

A Comparative Analysis of the Impeachment Procedures in Nigeria and Indonesia: A Need for a Paradigm Change

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ABSTRACT: Although impeachment as the outcome of constitutionalism is significant in good governance, narrow political affiliations, institutional corruption, and the absence of democratic tenets among politicians hamper its proper application in Nigeria and Indonesia. The impeachment in both countries reveals a weaponization of the process for parochial gains and there is a penchant for using the process to remove elected officials for personal and political reasons. This study comparatively analyzes the impeachment procedures in Nigeria and Indonesia to suggest measures to strengthen and safeguard the procedures from abuse. The methodology deployed in this study is essentially a desk review of both primary and secondary materials. Given the comparative analysis of the commonalities and variant impeachment procedures in Nigeria and Indonesia, the application of the constitutional provisions for impeachment in both countries remains fraught with neo-patrimonialism and narrow party considerations, exacerbated by corruption, selfish interests, and ulterior motives to be in power endlessly. Moreover, wieldy impeachment provisions and weak institutional regimes propagate the abuse of impeachment. Hence, public participation in the impeachment process, amendment of the impeachment provisions, appointment of judges by independent bodies, and the prosecution of corrupt politicians and judges by effectively implementing extant anti-corruption laws are some of the steps to suppress the abuse of impeachment in Nigeria and Indonesia. While these measures are vigorously implemented, the abuse of the impeachment procedures will be repressed.

KEYWORDS: Constitutionalism, Impeachment Procedures, Indonesia, Nigeria.



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I. INTRODUCTION

The uncontrolled exercise of governmental powers leads to anarchy and a state of anomie, especially when such power is overwhelming.¹ The doctrine of separation of powers as one of the tenets of democracy was introduced to prevent the concentration of powers in an individual or institution and strengthen the rule of law. It bolsters constitutionalism by entrenching checks and balances among the tripartite organ of government,² which includes preventing the abuse of powers.³ While one of the mechanisms through which the excesses of the executive branch are checked is impeachment, analyzing the development of its procedures in Nigeria and Indonesia is essential by taking into account both countries' practices with the presidential system.

A glean at the development of impeachment in both countries suggests the abuse of the process through parochial political shenanigans and convoluted personal interests. For example, though the 1963 Constitution of Nigeria, in Section 38, provided for the removal of the President, it was never implemented. However, the impeachment jurisprudence in Nigeria developed when the Governor of the old Kaduna State was impeached under Section 170 of the 1979 Constitution.⁴ Consequently, where the

¹ Omolulu Fagbadebo, *Impeachment in the Nigerian Presidential System: Challenges, Successes and the Way Forward* (Palgrave Macmillan, 2020) at 1.

² Fisher and Devins suggest that the principle of separation of powers contradicts the principle of checks and balances between the arms of government. Further, they argue that courts have contributed to this contradiction by the ruling, in some instances, in favor of strict adherence to separation of power. On other occasions, they support substantial overlapping of powers. Louis Fisher & Neal Devins, *Political Dynamics of Constitutional Law*, 6th edn ed (MN: West Academic Publishing St Paul, 2019). at 195. The doctrine of political question also creates an avenue where courts support a strict adherence to the separation of powers doctrine. See Rotimi T Suberu, "Constitutional Design and Anti-corruption Reform in Nigeria": Problems and Prospects" in *Corruption and Constitutionalism in Africa: Revisiting Control Measures and Strategies* (Oxford: Oxford University Press, 2020) at 147.

³ Mamman Lawan, "Abuse of powers of impeachment in Nigeria" (2010) 48:2 *Journal of Modern African Studies* 311–322.

⁴ The 1979 Constitution replaced the 1963 Constitution. Sections 132 and 170 of the 1979 Constitution contained the procedures for removing the President/Vice-President and the Governor/Deputy Governor respectively. *Alhaji Balarabe Musa v Musa Hamsa & 6 Ors* (1982) 3 NCLR. See also Omololu Fagbadebo & Suzanne

party that produces the executive is different from the party with the majority in the legislature, political rather than policy impeachment is entrenched. The absence of compromise between the executive and the legislature, opposing policy directions between the political parties that control the executive and the legislature, and political affiliations culminated in the abuse of the impeachment procedure in Nigeria. Similarly, the inclusion of a restrictive impeachment procedure in the 2002 amendments of the 1945 Constitution of Indonesia arose on account of the 'reproach mechanism' that culminated in the resignation of Sukarno and Abdurrahman Wahid.⁵

Compared to Indonesia,⁶ Nigeria has gone through several military dictatorships and autocratic regimes.⁷ The purported democratic

Francis, "Impeachment as an Accountability Measure in a Presidential System? Views from Nigeria" (2014) 3:2 *African Journal of Governance and Development* 25–126.

- ⁵ Hotman P Sibuea, A U Hosnah, & D S Wijanarko, "The Comparisons of Indonesian and Philippine Impeachment Models in the Presidential Government System" (2022) 25:2 *Journal of Legal, Ethical and Regulatory Issues* at 4. The 1945 Constitution of Indonesia (the Indonesian Constitution) was reinstated in 1959 with amendments through 2002.
- ⁶ Greg Fealy, "Jokowi in the Covid-19 Era: Repressive Pluralism, Dynasticism and the Overbearing State" (2020) 56:3 *Bulletin of Indonesian Economic Studies* 301–323 at 301–323. For further reading on the involvement of the military in Indonesian politics, see Greg Barton, Ihsan Yilmaz, & Nicholas Morieson, "Authoritarianism, Democracy, Islamic Movements and Contestations of Islamic Religious Ideas in Indonesia" (2021) 12:641 *Religions*, online: <<https://doi.org/10.3390/rel12080641>.> DOI: 10.3390/rel12080641; Jean-Luc Maurer, "Indonesia in '3D'. Development, Dictatorship and Democracy" (2021) 88 *International Institute for Asian Studies The Newsletter* 10 at 10; Hipolitus YR Wangge, "The Military's Role in Indonesia's Democracy" *International Institute for Asian Studies* (2019) 84 *International Institute for Asian Studies The Newsletter* at 16; Solomon O Abugu & Augustine E Onyishi, "Military Dictatorship, Democratization and the Struggle for National Development in Post-Suharto Indonesia: A Retrospect" (2018) 3:1 *Journal of Security Studies and Global Politics* at 113–120.
- ⁷ Emmanuel O Ojo, "The Military and the Challenge of Democratic Consolidation in Nigeria: Positive Skepticism and Negative Optimism" (2014) 15:4 *Journal of Military and Strategic Studies* at 9–37; Adegboyega I Ajayi, "Military Regimes and Nation Building in Nigeria 1966-1999" (2013) 5:7 *African Journal of History and Culture* at 138-142; Isawa J Elaigwu, "Nigerian Federalism under Civilian and Military Regimes" (1988) 18 *Publius: The Journal of Federalism* at 173–188.

governance in Nigeria is more or less an anocracy.⁸ Ikpe argues that Nigeria's military regimes operated a patrimonial system to a very large extent.⁹ Military rulers are personal rulers whose support arises due to their unbridled power to distribute state largesse based on nepotism. State offices become vehicles to generate resources for the incumbent officers and their dependents and clients.¹⁰ The institutional weaknesses strengthen the abuse of the impeachment vehicle in both countries. Fagbadebo believes that attitudinal dispositions of the political elite, rather than institutional structures, were responsible for the cases of abuse of power of impeachment.¹¹ While the existing institutions in both countries may not be efficient, the parochial and authoritarian preferences of those in power foster the use of these institutions to abuse the impeachment process. Although impeachment is an exceptional mechanism in democracy, the abuse of the process could be an anti-democratic tool that an activist legislature uses to unseat duly elected or appointed officials for raw political reasons.¹² In other words, the impeachment mechanism can be a tool to frustrate or remove an executive member on insubstantial or unsubstantiated grounds.

The impeachment in Nigeria follows the approach in which the National Assembly – the House of Representatives (Lower House) and the Senate (the Upper House) – indicts and impeaches. In contrariety to Nigeria, Indonesia adopts a system that involves both the legislature and the

⁸ For a detailed analysis of anocracy, see generally, Somya Chhabra, *The Impact of Anocracy on Terrorism: A Mixed-Method Approach* (Ph.D. Dissertation, Department of Political Science, University of Dublin, 2020) [unpublished]; Rohen A Cohen, “Challenging the anocracy model: Iran’s foreign policy in Iraq as an obstacle to democracy?” (2018) 47:2 *British Journal of Middle Eastern Studies* at 1–14; Josep M Colomer, David Banerjea, & Fernando B De Mello, “To Democracy through Anocracy” (2016) 13:1 *Democracy & Society* at 19–25.

⁹ Ukana B Ikpa, “Patrimonialism and Military Regimes in Nigeria” (2000) 5:1 *African Journal of Political Science* at 147. For Indonesia, see generally, Harold Crouch, “Patrimonialism and Military Rule in Indonesia” (1979) 31:4 *World Politics* at 571–587.

¹⁰ Ukana B. Ikpa, *ibid.* For Indonesia, see generally, Harold Crouch, *ibid.*

¹¹ Fagbadebo, *supra* note 1 at 24.

¹² Steven D Schwinn, “A Primer on Constitutional Impeachment” (2018) 82:6 *Social Education* at 355–356.

judiciary. The legislature and the judiciary play critical roles in the impeachment procedures in both countries (while the court in Nigeria plays an ex-post role, especially in non-compliance with the steps outlined in the Nigerian constitution, the Indonesian court plays an ex-ante role). Nonetheless, corruption has rendered these procedures weak and subject to manipulation by the executive and the legislature. The judiciary has become complicit in the abuse of the procedures by the other two branches of government.

This study comparatively examines the impeachment procedures in Nigeria and Indonesia, interrogates their application, addresses their abuses, and suggests measures to strengthen them. Its relevance centers on a shortage of research dialectically comparing the application of impeachment procedures in countries that share commonalities. It implies that similar measures can be applied to strengthen the impeachment procedures in Nigeria and Indonesia and prevent their abuse. Buttressing this point, both countries are the most populous nations in their regions; coastal states, though Indonesia is an archipelago; multicultural, multireligious, and multilingual societies; and key players in their various regions. In addition, Nigeria and Indonesia have similar political history and development concerning being colonized and presently going through seemingly authoritarian regimes.¹³ Moreover, as developing economies, peaceful transition of power through free and fair elections or lawful removal of an elected official under the constitution is vital in attracting and sustaining foreign investments and economic development.

This study sets out the discussion in three parts. The first part provides a theoretical framework of impeachment. The second part examines the legal

¹³ For a detailed analysis of Nigeria's military and authoritarian regimes, see Emmanuel O. Ojo, *supra* note 7. Adegboyega I. Ajayi, *supra* note 7; Isawa J. Elaigwu, *supra* note 7. For further reading on the military and authoritarian regimes in Indonesia, see Hotman P Sibuea, Asmak Ui Hosnah, & Clara L Tobing, "A Study on Authoritarian Regime in Indonesia: Perspective of the 1945 Constitution as a Democratic Constitution" (2020) 7:1 International Journal of Multicultural and Multireligious Understanding at 779–792; Ben Bland, "Politics in Indonesia: Resilient Elections, Defective Democracy" (2019) Lowy Institute at 1–19. Abugu & Onyishi, *supra* note 6 at 113–120.

frameworks of the impeachment procedures in Nigeria and Indonesia and comparatively analyzes the application of these procedures in both countries. It argues that both legal regimes contain unwieldy provisions that pave the way for the abuse of the procedures. Moreover, neo-patrimonialism, enveloped by religious, ethnic, and political cleavages, facilitates improper use of impeachment in both countries. Further, due to the nature of their societies, corrupt politicians take advantage of the institutional weaknesses and limitations to abuse the impeachment mechanism in Nigeria and Indonesia. The third part analyzes measures that will prevent the abuse of impeachment in Nigeria and Indonesia. It also concludes the study. It argues *inter alia* that the formal and informal participation of the people is significant in curbing the abuse of the impeachment procedures in both countries.

II. METHODS

The methodology adopted in this study was essentially a desk review of both primary and secondary materials with a qualitative approach. Consequently, legal instruments, case law, and academic publications were comparatively and dialectically interrogated in this study to highlight the constitutional provisions on the procedures for removing the executive members in Nigeria and Indonesia. This study used the content analysis technique to reach the concluding remarks, while the findings were elucidated descriptively.

III. THEORETICAL FRAMEWORK OF IMPEACHMENT

From the outset, impeachment power is exercised to maintain a constitutional government.¹⁴ According to Pitt, impeachment procedures

¹⁴ Thomas Jipping & Hans A von Spakovsky, "The Impeachment Process: The Constitution and Historical Practice Legal Memorandum," (2019) 248 *Edwin Messe III Center for Legal & Judicial Studies* at 3. For further reading on impeachment, see Louis Fisher & Neal Devins, *supra* note 2.

are the "bulwark of the constitution."¹⁵ The impeachment of a president by a mechanism aside from regular elections, limitation of terms, and the normal apparatus of political selection goes to the core of democratic governance.¹⁶ Fudin opines that impeachment is an accountability mechanism and a form of control over the exercise of executive powers in terms of checks and balances between the arms of government.¹⁷ Impeachment, according to Griffin, refers to a tool that "exists to provide a check on presidents who fall short in exercising the unique powers, duties, and responsibilities of their office."¹⁸ Schwinn avers that "impeachment is an important legislative check on the executive and judicial branches, hard-wired into ... checks-and-balances system."¹⁹ Horst further elaborated on the impeachment process and the role of the legislature in the process by stating that "the decision to remove a president elected by the...people is so important and existential for the survival of the constitutional order that it rests with"²⁰ the legislature. Thus, the need to engender a responsible executive is the fundamental purpose of impeachment. It means that "it is necessary to set a limitation *regarding the exercise of the presidential powers*,²¹ control it, and hold the executive responsible for breaches of the public trust reposed in them."²²

Aside from the importance of impeachment examined above, courts have noticed the legislature's penchant to remove an executive member over

¹⁵ Geoffrey Carnell & Colin Nicholson, *The Impeachment of Warren Hastings: Papers from a Bicentenary Commemoration* (Edinburgh University Press, 1989) at 5.

¹⁶ Tom Ginsburg, Aziz Huq, & David Landau, "The Comparative Constitutional Law of Presidential Impeachment" (2021) 88:81 *The University of Chicago Law Review* at 84.

¹⁷ Hanif Fudin, "Legal Justice in Presidential Impeachment Practice between Indonesia and the United States of America" (2020) 9:3 *Jurnal Hukum dan Peradilan* at 465–505 DOI: 10.25216/jhp.9.3.2020.465-505.

¹⁸ Stephen M Griffin, "Presidential Impeachment in Tribal Times: The Historical Logic of Informal Constitutional Change" (2019) 51:2 *Connecticut Law Review* at 420.

¹⁹ Steven D. Schwinn, *supra* note 12 at 356.

²⁰ Patrick Horst, "The Politics of Removal: The Impeachment of a President" in *Mobilization, Representation, and Responsiveness in the American Democracy* (2020) at 66.

²¹ The italicized words by this author.

²² Fagbadebo, *supra* note 1 at 79.

frivolous issues or manipulate the process to achieve a predetermined outcome.²³ It is because impeachment has become a political tool or weapon used against perceived political enemies.²⁴ In view of that, Perez-Linan argues that the legislature manipulates the legal grounds for impeachment and the legal procedure.²⁵ In some instances, impeachment discussions and purported grounds may commence even before the elected President has taken the oath of office.²⁶ In describing the recent abuse of the impeachment proceedings in the United States (US), Whittington opines that "[w]e apparently live in an age of impeachment. If the actual use of the impeachment power has not yet become commonplace, the power lies ominously on the political stage waiting to be used like Chekhov's gun."²⁷ Little wonder Grimes submits that removing a President without the transgression of any law is equivalent to "an approval of impeachments as part of future political machinery."²⁸ Unlike the proclivity of some legislative houses to use the impeachment procedures for parochial political or personal purposes, exemplified by Nigeria and Indonesia, Emanuel suggested that not all crimes should lead to impeachment.²⁹ In other words, the impeachment of a political office holder must be for the violation of public trust and stated crimes, and the stipulated procedures must be strictly followed.

In summary, impeachment is a derivative of constitutionalism – evidenced under democracy and the rule of law – that promotes the separation of powers and checks and balances to limit powers among the three arms of

²³ See generally, *Danladi v Dangiri & Ors* (2014) LPELR-24020, *Ekpenyong v Umunah* (2010) LPELR, *Dapianlong v Dariye* (2007) 8 NWLR, *Mike Balonwu v Peter Obi* (2007) 5NWLR.

²⁴ Brian Owsley, "Due Process and the Impeachment of President Donald Trump" (2020) 67 *University of Illinois Law Review* at 80.

²⁵ Anibal Perez-Linan, "Impeachment or Backsliding? Threats to Democracy in the Twenty-first Century" (2018) 33:98 *Revista Brasileira De Ciencias Sociais* at 3.

²⁶ Tom Ginsburg, Aziz Huq, & David Landau, *supra* note 16 at 83.

²⁷ Keith E Whittington, "A Formidable Weapon of Faction? The Law and Politics of Impeachment" (2020) 55:2 *Wake Forest Law Review* 383. See also Patrick Horst, *supra* note 21 at 90–91.

²⁸ Nikolas Bowie, "(Response) High Crimes without Law" (2018) 132:3 *Harvard Law Review Forum* 62., quoting Senator James W. Grimes.

²⁹ Steven Emanuel, *Constitutional Law*, 22nd ed (Aspen Publishers, 1976) at 126–127.

government. Whereas impeachment is a veritable tool to check the executive lawlessness and promote the constitution, it could be deployed as a partisan tool by the legislature to frustrate the executive, or it could be used by the President, with the support of the legislature, to remove the Vice-President. Because of that, Bowman III argues that "impeachment will sometimes be employed for petty or ignoble purposes, but it was invented as a mighty weapon against executive tyranny and a powerful tool for the preservation of the constitution."³⁰ According to Goldberg, impeachment creates an uneasy ambiance, culminating in drastic political sanction. If it is misapplied, it could "produce bitter divisions in the country and shatter confidence in our institutions and ourselves."³¹ Lastly, due to the propensity of politicians to use the impeachment vehicle for political and narrow purposes, it becomes imperative to dialectically and comparatively analyze the impeachment procedures in Nigeria and Indonesia to suggest measures to reduce the incidence of the abuse of the procedures.

IV. IMPEACHMENT LEGAL FRAMEWORKS IN NIGERIA AND INDONESIA

A. Impeachment Regulation and Procedure in Nigeria

Political exigencies due to diversities in Nigeria influenced the adoption of a presidential system of government similar to the US. As a constitutional government, similar to the US, the Constitution of the Federal Republic of Nigeria 1999 (1999 Constitution of Nigeria) provides for the removal of the President/Vice-President. Section 143 of the 1999 Constitution of Nigeria provides the procedure for removing the President/Vice-President for gross misconduct.³²

³⁰ Frank O Bowman III, "British Impeachments (1376-1787) and the Preservation of the American Constitutional Order" (2019) 46:4 *Hastings Constitutional Law Quarterly* at 749.

³¹ Arthur J Goldberg, "The Question of Impeachment" (1974) 1:1 *Hastings Constitutional Law Quarterly* at 5.

³² See s. 188 of the 1999 Constitution of Nigeria for removing the Governor/Deputy Governor of a state.

The procedure is as follows: the process is commenced with a written allegation that the President/Vice-President is guilty of gross misconduct in the performance of their office with detailed particulars signed by at least one-third of the members of the National Assembly and presented to the President of the Senate. Within seven days of receiving the notice, the Senate President shall ensure that a copy of the allegation is served to the person accused and every member of the National Assembly. If within 14 days both Houses of the National Assembly resolve – without debate and by a two-thirds majority of all members – that the allegation should be investigated, the Chief Justice of the Federation, upon request of the Senate President, will set up a seven-man panel of integrity, not being a member of any public service, legislative house or political party, to investigate the charges. After three months, the panel reports to the National Assembly whether the charges are proven. If the charges are proved, each House of the National Assembly shall consider the report and by a resolution of each House supported by not less than two-thirds majority of all the National Assembly members, the report of the panel is adopted. Consequently, the President or Vice-President is removed from office on that day (See Figure 1 below).

As a corollary to the above, where the President is guilty of 'gross misconduct in the performance of the functions of the office,' the process of impeachment of the president can commence. No matter how grave the misconduct of the president is,³³ it must be related to the performance of the presidential duties.³⁴ Hence, 'gross misconduct' in this instance refers to grave and intentional violation of the constitution, including "offenses and any gross immoral behavior."³⁵ It is within the exclusive purview of the legislature to determine what is 'gross misconduct.' Ayeki and Iro argue that the legislature must read the relevant provisions and comply strictly

³³ E M Joye & K Igweike, *Introduction to the 1979 Nigerian Constitution* (London: Macmillan, 1982) at 209.

³⁴ *Ibid.*

³⁵ Imo Udofa, "The Impeachment Power of the Legislature under the Nigerian and American Constitutions Compared" (2015) 2:4 *International Journal of Law and Legal Jurisprudence Studies* at 6.

with the impeachment provisions in exercising such discretionary power.³⁶ Nonetheless, "the wide and exclusive powers of the legislature to determine what constitutes gross misconduct seem to render the entire process vulnerable to subjective and partisan considerations, given the low state of our political development."³⁷

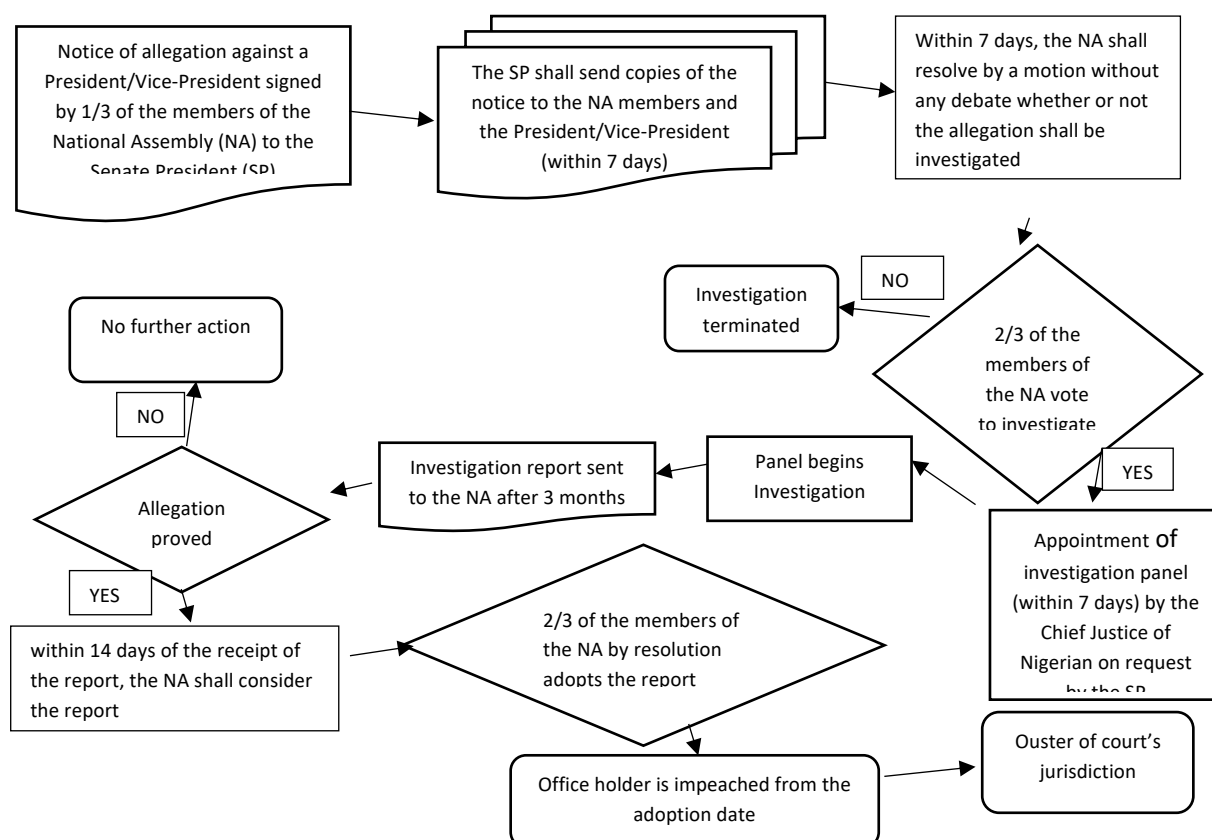


Figure 1. *Flow Chart of the Procedure for Impeaching the Nigerian President/Vice-President (Section 143 of the 1999 Constitution of Nigeria)*

Though the President and the Vice-President have never been impeached in Nigeria, the Supreme Court of Nigeria, in the case of *Attorney General of the Federation & 2 Ors v Atiku Abubakar & 3 Ors*,³⁸ held that the process of

³⁶ Lucky Ayeki & Daniel Iro, *Impeachment Panel under Section 188 of the 1999 Constitution: Whether A Mere Fact-Finding Panel?* (Odujinrin & Adefulu, Barristers, Solicitors & Notary Public, 2020) at 2. See also the case of *Danladi v Dangiri & Ors*, *supra*, per Ngwuta JSC.

³⁷ Imo Udofa, *supra* note 35.

³⁸ (2007) 10 NWLR (Pt. 1041) 1.

removing the President/Vice-President is through the impeachment procedure as enshrined in the Nigerian constitution. The litigation commenced because President Obasanjo declared the Vice President's office vacant since Vice-President Atiku Abubakar decamped to another party. Given that neither the President nor the Vice-President has been impeached in Nigeria, unlike in Indonesia, it becomes imperative to use the plethora of impeachment cases involving Governors/Deputy Governors to analyze the application of the impeachment procedure in Nigeria comprehensively. Thus, the roles of the legislature and the court in impeachment shall be adumbrated.

Five state governors were impeached during the 'period of impeachment gala' between 2003 and 2007.³⁹ Consequently, the so-called elite, party officials, and elected government officials could engineer impeachment in Nigeria. For example, the purported impeachment of the Governor of Oyo State, Rashidi Ladoja, on January 4, 2006, was a result of the personal aggrandizement of the touted 'godfather' of the Governor, Late Alhaji Lamidi Adedibu.⁴⁰ This contravenes the constitutional provision regarding reasons for impeaching a governor.⁴¹ The alleged impeachment of the Oyo State Governor, Abinitio, was further fraught with manifest irregularities. For instance, the State House of Assembly members that claimed to have removed the Governor was 18 out of 32 legislators.⁴² Thus, the illegality of the composition of the legislators, the sitting of the panel, and the inability to secure the votes required for the presentation of a notice containing allegations of gross misconduct, which is one-third of the total members of the legislature, undermined the impeachment of the Governor.⁴³

Moreover, the appointment of a speaker *pro tempore* to preside over the impeachment process is outside the contemplation of the 1999

³⁹ Offor M Arinze, Eze Christopher O, & Nwaeze Oliver, "Politics of Impeachment in Nigeria; A Discourse on Causes and Implications for Democratic Consolidation" (2016) 10:1 Journal of Policy and Development Studies at 51.

⁴⁰ Rotimi T. Suberu, *supra* note 2 at 166–169.

⁴¹ See Section 188 of the 1999 Constitution of Nigeria.

⁴² See the case of *Dapianlong v Dariye* at 293. See also Rotimi T. Suberu, *supra* note 2 at 168.

⁴³ See *Ibid.* See generally, Lucky Ayeki & Daniel Iro, *supra* note 36 at 1–7.

Constitution.⁴⁴ Similarly, the Supreme Court held that the appointment of the impeachment panel and conduct of the panel are subject to judicial scrutiny.⁴⁵ The rationale for the scrutiny is that setting up the impeachment panel by the State Chief Judge creates a quasi-judicial element to the impeachment proceeding.⁴⁶ Consequently, though the persons appointed to the panel are at the chief judge's discretion, an objection to an impeachment proceeding can be raised if the panel is improperly composed in terms of the number and qualities of its members. It means that "where there are less than seven members or where the requirement of integrity, membership of the public service, political party or a legislative house are not complied with,"⁴⁷ the scrutiny of the process by the court becomes inevitable.

Another controversial issue regarding the impeachment cases in Nigeria is the modus of service of the notice of an allegation of gross misconduct. According to Section 188(2)(b), the Speaker is expected to serve the notice on the occupier of the office. In interpreting this constitutional provision, the court declared that the constitutional drafters envisaged that the notice of allegation should be served on the person.⁴⁸ Hence, the purported service of the impeachment notice on the Governor by pasting the notice in the state government offices in Awka, the state capital, and the liaison offices of the state government in Lagos and Abuja was done in bad faith and contravened the intendment of the provisions of the constitution.⁴⁹ The court's decision implies that the service of the impeachment notice must be personally served on the Governor or President and not by publication, as

⁴⁴ See *Dapianlong v Dariye*, supra, at 303, per Justice Zainab Adamu Bulkachuwa, JCA. See also Omololu Fagbadebo & Nirmala Dorasamy, "An Analysis of the Judicial Review of the Impeachment Procedures in Anambra, Oyo, and Plateau in Nigeria's Fourth Republic" (2020) 27:48 *Transylvanian Review* at 12215.

⁴⁵ *Danladi v Dangiri*, supra note 23.

⁴⁶ See *Ekpenyong v Umunah*, supra note 23 at 8653. See also Lucky Ayeki & Daniel Iro, supra note 36 at 4.

⁴⁷ *Ibid.* See the case of *Mike Balonwu v Peter Obi*, supra, at (Pt. 1028) 488.

⁴⁸ See the case of *Balonwu v Peter Obi*, *ibid.*

⁴⁹ *Ibid.*

"the service of impeachment notice is a condition precedent or is *sine qua non* to an impeachment."⁵⁰

Beyond the non-fulfillment of the constitutionally provided procedures for impeachment, Suberu emphatically states that despite concerted constitutional engineering, grand political corruption remains an accustomed condition of the Nigerian government,⁵¹ which also manifests in the exercise of the impeachment power by the National Assembly. Corruption in this instance includes both the National Assembly⁵² and the judiciary.⁵³ The legislature attempts to remove the President for 'expropriating powers beyond his constitutional limits' only when their benefits are affected.⁵⁴ Olasupo opines that the lawmakers' discrepancies, trivialities, personal aggrandizement, and unseriousness in the two attempts to impeach the President (August 2002 and April 2005) – some attempts were made public while others were suppressed – led to the failure and collapse of the attempted removal.⁵⁵ It is noted that "the legislature became the whipping instrument to enforce compliance with the demands of the political elite and their sponsors rather than promoting public policy."⁵⁶

Aside from the corrupt actions of the legislature, the judiciary, which is supposed to be the last hope of the commoner, is also enmeshed in

⁵⁰ Lucky Ayeki & Daniel Iro, *supra* note 36 at 3.

⁵¹ Rotimi T. Suberu, *supra* note 2 at 139.

⁵² Akume T Albert, "Combating Corruption in Nigeria and the Constitutional Issues Arising: Are they Facilitators or Inhibitors?" (2016) 23:4 *Journal of Financial Crime* 707–708. Moreover, the National Assembly seemed powerless and could not even utilize impeachment in the face of gross abuse of power by then President Olusegun Obasanjo. See Ogbujah Columbus, "Power and Good Governance: Observations from Nigeria" (2016) 32:1 *MELINTAS* at 13–18.

⁵³ Evidence from the deployment of the impeachment mechanism suggests the complacent of the judiciary in the abuse of the process. See Dhikru A Yagboyaju, "The Challenges of Legislative-Executive Frictions over Institutional Powers in Nigeria" in Ebenezer O Oni, et al., eds, *Perspectives on the Legislature and the Prospects of Accountability in Nigeria and South Africa: Advances in African Economic* Springer Nature (Social and Political Development, 2019) at 146.

⁵⁴ Fatai A Olasupo, "Voice of Jacob Hand of Esau: Appraising the Role of Chief Executives and Party Leaders in Impeachment Processes in Nigeria" (2014) 5:1 *Beijing Law Review* at 12.

⁵⁵ *Ibid.*

⁵⁶ Rotimi T. Suberu, *supra* note 2 at 166.

corruption.⁵⁷ For instance, a former Chief Justice of Nigeria, Justice Walter Onnoghen was purportedly removed from office for not declaring all his assets to the Code of Conduct Bureau (CCB).⁵⁸ Additionally, empirical research has revealed that lawyers and litigants pay bribes to court officials in their court cases and to expedite their court processes or be granted execution;⁵⁹ thereby buttressing the fact that the judiciary is prone to corruption in Nigeria. Above all, research also shows that the judiciary lacks qualities like independence, impartiality, and fairness in discharging its duties. Most of them are influenced by the government (appointments are based on politics and not based on merit). Thus, some of their decisions are not founded on law but on politics.⁶⁰ It creates a conducive environment for unscrupulous executive members, on the one hand, and the legislature, on the other hand, to abuse the impeachment mechanism in the country.

Corruption breaks the link between collective decision-making and people's powers to influence collective decisions through speaking and voting: the very link that defines democracy.⁶¹ The weaknesses in the anti-corruption legal regime and institutional framework⁶² merely focus on symptoms of corruption rather than tackling the underlying causes and profound political and economic dynamics that have influenced the

⁵⁷ See Stephen Azubuike, "The Court is the Last Hope of the Common Man": Here is What it Means," *Stephen Legal* (February 10, 2021), online: <<https://stephenlegal.ng/the-court-is-the-last-hope-of-the-common-man-here-is-what-it-truly-means/>>.

⁵⁸ See Kingsley O Mrabure & Ufuoma V Awhefeada, "Onnoghen's CJN Conundrum, Exercise of the President's Executive Powers and the Practice of Separation of Powers in Nigeria" (2020) 46:3 Commonwealth Law Bulletin at 1.

⁵⁹ Chiedozie O Okafor et al., "Democracy and Perceived Public Confidence in the Judiciary: Roles of Socio-Economy and Gender" (2020) 14:1 African Research Review at 157–158.

⁶⁰ *Ibid* at 158.

⁶¹ Wale Adebaniwi & Ebenezer Obadare, "When Corruption Fights Back, Democracy and Elite Interest in Nigeria's Anti-Corruption War" (2011) 49:02 The Journal of Modern African Studies at 186.

⁶² These anti-corruption institutions are susceptible to the influence and control of the President. For instance, the President used the CCB to remove the former CJN, Justice Onnoghen purportedly. See generally Kingsley O. Mrabure & Ufuoma V. Awhefeada, *supra* note 59 at 1–21.

evolution of corruption in the country to exacerbate corruption in Nigeria.⁶³ Moreover, an overview of the experience of Nigeria in terms of corrupt practices that promote the abuse of impeachment suggests "that flagrant deficiency in constitutional architecture, including flaws in the institutional design of anti-corruption and oversight agencies, can contribute directly to the failure of anti-corruption reform."⁶⁴ More importantly, the existing institutional structure in Nigeria, like the extant neo-patrimonial political system,⁶⁵ bolsters the abuse of the impeachment process in the country. The implication is that "a president who can influence who is (and who is not) targeted by anti-corruption agencies has a powerful instrument for disciplining followers while taming or eliminating threats"⁶⁶ abuses the impeachment mechanism.

B. Impeachment Regulation and Procedure in Indonesia

Like Nigeria, Indonesia is a constitutional state governed by the rule of law according to Article 1(3) of the Indonesian Constitution.⁶⁷ Articles 7A and 7B of the Indonesian Constitution contain the procedure to remove the President/Vice President. Accordingly, the President/Vice-President may be dismissed from office by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*: MPR) – made up of the House of Representatives (*Dewan Perwakilan Rakyat*: DPR) and Regional

⁶³ Chiedozie O. Okafor et al, *supra* note 59.at 140.

⁶⁴ *Ibid.*

⁶⁵ For further reading on patrimonialism in Nigeria, see generally Christian C Chukwu, Ignatius Sunday Ume, & Samuel Bambori Dibia, "The Role of Neo-patrimonialism in Elections and the Challenge of National Security in Contemporary Nigerian Society: An Appraisal" (2018) 7:6 International Journal of Development and Sustainability at 1800–1814; Osumah Oarhe, "Tonic or Toxin? The State, Neopatrimonialism, and Anticorruption Efforts in Nigeria" (2013) 28:1 The Korean Journal of Policy Studies at 111–134.

⁶⁶ Letitia Lawson, "The Politics of Anti-Corruption Reform in Africa" (2009) 47:1 The Journal of Modern African Studies 74. The use of the CCB by the President to allegedly oust the former CJN, Justice Onnoghen buttresses this point. See generally, Kingsley O. Mrabure & Ufuoma V. Awhefeada, *supra* note 58 at 1–21.

⁶⁷ For a detailed analysis of the amendment of the Indonesian Constitution, see Denny Indrayana, "Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-making in Transition" (2009) 5:1 Asian Law Review 65–101.

Representative Council (Dewan Perwakilan Daerah: DPD) – on the proposal of the DPR that the Constitutional Court has approved. This happens if it is proved that the President "has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice President."⁶⁸

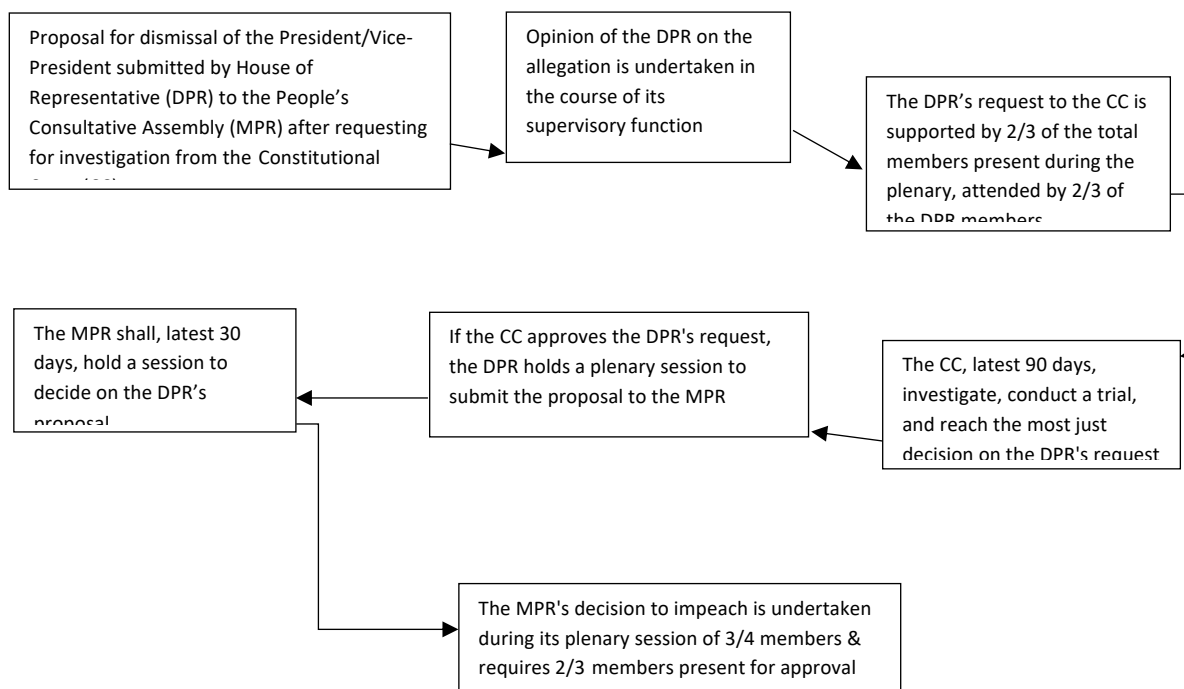


Figure 2. *Flow Chart of the Procedure for Impeaching the Indonesian President/Vice-President (Article 7A and 7B of Indonesian Constitution of 1945)*

Article 7B of the Indonesian Constitution outlines the procedure for such impeachment thus: allegations against the President/Vice-President are decided in a plenary session of the DPR, in which two-thirds of the members participate as a quorum, and the indictment is approved by two-thirds of the DPR members at the plenary session. Thereafter, the indictment will be sent to the Constitutional Court for examination, trial,

⁶⁸ Article 7A of the Indonesian Constitution. Please note that this provision also applies to the Vice-President.

and decision no later than 90 days after being received. If the Constitutional Court decides that the President/Vice-President is guilty as alleged, the DPR will immediately hold a plenary session targeted toward forwarding the decision of the Constitutional Court to the MPR. After receiving the decision of the Constitutional Court, the MPR will conduct a trial not later than 30 days to decide on the verdict of the court. Since the decision of the DPR is not binding on the MPR, the latter can decide on a political viewpoint. The MPR can approbate the decision of the Constitutional Court to remove the President/Vice-President or reject their removal for political reasons.⁶⁹

Before the distillation of the above impeachment procedure under the Indonesian Constitution, it is essential to state that, like Nigeria,⁷⁰ Indonesia arguably moved from the parliamentary system of government to the presidential system.⁷¹ The implication of this is that, unlike the parliamentary system where the removal of the prime minister is by a mere vote of no confidence, the President's impeachment under the presidential system requires a laid down procedure that must be strictly followed, involving the legislature (the judiciary may participate in the process as in the case of Indonesia). In contrast, the judiciary only ensures that the procedural requirements of impeachment are complied with, as exemplified by Nigeria.⁷²

According to Pahlawan, the application of the impeachment procedure under the old order, the new order, and the eon of reform did not follow

⁶⁹ Subuea, et al., *supra* note 5 at 4–5.

⁷⁰ See Fagbadebo, *supra* note 1; Kunle Awotokun, "Nigeria's Presidentialism and the Burden of Profligacy in an Inchoate Constitutional Democracy" (2020) 11:5 *Mediterranean Journal of Social Sciences* at 40; Adam A Anyebe, "An Overview of Presidential System at the Local Government Level in Nigeria" (2016) 2:1 *International Journal of Political Science* at 1.

⁷¹ See Saldi Isra, Fahmi Idris, & Hilaire Tegan, "Designing a Constitutional Presidential Democracy in Indonesia" (2020) 13:2 *Journal of Politics and Law* at 22–23; Nurwita Ismail, "Impeachment in the State System" (2018) 1:1 *Substantive Justice International Journal of Law* at 46–47; Andrew Ellis, "The Indonesian Constitutional Transition: Conservatism or Fundamental Change?" (2002) 6 *Singapore Journal of International & Comparative Law* at 4–5.

⁷² For a detailed comparative analysis of the presidential and parliamentary systems of government, see Kunle Awotokun, *supra* note 70.

the provisions of the amended Indonesian constitution.⁷³ Consequently, the removal of Sukarno and Abdurahman Wahid did not comply with legal mechanism due to the absence of specific guidelines outlined in the constitution.⁷⁴ Taking that into consideration, Isra, et al., queried: "What is a president who is solely subject and dependent on the decisions and instructions of the parliament? Or what good is a president who cannot take his own decision to carry out his political agenda?"⁷⁵ These authors confirmed that the lopsided constitutional arrangement culminated in the impeachment of President Soekarno in 1967 and President Wahid in 2001 by the MPR for political reasons without any legal basis.⁷⁶ Nonetheless, similar to the cases in Nigeria,⁷⁷ the Indonesian political expedition in terms of governance since the era "of direct elections has always included calls and movements to topple a president in the middle of his/her term. The history of Indonesia's political administration thus far has shown that changes in national leadership are often conducted in conditions full of turmoil and not under normal conditions."⁷⁸ Buttressing this point, Kumoro opines that:

President Soekarno was toppled after a Special Session of the MPRS (temporary MPR) was held in 1967. President Soeharto was forced to step down after he lost the support of parliament and several ministers in his cabinet when the Reformasi movement of 1998 was in full swing. President Bacharuddin Jusuf Habibie chose not to put himself forward as a candidate after his accountability speech was rejected by a

⁷³ Muhammad R Pahlawan, "The Constitutional Court Function of the Indonesian State Concerning System for the Implementation Impeachment of the President and/or Vice President" (2020) 4:2 Jurnal Hukum Volkgeist at 121.

⁷⁴ *Ibid*; Bawono Kumoro, *Understanding Impeaching the President Post-Constitutional Amendments* (The Habibie Center, 2020); Saldi Isra, Fahmi Idris, & Hilaire Tegnan, *supra* note 72; Dieter Ernst & Marcus Mietzner, eds, *Reinventing Asian Populism: Jokowi's Rise, Democracy, and Political Contestation in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2015) at 1-2.

⁷⁵ Saldi Isra, Fahmi Idris, & Hilaire Tegnan, *supra* note 71.

⁷⁶ *Ibid*.

⁷⁷ In Nigeria, the calls for the removal and the subsequent removal of Governors and Deputy Governors in Nigeria are common and politically motivated. Offor M. Arinze, Eze Christopher O., & Nwaeze Oliver, *supra* note 39.

⁷⁸ Bawono Kumoro, *supra* note 74.

General Session of the MPR in 1999. President Abdurrahman Wahid was also removed via a Special Session of the MPR in 2001 after taking unconstitutional steps.⁷⁹

Again, before the 2002 amendments, the 1945 Constitution stipulated that the MPR "was the sole representative of Indonesia's sovereignty of the people." Given the absolute power bestowed on the MPR, this constitutional provision enabled the MPR to abuse its power, especially when there was an unpopular president. On the other hand, it could lead to a 'rubber stamp' President that would kowtow to the parochial preferences of the MPR. Due to the unbridled power of the MPR, the absence of the procedure for the removal of the President in the constitution,⁸⁰ and the exclusion of the judiciary in the impeachment process, a President could be impeached by the MPR for any reason.⁸¹ It created an avenue for the abuse of the impeachment mechanism by the MPR. As Indrayana observed, the reasons for impeaching the President are "more political than legal: if the President 'truly breached' state policy and the constitution."⁸²

Analogous to Nigeria, none of the Presidents of Indonesia has been impeached since the 2002 amendments to the Indonesian constitution.⁸³ Notwithstanding, it is imperative to dialectically analyze the procedures outlined in Articles 7A and 7B of the Indonesian Constitution. The impeachment procedure is commenced if the President is suspected of violating "the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice President."⁸⁴ Contrary to the position in Nigeria,⁸⁵

⁷⁹ *Ibid.*

⁸⁰ The legal basis for removing a president is "[g]enerally mentioned in the elucidation of the Constitution, and was mostly stipulated in a People Consultative Assembly Decree." See Indrayana, *supra* note 67 at 113. For further reading on the elucidation of the Indonesian Constitution by the MPR, see Saldi Isra, Fahmi Idris, & Hilaire Tegnan, *supra* note 71 at 25.

⁸¹ Indrayana, *supra* note 67 at 109/113.

⁸² *Ibid* at 113.

⁸³ Saldi Isra, Fahmi Idris, & Hilaire Tegnan, *supra* note 71 at 27.

⁸⁴ Article 7A of the Indonesian Constitution.

the DPR begins the impeachment by preparing a proposal requesting the Constitutional Court to investigate, try, and issue a decision on the opinion of the DPR that the President/Vice-President has violated specified provisions of the constitution. It requires the support of two-thirds of the total members of the DPR who are present in a plenary session attended by two-thirds of the total membership of the DPR.

In contradistinction to the framework in Nigeria,⁸⁶ the Constitutional Court established under the Constitutional Court Law (CCL)⁸⁷ is obligated to decide upon the opinion of the DPR that the President/Vice-President has committed certain violations according to the constitution and/or the President/Vice-President no longer meets the requirements to be President/Vice-President. Consequently, the Constitutional Court could refuse or reject the DPR's opinion/proposal on impeachment. The implication of this is that the impeachment process cannot proceed to the Special Session of the MPR.⁸⁸ However, if there is merit in the DPR's proposal for impeachment, the Constitutional Court will confirm the proposal, leading to the MPR's Special Session that culminates in the President's dismissal.⁸⁹ Though the Constitutional Court may have confirmed the DPR proposal regarding the President's impeachment, the MPR may decline to hold its Special Session to dismiss the President. This is because the decision of the Constitutional Court is final and binding only on the DPR.⁹⁰ The implication is that the President may or may not

⁸⁵ The National Assembly commences the impeachment of the president/Vice-President in Nigeria.

⁸⁶ Nigeria has no Constitutional Court, and the judiciary plays no active role in the impeachment process in the country.

⁸⁷ For establishing the Constitutional Court in Indonesia, see the Republic of Indonesian Law Number 24/2003 on Constitutional Court, August 2003 (CCL).

⁸⁸ Muhammad R. Pahlawan, *supra* note 73 at 125.

⁸⁹ *Ibid.*

⁹⁰ See para. 5, Article 19 of the Constitutional Court Regulation Number 21 of 2009 Concerning Procedure Guidelines in Deciding the Opinion of the House of Representatives Regarding Alleged Violations by the President and/or Vice President. See also Khamim M Ma'rifatulloh, "Ration Legis of the Constitutional Court Decision about Impeachment: Is it Final and Binding?" (2020) 27:2 Jurnal Ilmiah Hukum 177-186; Muhammad R. Pahlawan, *supra* note 73.

be impeached based on the DPR proposal.⁹¹ Consequent upon that, Sibuea, et al., argue that the constitutional provision providing the DPR the power to prosecute may be sterile for political reasons so that political trials based on legal reasons stipulated in the constitution are likely to not be held.⁹² Hadi suggests that political power in the parliament largely determines when a President/Vice-President can be removed because "the majority is very decisive and more prominent in every decision making"⁹³ in the parliament, especially during impeachment proceedings. Nonetheless, it can be inferred that once the Constitutional Court has rejected the DPR's impeachment proposal, the proposal cannot be submitted to the MPR for further implementation (see Figure 2 above).

The last leg of the impeachment procedure in Indonesia involves the DPR submitting the impeachment proposal, which has been approved by the Constitutional Court, to the MPR. After that, the MPR holds a plenary session to decide on the DPR's recommendation within 30 days of its receipt. The MPR plenary session uses a quorum mechanism of at least 2/3 of the members to determine the President's dismissal. A minimum of 3/4 of the members of MPR approve the proposal after the President has given information.⁹⁴

Furthermore, Article 7A of the Indonesian Constitution stipulates that the contravention of "the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude" by the President/Vice-President is ambiguous and would likely pave the way for the DPR to abuse the impeachment mechanism. The provisions of Article 10 (3) of the CCL that stipulate the meaning of some of the phrases in article 7A of the Indonesian Constitution may be inadequate. This is exemplified by the inclusion of 'moral turpitude,' a vague phrase.⁹⁵ Such

⁹¹ Muhammad R. Pahlawan, *supra* note 74 at 125.

⁹² Subuea, et al., *supra* note 5 at 7.

⁹³ Sofyan Hadi, "Impeachment of the President and /or Vice-President (Comparative Study between Indonesia and, the United States and the Philippines)" (2016) *Journal of Legal Studies* at 23.

⁹⁴ See Art. 7B (7) of the Indonesian Constitution.

⁹⁵ See *Mylius v Uhl*, 203 F. 154 (SDNY 1913), *aff'd*, 210 F. 860 (2d Cir. 1914). See generally Craig S Lerner, "Crimes Involving Moral Turpitude": The Constitutional

ambiguous phrases or words could be manipulated to impeach a President/Vice-President unduly or reject a warranted impeachment.⁹⁶ Despite the fluid nature of the phrase 'disgraceful act,'⁹⁷ it is a ground for the President's impeachment in Indonesia.⁹⁸

Additionally, it is submitted that despite the spread of the appointment of the judges of the Constitutional Court among the Supreme Court (3), the DPR (3), and the President (3),⁹⁹ the heightened level of neopatrimonialism that has promoted an unprecedented corruption, especially during the tenure of President Yudhoyono,¹⁰⁰ shows that impeaching a President/Vice-President may be less complicated. This could be possible considering the uninhibited powers of the ex-generals in the democratic dispensation in Indonesia and their past exploits in the elections and removal of presidents.¹⁰¹ Beyond the undue influence of the military in Indonesia's politics, the heightened level of corruption in the country could compromise the institutions saddled with the responsibility of removing the President.

and Persistent – Immigration Law Doctrine” (2021) 14:1 Harvard Journal of Law & Public Policy at 71–144; Patrick J Campbell, “Crimes Involving Moral Turpitude: In Search of a Moral Approach to Immoral Crimes” (2014) 1:88 John’s Law Review at 147–174.

⁹⁶ Having read the Indonesian Constitution and the CCL, especially the provisions related to the President's impeachment, and academic papers on impeachment in Indonesia, 'moral turpitude' was not strictly analyzed.

⁹⁷ It is common knowledge that the attempt by the House of Representatives to impeach Bill Clinton, the President of the US, over his affair with the former White House intern, Miss Monica Lewinsky, was rejected by the Senate.

⁹⁸ Disgraceful act, which is an ethical violation, covers the general principles of good governance. See generally, Nadir, “The Paradigm of the General Principles of Good Governance as Examination Method of Indonesian Presidential Impeachment Based on the Perspective of Ethical Control” (2020) 7:2 Padjadjaran Journal of Law at 141–157.

⁹⁹ Article 18 (1), Chapter IV of the CCL.

¹⁰⁰ Dieter Ernst & Marcus Mietzner, *supra* note 74 at 11–16.

¹⁰¹ See Meidi Kosandi & Subur Wahono, “Military Reform in the Post-New Order Indonesia: A Transitional or a New Subtle Role in Indonesian Democracy” (2020) 12:2 Asian Politics & Policy at 224–241.

Similar to the situation in Nigeria,¹⁰² neo-patrimonialism exists in Indonesian politics as leaders are seen as the patron,¹⁰³ while the people are "considered the clients in the kind of vertical leadership."¹⁰⁴ Additionally, geographical, ethnic, and religious diversities create an enabling environment for neopatrimonialism to thrive. The military's involvement in Indonesian politics aggravates neopatrimonialism and its attendant offshoots, which can potentially trigger the abuse of impeachment, especially if the President jettisons the interests of the ex-generals.¹⁰⁵ Thus, shared interests in avoiding prosecutions for their past human rights abuses and securing their businesses "led to the interest in preserving this informal and indirect power. Having the power to affect policymaking and political recruitment is crucial to securing their interests amid political reform and under high pressure for military reform."¹⁰⁶

C Applying the Impeachment Procedures in Nigeria and Indonesia

First and foremost, Nigeria and Indonesia's democratic governance and political institutions encourage the abuse of the impeachment mechanism. Because the military influences both countries' democratic governance, ex-generals have continued to govern and control politics. The 'tutelary'

¹⁰² See Roelofs Portia, "Beyond Programmatic Versus Patrimonial Politics: Contested Conceptions of Legitimate Distribution in Nigeria" (2019) 57:3 *Journal of Modern African Studies* 415–436; Sunday Omotuyi, "Electoral Process and Neopatrimonialism: An Appraisal of Quality of Governance in Democratic Nigeria" (2016) 16:3 *Global Journal of Human-Social Science: F Political Science*.

¹⁰³ Muhammad Bahrul Ulum, "Indonesian Democracy and Political Parties After Twenty Years of Reformation: A Contextual Analysis" (2020) 10:1 *Indonesia Law Review* at 33.

¹⁰⁴ Nur H Sardini, "The Role of Moral Outrage on the Impeachment of Garut Regent in 2012-2013" (2018) 9:2 *Journal of Social and Development Sciences* at 28. See generally, Adian M Firnas, *The Dynamics of Politics Indonesia: Patrimonial Bureaucracy Model in Indonesia Period of Reform* (2018) at 1667–1674; Douglas Webber, "A Consolidated Patrimonial Democracy? Democratization in Post-Suharto Indonesia" (2006) 13:3 *Democratization* at 396–420.

¹⁰⁵ Bland suggests that President Widodo works closely with powerful ex-Generals and 'countenanced an expanding role for the military in politics' in Indonesia. Thus, shielding himself from impeachment. See Ben Bland, *supra* note 13 at 2.

¹⁰⁶ Meidi Kosandi & Subur Wahono, *supra* note 102 at 238–239. See Ben Bland, *ibid*.

democracy¹⁰⁷ practiced in both countries engender pervasive neopatrimonialism, among other things. Crouch suggests that the purported attempt of third world countries to establish political institutions and cling to power, perhaps perpetually, culminated in the existence of neopatrimonialism.¹⁰⁸ Sigman and Lindberg opine that neopatrimonialism rule "combines strong presidents, clientelistic linkages between citizens and politicians, and state resources for political legitimation. These features may be present across different regime types, from highly competitive democracies to highly closed authoritarian regimes."¹⁰⁹ This is imperative since transparency and accountability are absent in their activities.

In particular, elections in both countries¹¹⁰ are fraught with selling party nominations to the highest bidder and vote-buying by the elite during campaigns and elections.¹¹¹ Since the legislature is involved in the impeachment process and legislators are susceptible to corruption, the unwarranted removal or non-removal of an indicted President in Nigeria

¹⁰⁷ Tutelary democracy means domain or enclave democracy. See Douglas Webber, *supra* note 104 at 397.

¹⁰⁸ Harold Crouch, *supra* note 9.

¹⁰⁹ Rachel Sigman & Staffen I Lindberg, "Neopatrimonialism and Democracy: An Empirical Investigation of Africa's Political Regimes" (2017) 56 V-Dem Institute (Working Paper Series) at 1.

¹¹⁰ For a detailed analysis of electoral malpractices in Nigerian, see generally, Emanuel O Akubor, "Campaigns and Electioneering: Reflecting on the 2015 General Elections in Nigeria" (2020) 49:4 Polish Political Science Yearbook at 72–86; Babayo Sule & Usman Sambo, "The 2019 General Election and the Politics of Inconclusive Election in Nigeria: A Review of the Affected States" (2020) 2:3 Khazanah Sosial at 105-124; Olalekan W Adigun, "Vote Buying: Examining the manifestations, Motivations, and Effects of an Emerging Dimension of Electoral Rigging in Nigeria (2015-2019)" (2019) 15:11 Canadian Social Science 20-28; John S Ojo & Godwin Ihemeje, "Designing E-Voting as an 'Apparatus' for Combating Election Rigging: A Nigerian Model" (2019) 2:3 Journal of Social and Political Sciences at 582–601. For more details on electoral malpractices in Indonesia, see generally Burhanuddin Muhtadi, *Vote Buying in Indonesia: The Mechanics of Electoral Bribery* (Palgrave Macmillan, 2019) at 1-263; Kris Nugroho, "Electoral Malpractice, Integrity of the Election Management Bodies: A Case of 2015 Simultaneous Elections in East Java" (2016) 81 Education and Humanities Research at 145.

¹¹¹ For Indonesia, see Asian Development Bank, *A Diagnostic Study of the Civil Service in Indonesia (Asian Development Bank 2021* (Manila: Asian Development Bank, 2021) at 45.

and Indonesia will be overwhelmingly influenced by narrow parties' affiliations and corruption. Though party affiliation is important in governance, especially in the implementation of the policies of such a party, some policies are anti-democratic and do not promote the socio-economic and political development of the citizens. Under such circumstances, party affiliation cannot be a reason to unseat a President unduly.

In Nigeria, the 1999 Constitution permits the judiciary to review impeachment that does not follow the stipulated procedure for removing the executive without considering the merit of the impeachment, to prevent the improper or unlawful removal of the executive.¹¹² In contradistinction to the system in Nigeria, the Indonesian Constitution included the Constitutional Court as part of the impeachment process in Indonesia.¹¹³ Unlike in Indonesia, where the court is necessary for impeachment, the unfettered powers of the legislature to remove the executive in Nigeria without the court's interference have resulted in the abuse of the impeachment process. Hence, most of the impeachment attempts in Nigeria have not followed the procedure contained in Sections 143 and 188 of the 1999 Constitution of Nigeria. Consequently, in condemning the ongoing abuse of the impeachment power in Nigeria, Arinze, et al., argue as follows:

Nigeria political parties get into power through electoral malpractice, electoral tribunals or court, and the impeachment of the incumbent. An understanding of successful and failed impeachment since 1999 has confirmed the argument that the impeachments across the land have established that political actors are bereft of proper

¹¹² See Omololu Fagbadebo & Nirmala Dorasamy, *supra* note 44 at 12211-12212 and Abdulahi Sani, Che Talbi Md Ismail, & Aspalela A Rahman, "An Examination of the Role of Courts in Ensuring Compliance with the Constitutional Requirements for Impeachment in Nigeria" (2019) 10:1 UUM Journal of Legal Studies 2-3; Omololu Fagbadebo, "Interrogating Constitutional Requisites for Legislative Oversight in the Promotion of Accountability and Good Governance in South Africa and Nigeria" (2018) 11:1 African Studies 49-50.

¹¹³ Nurwita Ismail, *supra* note 71 at 50.

understanding of the meaning and purpose of removing an official from office.¹¹⁴

Again, some of the constitutional provisions in both countries' constitutions regarding impeachment procedures create an avenue for the abuse of the procedures when words or phrases are not clarified, or the provision is ambiguous. For example, similar to the situation in Indonesia,¹¹⁵ the issue of 'gross misconduct' paved the way for the abuse of impeachment in Nigeria despite numerous judicial interventions.¹¹⁶ Hatchard believes that a clear and transparent impeachment procedure in the constitution prevents additional and unnecessary political controversy and uncertainty.¹¹⁷ Some of the constitution's provisions contribute to the President's proclivity to abuse the powers bestowed on him. Because of that, it has been observed that many "specific provisions of the Constitution underscore the President's prodigious appointing, quasi-legislative, quasi-judicial, and allocative powers."¹¹⁸

Using Nigeria as a case study, some of the decisive powers of the President under the 1999 Constitution of Nigeria include "the authority to appoint the heads, and direct, 'deploy,' or determine the operational use, of the armed forces and the police; to name persons to key 'independent' agencies or offices (such as the offices of the Auditor-General and Attorney-General of the federation."¹¹⁹ It creates a situation where authoritarian

¹¹⁴ Offor M. Arinze, Eze Christopher O., & Nwaeze Oliver, *supra* note 39 at 49.

¹¹⁵ The phrase 'moral turpitude' is included in the impeachment provision in the Indonesian Constitution. The phrase has been regarded as vague. See *Mylius v Uhl*, *supra*.

¹¹⁶ See the analysis under Section IV (A) of this paper.

¹¹⁷ John Hatchard, "Presidential Removal: Unzipping the Constitutional Provisions" (2000) 44:01 *Journal of African Law* 1.

¹¹⁸ Rotimi T. Suberu, *supra* note 2 at 146.

¹¹⁹ *Ibid.* Given Indonesia, Article 5(2) of the Indonesian Constitution authorizes the President to make regulations in lieu of law in case of emergency, ratified by the parliament in the succeeding session. In his seminal work on whether the Indonesian President is strong or weak, Kawamura concluded that the President is relatively 'weak' and comparatively 'legislatively-heavy.' See Koichi Kawamura, *Is the Indonesian President Strong or Weak?* (IDE Discussion Paper No. 235, 2010) at 48. Fealy suggests that Jokowi's support of his son and son-in-law's nominations in mayoral elections in two major cities encourages dynasticism and elitism in

Presidents use government apparatuses to perpetuate themselves in power by neutralizing any impeachment process or directing the impeachment of their Vice-Presidents they deemed threats to their ambition.

A weak institutional regime, as evidenced by the legislature and the judiciary calibrated by party affiliation, creates a conducive environment for the abuse of impeachment. Reyes opines that where "the same political party controls multiple branches of the federal government, the structural safeguards of separation of powers can be undermined by the corrosive effects of shared political interests."¹²⁰ Using the judiciary as an example, "the corruption and weakness of the judges"¹²¹ may affect the outcome of impeachment. It is suggested that partisanship "on the bench compounds doubts about the sufficiency...of separation of powers as a check on executive overreach,"¹²² and perhaps, culminate in the abuse of the impeachment process. Such partisanship negates the primary role of the judiciary, which is to "prevent the arbitrary exercise of judicial power by the monarch who was already endowed with two other powers."¹²³ Though the judiciary plays a minor role in removing the executive members of the government in Nigeria, the court intervenes through judicial review in circumstances where the constitutional provisions for such removal are not strictly followed. On the contrary, the Indonesian Constitutional Court constitutes an integral part of the impeachment procedure. In other words,

Indonesia's political landscape. See Greg Fealy, *supra* note 6. It affirms the argument that, like in Nigeria, the President of Indonesia can support the appointments of cronies to key positions or head major agencies to protect himself from being removed from office. More importantly, aligning himself with the military supports the thesis that President Jokowi may use the influence of the ex-soldiers to overcome any impeachment attempt against him or spearhead the impeachment of the vice president. See Ben Bland, *supra* note 13 at 2.

¹²⁰ Rene Reyes, "Constitutional Crises Compared: Impeachment, Brexit, and Executive Accountability" (2021) 35:3 *Emory International Law Review* 470.

¹²¹ Mithi Mukherjee, "Justice, War, and the Imperium: India and Britain in Edmund Burke's Prosecutorial Speeches in the Impeachment Trial of Warren Hastings" (2005) 23:3 *Law and History Review* at 628.

¹²² Rene Reyes, *supra* note 120 at 473.

¹²³ Pasquale Pasquino, "One and Three: Separation of Powers and the Independence of the Judiciary in the Italian Constitution" in John Ferejohn, Jack N Rakove, & Jonathan Riley, eds, *Constitutional Culture and Democratic Rule* (Cambridge University Press, 2001) at 210.

the Nigerian judiciary plays an ex-post role in removing the executive members and, in contrast, the Indonesian Constitutional Court plays an ex-ante role in removing executive members.

Although every society is prone to corruption, the high level of corruption in Nigerian and Indonesian public services and the executive, legislative, and judicial arms of government has culminated in various socio-economic and political challenges in both countries.¹²⁴ The existence of neopatrimonialism facilitates corruption, leading to the abuse of impeachment as unscrupulous leaders use broad constitutional powers, as in the case of Nigeria, and convoluted party affiliations to influence the removal of the President/Vice-President. Even when technocrats are appointed to contribute to the development of Nigeria, unbridled power, which could be deployed to remove an executive officer, is politicized and utilized, culminating in the abuse of impeachment and the attendant misuse of technocrats in nation-building.¹²⁵

V. MEASURES TO CURB THE ABUSE OF THE IMPEACHMENT PROCEDURES

This paper argues emphatically that as part of direct democracy,¹²⁶ active participation of the citizens is crucial in either determining the impeachment of an elected government official or opposing such removal. The "[a]ctive citizenship now implies an assumption of direct responsibility to exercise decision-making, consultive, and veto powers by citizens outside of ordinary political channels,"¹²⁷ which could influence the legislature's

¹²⁴ To analyze corruption in the Nigerian civil service, see Oyesola Animasaun & Howard Chitimira, "The Reliance on Lifestyle Audits for Public Officials to Curb Corruption and Tax Evasion in Nigeria" (2021) 24:Special Edition: Corporate and Financial Markets 2021 Potchefstroom Electronic Law Journal 1–38 at 2. For further reading on corruption in the Indonesian civil service, see Asian Development Bank, *supra* note 112 at 43.

¹²⁵ Alexander Thurston, "The Politics of Technocrats in Fourth Republic Nigeria" (2018) 61:1 African Studies Review at 217–218.

¹²⁶ See Eloy Garcia, Elisabetta Palici di Suni, & Martin Rogoff, *Direct Democracy in Comparative Law* (Eleven International Publishing, Hague, 2018) at 1.

¹²⁷ *Ibid.*

decision in the impeachment process. The advent and advancement of technology have made the participation and subsequent influence of political discourse by the citizens easy and spontaneous through such mechanisms as the web, virtual town meetings, and other social media platforms.¹²⁸ After establishing that the public can constitutionally play a vital role in the impeachment process through a referendum¹²⁹ and recall their elected officers,¹³⁰ Ginsburg et al. suggest that mass protest, exemplified by events in South Korea and Brazil, is a mode of public involvement in removing the President.¹³¹ Thus, Nigerians and Indonesians can take advantage of both formal and informal tools to express their support for or against any government official's impeachment and register their displeasure at the mishandling of the impeachment procedure by the relevant institutions.¹³² It has become pertinent for the people to become involved in removing executive members, since elected representatives are in cohort with the executive in abusing the impeachment process in Nigeria and Indonesia.

Ensuring a succinct impeachment provision is vital in preventing the abuse of impeachment procedures. Therefore, it is necessary to briefly specify the actual misdeeds, processes, and steps to impeach a member of the executive branch of government in the constitution.¹³³ Just like in the Indonesian case, where the phrase 'disgraceful act' is subject to several interpretations, 'gross misconduct' has resulted in multiple interpretations by the State

¹²⁸ *Ibid.*

¹²⁹ See art. 63 (4) of the Constitution of Gambia 1997 and art. 60(6) of the Constitution of Austria 1920. In Nigeria, members of the National Assembly and the State Houses of Assembly can be recalled. See ss. 69 and 110 of the 1999 Constitution of Nigeria, respectively.

¹³⁰ See Tom Ginsburg, Aziz Huq, & David Landau, *supra* note 16 at 135. See generally Jayus Jayus, Muhammad Bahrul Ulum, & Moch Marsa Taufiqurrohman, "Examining Recall of the House Member: How Does it Impact on Eradicating Corruption in Indonesia?" (2020) 7:1 *Lentera Hukum* 101-116.

¹³¹ See Akhil R Amar, "On Impeaching Presidents" (1999) 28:2 *Hofstra Law Review* 307-309.

¹³² The involvement of the citizens in the impeachment process aligns with the premise that "we, the people" are the defenders of democracy from authoritarian regimes. See Patrick Horst, *supra* note 21 at 64.

¹³³ John Hatchard, *supra* note 117.

Houses of Assembly in Nigeria in the impeachment of the Governors and the Deputy Governors. In buttressing the argument, conducts that constitute 'gross misconduct' in Nigeria and 'disgraceful act' in Indonesia should be listed to avoid the parochial interpretation of the phrases by the legislature in the impeachment process.¹³⁴ The listing of or clarification of what constitutes a 'gross misconduct' or 'disgraceful act' is critical because impeachable offenses must be narrow and precise.¹³⁵ It could be achieved through constitutional amendment or judicial interpretation.

Prosecuting corrupt elite (including ex-soldiers), politicians, and judges is another critical step in suppressing the abuse of the impeachment process in Nigeria and Indonesia. It is imperative to effectively implement the extant anti-corruption laws in both countries. The existence of anti-corruption institutions in Nigeria¹³⁶ and Indonesia¹³⁷ is the first step in curbing corruption in both countries. Adequate training, provision of modern facilities, and financial and administrative independence of these anti-corruption agencies from the executive are crucial in curbing corruption in both countries. More importantly, the appointment and the removal of the heads of these anti-corruption agencies in both countries must be made by independent bodies to prevent a situation where the chief executive officers in both countries would use these agencies to conceal their corruption or weaponize these agencies against their perceived political enemies. A situation where the chairman of the EFCC is appointed and removed by the President in Nigeria leads to undue control of and use of the agency to go after their political rivals or members of the opposition party. The implication is that a corrupt Presidents could use the agency to go after their perceived political enemies.¹³⁸

¹³⁴ *Ibid.*

¹³⁵ Patrick Horst, *supra* note 20 at 67.

¹³⁶ See the Economic and Financial Crimes Commission (EFCC) created by s. (1) of EFCC (ESTABLISHMENT) Act 2004. See also the Code of Conduct Bureau (CCB) established by s. 1(1) of the Code Conduct Bureau and Tribunal Act, Cap 58, Laws of the Federation of Nigeria (LFN) 1991.

¹³⁷ See the Indonesian Corruption Commission (Komisi Pemberantasan Korupsi - KPK) Law No. 30 of 2002.

¹³⁸ See Kingsley O. Mrabure & Ufuoma V. Awhefeada, *supra* note 58.

There is a need for the judiciary to be wholly independent. An independent judiciary would ensure that the implementation of the impeachment procedure reflects the transgression of the executive, thereby preventing the weaponization of impeachment to suppress perceived political enemy or a member of the opposition party or punishing an executive member for political reasons. This is a significant measure in repressing the abuse of impeachment. The activation of the impeachment procedure in Nigeria,¹³⁹ similar to the impeachment of Presidents in Indonesia,¹⁴⁰ which affected both Governors and Deputy Governors depicted a weaponization of the procedure against political rivals and perceived political enemies. It is laudable that the three arms of government make the appointment of the justices of the Constitutional Court in Indonesia. In contrast to the situation in Indonesia, the executive in Nigeria appoints, removes, and controls the finances of the judiciary.

Consequently, it becomes imperative to ensure that the appointment of judges is removed from the executive branch of government. Under the regime in Nigeria, judges would be susceptible to corruption as the executive would control the judiciary's appointment, removal, and finances to coerce the judges to overlook the contravention of the constitutionally outlined procedures for impeachment. Given the level of corruption, the rampant influence of the ex-generals in politics, the existence of neo-patrimonialism, and perennial institutional weaknesses and inefficiencies in Nigeria and Indonesia, an independent judiciary is a key to arresting the abuse or misuse of impeachment in both countries.

IV. CONCLUSION

The abuse of impeachment procedures is rife in Nigeria and Indonesia, and the perpetrators of this abuse include the executive, the legislature, and the judiciary. The introduction of the impeachment mechanism is to authorize the legislature to check that the executive does not exercise its powers

¹³⁹ See the cases of *Danladi v Dangiri & Ors*, *supra*, *Ekpenyong v Umunah*, *supra*, *Dapianlong v Dariye*, *supra*, and *Mike Balonwu v Peter Obi*, *supra*.

¹⁴⁰ Generally, Muhammad R. Pahlawan, *supra* note 73; Bawono Kumoro, *supra* note 74.

beyond the constitutional and statutory limits. The judiciary's role in the impeachment proceedings can be ex-ante, as in the case of Indonesia, or ex-post, exemplified by Nigeria. Nonetheless, some judges have compromised their elevated position to ignore the abuse of the impeachment procedures. Neo-patrimonialism, corruption, parochial party affiliations, and ambivalent constitutional provisions are factors that facilitate the abuse of impeachment in Nigeria and Indonesia. To eliminate the abuse of the impeachment process, this paper principally advocated for the people's participation in the impeachment process in since the elected representatives are only interested in protecting their party's interests without considering the people's interests. The study believes that aside from the formal – like recall – and informal, such as mass protest, modes of participation by the people in the impeachment process, social media platforms bolster the people's involvement in the impeachment of an elected public official. It is equally essential to prosecute corrupt executive members, legislators, judges, and the elite to suppress the abuse of the impeachment process. The inference is that the anti-corruption agencies in both countries should be adequately funded and trained. More importantly, the heads of these agencies must be appointed and dismissed by an independent body. Neopatrimonialism should be put paid to curb the abuse of impeachment in both countries. These measures could strengthen the elimination of the abuse of impeachment in Nigeria and Indonesia.

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COMPETING INTERESTS

The author declared that he has no competing interests.

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