Section 188(11) defines gross misconduct to mean 'a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts, in the opinion in the House of Assembly, to gross misconduct' (Constitution of the Federal Republic of Nigeria, 1999 as amended).

This definition has been subjected to a series of abuse and misuse by the Nigerian state legislatures (Nwabueze 1985; Lawan 2010). Nwabueze (1985) averred that this definition represents a misconception of the original meaning of gross misconduct. The Supreme Court has described it as 'nebulous, fluid and subject to potentially gross abuse and is also potentially dangerous at this point of our national or political life' (*Inakoju & 17 Ors v. Adeleke & 3 Ors*).⁹ The Supreme Court admitted that though section 188(11) 'is generic and vague in its wording [but] cannot be extended beyond its onerously generic and vague nature to include misconduct, which are not gross' (*Inakoju & 17 Ors v. Adeleke & 3 Ors*)¹⁰. The Court thereafter defined gross conduct as grave violation of the constitution such as corruption, breach of the provisions, abuse of fiscal provisions as well as interference with the statutory functions of the legislature.

Similarly, section 188(10), which ousts judicial intervention in the impeachment procedure, has also been misconceived by the judiciary to mean blanket restraint of judicial review of impeachment cases. The Supreme Court also averred that the interpretation of the clause of the provision negates the intendment of the drafters of the constitution¹¹. The apex court submits that the judiciary cannot interfere with the decision of the legislature but can judicially consider the extent of compliance to the stipulated rule and procedure for impeachment (*Inakoju & 17 Ors v. Adeleke & 3 Ors*).¹²

Essentially, the import of impeachment in the Nigerian constitution is to serve as an instrument of accountability. Ben Nwabueze (1985) sees impeachment as an instrument of check against gross official misconduct. Drawing from the viewpoint of the American presidential system, Nwabueze argues that the provision is not a means of controlling the tenure of the officials concerned but to ensure ethical conduct in the exercise of power¹³. Awotokun (1998) sees the provisions as the

9 *Inakoju & 17 Ors v. Adeleke & 3 Ors* (2007) 1 S. C. (Pt I), p183.

10 *Inakoju & 17 Ors v. Adeleke & 3 Ors* (2007) 1 S. C. (Pt I), p135.

11 *Inakoju & 17 Ors v. Adeleke & 3 Ors*, (2007) 1 S. C. (pt I), p 75

12 *Inakoju & 17 Ors v. Adeleke & 3 Ors*, (2007) 1 S. C(pt I))

13 Impeachment is like the use of a vote of no confidence in the parliamentary system. While a vote of no confidence signifies the fall of the government, impeachment only affects the tenure of the officeholder without affecting the government. Perez-Linan (2007) discusses this point in detail, arguing that impeachment is an instrument of correction to discontinue with a particular administration while it encourages continuity in government.

needed mechanisms to enhance accountability, probity, and responsible executive with a view to averting arbitrariness in the exercise of power. In other words, impeachment is the antidote to corruption associated with absolute power. Akinsanya (2002) argues that impeachment provision in the constitution is the most effective weapon to combat the excess abuse and misuse of state power by the executive branch. To them, impeachment power of the legislature is essential to ensure effective control of the executive.

Could this be the intention of the drafters of the constitution? The Nigerian Supreme Court answered this in affirmative:

The exercise [impeachment] is much more than the party the Governor or Deputy Governor belongs to and the party a member belongs to. It is an exercise for the good of the state and members must remove their political hats or togas...Let the debate and the subsequent findings of the House be donated by the report of the Panel and not by sentiment (*Inakoju & 17 Ors v. Adeleke & 3 Ors*).¹⁴

The court stressed that impeachment 'is meant to guarantee good governance and development and to prevent abuse of power' (*Inakoju & 17 Ors v. Adeleke & 3 Ors*).¹⁵ In other words, the impeachment provision is not meant to exhibit sectional or political sentiments, but is meant as an instrument to ensure the promotion of the public good. Why was it difficult for the political elites to appropriate these statutory provisions as intended by the constitution?

Impeachment in Nigeria's Second Republic

During the Second Republic, there was a series of attempts by the legislature to exercise the impeachment power in section 170 of the Constitution (Nwabueze 1985; Awotokun 1998; Akinsanya and Idang 2002). The most celebrated was the impeachment of Balarabe Musa, the governor of the defunct Kaduna State. His impeachment was a function of the divided government that characterised the Kaduna state where the national Party of Nigeria (NPN) secured majority seats in the legislature, while the Peoples Redemption Party (PRP) produced the governor (Awotokun 1989; Akinsanya 2002; Nwabueze 1985).

14 (2007) 1 S. C. (Pt I), p62.

15 (2007) 1 S. C. (Pt I), p183.



The seemingly ideological difference between the NPN and PRP¹⁶, coupled with the rigid position of the governor, accentuated an acute and hostile relationship between the executive and the legislature. Rather than adopt a negotiated path of compromise and accommodation of the opposition, the governor's intransigent and hostile disposition was reflected in his maiden address where he outlined the policy direction of his government¹⁷ (Awotokun, 1998). This radical posture infuriated the NPN members, who were in the majority in the legislature. The lawmakers were of the view that the governor should have consulted with the House on such a sweeping policy statement. Despite this criticism, the governor insisted that he would not reach a compromise with the NPN majority legislators. The deadlock eventually paved the way for breaches of constitutional provisions in the exercise of the governor's power with an uncompromising legislature.

It is evident that the attitude of the legislature is more politics than policy. The lawmakers seized the majoritarian opportunity to vent their political anger consequent upon the defeat of NPN in the gubernatorial election. The outcome of this action, according to Nwabueze (1985), is its bandwagon effect as other legislatures embarked upon the impeachment of their deputy governors while others threatened their governors with the impeachment axe. Unfortunately, the judiciary adopted a self-restraining posture in adjudicating cases of flagrant abuse of the procedure (Nwabueze 1985).

Impeachment in the Fourth Republic

Consequent upon the successful impeachment of Balarabe Musa without any reprieve from the judiciary, the tide of impeachment grew in the early period of the Fourth Republic. The legislatures in Anambra, Bayelsa Ekiti, Oyo, and Plateau impeached their governors. Similarly, legislatures in Abia, Akwa Ibom, Cross River, Ekiti, Gombe, Jigawa, Katsina, Kebbi, Lagos, Osun¹⁸, and Taraba,

16 The NPN and PRP were offshoots of two major political parties controlling the Northern Nigeria in the First Republic – Northern Peoples' Congress (NPC) and the Northern Elements Progressive Union (NEPU). Mallam Aminu Kano, the leader of NEPU, was also the founder and leader of PRP. NEPU prides itself on being the party who represents the interests of the peasantry in the North as opposed to its conception of NPC as the mouthpiece of the oligarchy and the bourgeoisie class. This radical ideological disposition unsettled the political situation in the North, especially in Kano, as the NEPU became the rallying political platform for the Talakawas (the poor peasants who constitute the majority) (Dudley 1968; Sklar 1963). This same orientation remained the platform upon which PRP emerged as a political party in the Second Republic. Its electoral fortune was restricted to the Kano and Kaduna States.

17 The governor condemned the existing social order with a resolution that his government would initiate the building of a new foundation of new social order. As a demonstration of this policy thrust, the governor ordered the suspension, processing, and issuance of certificates of occupancy on government lands. To him, the land allocation system was an instrument of semi-feudal oppression and exploitation in the society. For the details on this, see Musa 1981.

18 The Governor of the State had earlier escaped removal through impeachment because the House could not muster sufficient votes to direct the investigation of the allegations of gross misconduct contained in the notice.

removed the Deputy Governors of their respective states¹⁹. In all these cases, there was a series of breaches of constitutional provisions relating to the procedure required by law.

Unlike the cases of Balarabe Musa during the Second Republic, judicial review of the legislative actions brought relief to three of the four impeached governors. Judicial pronouncements nullified the impeachment of Governors Rashidi Ladoja, Joshua Dariye and Peter Obi of Oyo, Plate and Anambra States, respectively.²⁰ In recent times, the legislatures have been guided by this judicial precedent though it has not reduced the rate at which state legislatures exercise the power either to harass or settle political scores.

The position of this paper is that in all the impeachment cases that took place in the Fourth Republic, none have been used for the promotion of accountability (Fagbadebo 2010). The 18 lawmakers who participated in the impeachment of Governor Ladoja in 2006 acted the script of their godfather, Late Alhaji Lamidi Adedibu (Omobowale and Olutayo, 2007). Similarly, the six members of the Plateau State House of Assembly who impeached the governor, Chief Joshua Dariye, acted upon the goading of the Economic and Financial Crime Commission (EFCC) (Lawan 2010). Prior to this time, there had been cases of money laundering against the governor, who had earlier jumped bail in London (Global Witness, 2010). In Bayelsa State, Governor Diepreye Alamieyeseigha, like Dariye, absconded from London in 2005, having been arrested on allegations of money laundering by the London Metropolitan Police (*Global Witness*, 2010). Nevertheless, the majority of the legislators did not see any reason for his impeachment until the EFCC conscripted 15 of the 24-member House to commence the impeachment process.

In 2014, the legislators in Adamawa State impeached the governor, Murtala Nyako, on 26 counts of financial misconduct (Yusuf, 2014). Prior to this time, the EFCC had frozen the accounts of the state government upon suspicion of fraudulent transfer of state funds to personal accounts of government officials (Alachenu *et al*, 2014). With proven cases of financial malpractices established against the governor, one could argue that the legislators were prompted by their desire to salvage the state from the shackles of misgovernment. Nevertheless, it is evident that the legislators' actions were prompted by the impulse to avenge the defection of the governor from the People Democratic Party (PDP) to the opposition party, the All progressive Congress (APC) (*ThisDay*, 18 July, 2014). In October 2013, the Adamawa State House of Assembly passed a vote

19 The Deputy Governor of Abia State, Eyinaya Abaribe, survived the first impeachment attempt but eventually resigned when the legislature commenced the second attempt. Similarly, the two Deputy Governors in Lagos States, Bucknor Akerele and Pedro, also tendered their resignation letters when the legislature commenced the impeachment process against them. Tukur Jikamshi of Katsina State, Abdullahi Argungu of Kebbi State, John Okpa of Cross River State, Garba Gadi of Gombe state and Shehu Kwatalo of Jigawa State, lost their positions through impeachment when they fell out with their governors.

20 *Inakoju & 17Ors v Adeleke & 3 Ors*[2007] 8 NWLR; *Hon. Michael Dapialong and others v. Chief (Dr) Joshua Chibi Dariye and another*, [2007] 8 NWLR; *Hon. Mike Balonwu & five others v. Mr. Peter Obi & another* (2007) 5 NWLR (Pt.1028) 488 C.A.



of confidence on the leadership of the governor, Murtala Nyako (Sani, 2014)²¹. The lawmakers had praised the governor for his purposeful leadership in the administration of the government of the state as well as forging an effective working relationship with the legislature. Curiously, the offences that warranted impeachment had been committed prior to the time the legislators passed a vote of confidence in the governor. If the governor had not defected from the PDP to the APC, would the legislators have contemplated impeaching him? From all indications, it is evident that the impeachment of the governor was primarily prompted as an instrument of political vendetta rather than a promotion of accountability.

The Chief Whip of the Adamawa State House of Assembly, Mr Jerry Kumdisi, provided insights into the politics associated with the impeachment of the governor (Ndiribe, 2014). According to him, the impeachment of the governor was a punishment for his arrogance. He disclosed further that the major factor that prompted the move was a series of political differences between the governor and some members of the legislature. Is impeachment an instrument of punishment for arrogance or political vendetta? With the exception of Peter Obi, whose impeachment was orchestrated by the divided-government, the other three impeached governors had cases of allegations of mismanagement of state resources (Lawan, 2010). Though judicial review of their cases was not based on the veracity of the allegations, it is evident from later developments that they were actually culpable of gross misconduct. As shown in data presentation, these former governors are currently involved in judicial litigation over the allegations of financial impropriety while in office. Aside from this, there are other governors who are also involved in litigation over financial impropriety while in office but are not 'harassed' or threatened by their legislatures.

Data Presentation and Discussion

Extant constitutional provisions provide avenues to monitor the disbursement of government funds. The legislature has constitutional powers to police the administration of appropriated funds. With adequate constitutional provisions, there should not be cases of misapplication or embezzlement of public funds at any level of government in Nigeria. Nevertheless, empirical evidence, as presented below, shows a prevailing culture of impunity among the heads of the executives of the states vis-à-vis failure of their respective legislatures to exercise their oversight power. The table that follows shows records of evidence of governor impunity in selected states in Nigeria.

21 The concept of a vote of confidence is alien to the presidential system. It is an instrument commonly used to confirm the survival of a government in the parliamentary system. A vote of 'no confidence' is an indication of the collapse of the government. However, its usage is a common phenomenon in the Nigerian presidential system, apparently politically, as an instrument of public relations, when lawmakers have struck a deal with the governor, usually to do with welfare packages. It is a token of their loyalty to the governor and a pledge of their continuous support.

Table 1: Records of Allegations of Impropriety against Selected Governors between 1999 and 2011

Name of Governor	State	Allegations	Legislative/Judicial Action
Jolly Nyame	Taraba 1999-2007	Money laundering and acceptance of bribe to the tune of N1.36billion	No legislative action. Charged in court by the EFCC but no conviction
James Ibori	Delta 1999-2007	Stole £50m while in office. Embezzled £157million. Laundered £1.4million	No legislative action. Convicted by a London Court
Lucky Igbinedion	Edo 1999-2007	Stole N4.4 billion	No legislative action. He was charged in court by EFCC and found guilty
Joshua Dariye	Plateau 1999-2007	N1.6 billion of the state's ecological fund while in office	No legislative action. EFCC induced his impeachment but was invalidated by the judiciary. He later confessed to the offence but said that he had used part of the money to fund the 2003 presidential election
Attahiru Bafarawa	Sokoto 1999-2007	Facing a 47-count charge relating to allegations of embezzlement of state funds	No legislative action. EFCC pressed charges against him
Orji Uzor Kalu	Abia 1999-2007	Criminal diversion of public funds totalling over N5 billion	No legislative action. Was charged in court by the EFCC
Chimaroke Nnamani	Enugu 1999-2003	Laundered N4.5 billion	No legislative action. EFCC pressed charges against him
Danjuma Goje	Gombe 2003-2011	Diversion of N52 billion state funds for private use. Stole N5 billion from the state coffers through supply of food to the Gombe State Government House	No legislative action. EFCC pressed charges against him
Diepreye Alamieyeseigha	Bayelsa 1999-2005	Money laundering to the tune of over US \$20million; arrested in London but absconded to Nigeria	Impeached by a faction of the legislature induced by the EFCC. Arrested and charged in court. He was found guilty but was later pardoned by the Federal Government

Sources: Compiled by the author from different newspaper reports.

The above data is a reflection of the general pattern of actions and modus operandi of most government officials in Nigeria. While in office, in spite of the constitutional provisions for checks, the culture of impunity characterises the administration of governance. Most of these governors, despite the overwhelming evidence of graft while in government, are serving in various capacities in the National Assembly. Joshua Dariye, Chimaroke Nnamani, Attahiru Bafarawa, Danjuma Goje,



are serving senators in the Nigerian Senate. In fact, Bafarawa was, at a time, contemplating running for the Nigerian presidency.

While these indicted former governors remain prominent actors in the country's political process, the anti-corruption agencies find it difficult to proceed with their prosecution for lack of funds. For instance, the EFCC had to make provision for N284.6 million in the 2014 budget for the prosecution of the former governors indicted of corruption since 2003 (Daniel 2014)! This is an indication of the prevalence of the culture of impunity while the legislature remains docile.

The provisions of the constitution on the power of the state legislature to discipline erring governors are clear. While the legislature recognises impeachment as an oversight function to instil fiscal discipline and promote good governance in the country's presidential system, (Tambuwal, 2013) its conduct and reactions to cases of corrupt practices left much to be desired. A writer sums it up this way:

A situation where legislators are sitting contractors does not only worsen the situation but result(s) in conflict of interest between public interest and private concern. Where ministries, parastatals and other organizations that are supposed to be under the 'supervision' of the legislature end up sponsoring, paying for the over sea (sic) trips and other emoluments of the legislature, oversight functions automatically take the passenger's seat if not outrightly thrown out of the fast-moving vehicle of national development (Kadir, ND).

Unfortunately, none of the state legislatures of these governors took any action while the governors were in office, with the exception of Alamiyeseigha. Thus, accountability is not a direct consequence of collusion between the executive and the legislature.

The political elites blame this failure on the absence of credible leadership in the political system (Ajayi, 2013). Former president Olusegun Obasanjo said that the country is reeling under the curse of leadership (Ajayi, 2013). A former defence minister, Theophilus Danjuma, denounced the infamous role of the country's political leadership, who were fond of 'scheming and screaming for due and undue advantages' while the people 'are chained down in dehumanising and grinding poverty'(cf. Akhaine & Bello, 2013). The legislature lamented the failure of governance as the Senate President, David Mark, spotted 'frustrations occasioned by maladministration' as the lot of the people of the country (cf. Aborisade, 2013). To him, the rising tide of insecurity and serial political instability, especially within the political parties, depicted the unbridled appetite of the leadership for power without service.

We need to look inwards and begin to search our minds. The ball certainly is in our court as leaders to do what we should do to reverse the trend. We must shelve the attitude of seeking power at all cost(s). We do not need to get desperate about getting to the top. At any level, we must be ready to contribute our quotas (cf. Aborisade, 2013).

These submissions manifest in the spate of failure that characterises the provision of basic amenities in the country. Most Nigerian roads are in deplorable condition while many communities are under the siege of criminals. Transparency and accountability are no longer the norms guiding public policy. Every sector of the society has its own device of circumventing the rules of probity. In short, the spoil politics and its attendant effects are the defining characters of every sector in the Nigerian society where access to political power is the avenue to appropriate state resources for personal prosperity (Dal Bo and Powell 2009). The outcome of this is the acute struggle to control state power by the political elite. While private properties of the political elites expand, the people's quality of life dwindles.

Conclusion

The urge of the people to abandon their legitimate place of assignment where 'they could only make a pittance' and accept 'the cozy, cushy embrace of a corrupt, deceitful, and unscrupulous... administration' (Obasanjo, 1998)²² persists. Indeed, Obasanjo's description of Nigeria as a country where 'anything goes' is more real under civilian administration since May 29, 1999 characterised by spoils. In Nigeria, 'corruption and fraud became habits that trickled down to every level of society' (Obasanjo, 1998). President Goodluck Jonathan recently admitted that the Nigerian people have accepted corruption as the norm with a retrogressive system through which the society rewards corrupt people, rather than punishes them (Ujah, 2013).

When you talk about corruption, the private sector is involved; the public sector is involved; even the individuals, including other societies, and I wouldn't want to mention names so that I will not be attacked. But I know that if collectively all of us don't reward corruption, people would not be attracted to corrupt practices, but when we all reward corruption, then of course, we will be tempted to go in that direction (cf. Ujah, 2013).

In other words, the Nigerian environment, according to the president, tempts government officials to take what belongs to the public. This is an admission of failure by a leader who swore to uphold the provisions of the constitution of the country.

All the above submissions by political elites are indications of the failure of presidentialism as a governing system meant for the promotion and protection of the interests of the public in Nigeria. This is not necessarily because of the nature of the system, but the endemic culture of corruption that pervades the political landscape of the country. Thus, it is obvious that with systemic corruption, governing measures to induce good governance would be an exercise in futility. And impeachment will remain an instrument of political harassment and vendetta.

22 Olusegun Obasanjo, a one-time military head of state and lately the democratically elected president for eight years, used these words to deride the nature of political actors under the military regime of general Ibrahim Babangida, ironically, one of the prominent elites in the ruling People Democratic Party (PDP). These words are still relevant to describe the nature of the scramble of elites to occupy government positions in the country even under the administration of Obasanjo.



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