

RECALL OF A LEGISLATOR UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999: IMPLICATIONS FOR DEMOCRACY*

By

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“The position held by the law-maker in the legislature belongs to his constituency. He merely holds it in trust for them. The sooner our legislators realise this the better for them and the country.”

Ubaezonu, JCA¹

Abstract

The right of the represented, electorate or constituents to elect their representative in parliament, and to also remove or withdraw the representative when the need to do so arises is gaining popularity among nations. Nigeria, like several other common law countries introduced the right to recall legislators by constitutional provision in 1999. We examine here, the concept of political representation, the law and practice of recall in Nigeria with reference to similar law and practice in some other countries including the India, USA, Canada and the UK. We also show evidence that the Nigerian courts have demonstrated the will to support and enforce the provisions of the Constitution and the guidelines of national electoral commission. However, we assert that the national electoral umpire has to provide suitable and implementable guidelines and other processes to make it possible for the will of the electorate to prevail always. We conclude that there is room for improvement to make the Nigerian recall law easy to practice and enforce effectively, and that Nigeria could benefit from considering the laws and practice in the other countries in efforts to effect the desired improvement.

Keywords: Electorate, Representative, Represented, Democracy, Recall, Constituents.

Introduction

Recall² is a procedure that allows electorates of a constituency to withdraw their elected representative from the legislative house where he occupies the seat for the constituency he represents (through direct vote), before the end of the statutory or constitutional term of office. In Nigeria, the Independent National Electoral Commission (INEC) defines recall as “A petition submitted by electorates of a constituency for withdrawing their elected representative from a legislative house.”³ Recall has also been defined as “... a procedure that allows citizens to remove and replace a public official before the end of a term of office”⁴

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¹ *Igbo Peter v. Architect George Ike Okoye and Independent National Electoral Commission*. FWLR 8 July 2002, 1864

² It is also called referendum or representative recall.

³ See **Frequently Asked Questions on Recall of a Member of The National Assembly, House of Assembly of a State and Area Council of The Federal Capital Territory**. A publication of the Independent National Electoral Commission, Abuja, Nigeria, <https://www.inecnigeria.org> (Accessed at 16.46 hours on 23/03/2018)

⁴ In the United States of America. See Recall of State Officials in <http://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx> (Accessed at 12.45 hours Nigerian time on 31/05/2018)

Recalls, which are initiated when sufficient voters sign a petition, have a history dating back to 5th century BC ancient Athenian democracy⁵ and feature in several contemporary constitutions. In indirect or representative democracy, people's representatives are elected and these representatives are elected for a specific period of time. Where and when representatives come to be perceived as not properly discharging their responsibilities, then they can be called back with the written request of specific number or proportion of voters in the constituencies.

This paper examines the concept of political representation, the law and practice of legislator recall under the Constitution of the Federal Republic of Nigeria, and its implication for the practice of democracy in Nigeria. We have also looked at the practice in some other jurisdictions, especially India where recall is possible in the local government only, the United States if America, Canada, and the United Kingdom, with the belief that the process for recall in those areas, could be considered in the review of the law and practice of recall in Nigeria.

The Concept of Political Representation

Political representation can be said to be synonymous with the idea of the rule of the people. It has been defined broadly as referring "...to an arrangement whereby one is enabled to speak and act with authority in the behalf of some other."⁶ For there to be political representation, there has to be a constituency or a body to be represented on the one hand, and a process or method by which the representative of the constituency or body is to be selected or determined on the other hand. Representation is compatible with and complementary to democracy. As far back as 1820, James Mill⁷, the British political philosopher, economist, and historian concluded in his essay "*On Government*" that "in the grand discovery of modern times, the system of representation, the solution to all difficulties, both speculative and practical, will perhaps be found."⁸ Though the representative is elected by his constituency to represent their interest, once elected, the representative is confronted with the responsibility of locating the balance between the interest of the constituents or constituency with the overall interest of the greater community, the state or nation. The representative will not only be expressing the grievances and popular opinion of his constituents, but also has the duty to garner popular support for state or national policies. He therefor has the responsibility of serving as a two-way channel of communication.⁹ Edmund Burke's view of parliament is instructive in this regard. He saw parliament as "the express image of the feelings of the nation"¹⁰. Parliament according to him is "not a congress of ambassadors from different and hostile interests...but parliament

⁵ https://en.wikipedia.org/wiki/Recall_election (accessed at 12.40 Nigerian time on 29/05/2018. Athenian democracy developed around the fifth century BC in the Greek city-state (known as a polis) of Athens, comprising the city of Athens and the surrounding territory of Attica, and is the first known democracy in the world. Other Greek cities set up democracies, most following the Athenian model, but none are as well documented as Athens'. It was a system of direct democracy, in which participating citizens voted directly on legislation and executive bills. Participation was not open to all residents: to vote one had to be an adult, male citizen, i.e., not a foreign resident, a slave or a woman.

⁶ New Dictionary of the History of Ideas, 2005 The Gale Group, Inc.

⁷ 1773–1836. In his essay titled "On Government" written in 1820 p. 21

⁸ <https://www.encyclopedia.com/people/philosophy-and-religion/philosophy-biographies/james-mill> last accessed on December 24 2018. See also Mill, James. "Government." In *Political Writings: James Mill*, edited by Terence Ball, 1–42. Cambridge, U.K.: Cambridge University Press, 1992.

⁹ For more on this, see "*Political Representation*" New Dictionary of the History of Ideas, 2005 The Gale Group, Inc.

¹⁰ Burke, Edmund, "Thoughts on the Cause of the Present Discontents." In *The Writings and Speeches of Edmund Burke. Vol II: Party, Parliament, and the American Crisis, 1766–1774*, edited by Paul Langford, 251–322. Oxford: Clarendon, 1989, at p. 292

is a *deliberative* assembly of *one* nation, with one interest, that of the whole".¹¹ Consequently, representatives do not necessarily have to be glued to the constituents or constituencies that they represent. In Burke's opinion, constituencies need not have direct representation, as they still enjoyed "virtual representation" deriving from a "communion of interests and sympathy in feelings and desires between those who act in the name of any description of people and the people in whose name they act, though the trustees are not actually chosen by them"¹² Rather than viewing the representative as a delegate, authorized to do only what the constituency wills, and limited by the constituents' expressed interests and preferences, Burke sees the representative as a trustee authorized to judge and act independently of the constituency's and constituents' "opinions."¹³

Definitive expression to the rationales for representative democracy was given by James Madison. He claimed that representative institutions serve as channels for extending democracy over greater territory and population with several advantages including sending representatives that possess superior judgement, knowledge and skills such as oration and negotiation. He asserts that one clear effect of representative legislature is to "refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations"¹⁴

By the mid-nineteenth century, democratic theorist were virtually united in the view that representation or political representation by elected individuals was the only means by which the larger community can participate in government to truly enjoy the dividends of democracy and good government. John Stuart Mill, one of such theorists was emphatic on this when he stated that "the only government which can fully satisfy all the exigencies of the social state is one in which the whole people participate.... But since all cannot, in a community exceeding a small town, participate personally in any but very minor portions of the public business, it follows that the ideal type of a perfect government must be representative"¹⁵.

Ubaezonu, JCA's definite assertion that "The position held by the law-maker in the legislature belongs to his constituency" and the he "...merely holds it in trust for them"¹⁶ is a reflection of the theoretical literature on the subject of political representation which focus on the debate whether the representative should play the role of a *delegate* or the role of a *trustee*. Ubaezonu argues that the legislator holds the position in *trust* for the constituents. If that be the case, is the legislator then a *trustee*? If the answer is in the affirmative, does it not follow that the

¹¹Burke, Edmund, "Speech at the Conclusion on the Poll, 3 November 1774." In *The Writings and Speeches of Edmund Burke. Vol III: Party, Parliament, and the American War, 1774–1780*, edited by Paul Langford, 63–70. Oxford: Clarendon, 1989, at p. 69

¹² Burke, Edmund. "Letter to Sir Hercules Langrishe, 1792." In *The Writings and Speeches of Edmund Burke. Vol. IX, I: The Revolutionary War 1794–1797 II: Ireland*, edited by Paul Langford, 594–638. Oxford: Clarendon, 1989, p. 629.

¹³ n. 6

¹⁴ Madison, James "The Federalist No. 10" (1787), p.409. See also Madison, James. "The Federalist No. 10." In *The Federalist with Letters of "Brutus,"* by Alexander Hamilton, James Madison, and John Jay, edited by Terence Ball, 40–46. Cambridge, U.K.: Cambridge University Press, 2003.

¹⁵ Mill, John Stuart. "Considerations on Representative Government." In *American State Papers/The Federalist* by [Alexander Hamilton](#), James Madison, John Jay/On Liberty: Representative Government/Utilitarianism by [John Stuart Mill](#), edited by [Robert Maynard Hutchins](#), 325–442, at p. 350. Great Books of the Western World 43. [Chicago](#): Encyclopaedia Britannica, 1952.

Considerations on Representative Government (1862) p. 305

¹⁶ In *Igbo Peter v. Architect George Ike Okoye and Independent National Electoral Commission*, FWLR 8 July 2002

representatives ought to follow their independent understanding or knowledge of the best action to pursue in their perceived best interest of the constituents? It has been argued that representatives who are *delegates* simply follow the expressed preferences of their constituents, while representatives who are *trustees* follow their own understanding of the best action to pursue.¹⁷ What we find is a paradox. On this reality, Hanna Pitkin¹⁸ sees no reason why theorists should be attempting to reconcile the paradoxical nature of representation. She argues in favour of the preservation of the paradox with the recommendation that the autonomy of both the representatives and the represented be safeguarded. By allowing the representatives to make decisions based on their understanding of the constituent's interests (the trustee conception of representation), the autonomy of the representative is preserved. On the other hand, the autonomy of the constituents who are represented is similarly preserved by having their preferences influence evaluations of representatives (the delegate conception of representation). Pitkin warns that "representatives must act in ways that safeguard the capacity of the represented to authorize and to hold their representatives accountable *and* uphold the capacity of the representative to act independently of the wishes of the represented."¹⁹ The criteria for determining whether the autonomy of the representative and the autonomy of the represented have been breached is the objective interest.²⁰ Suzanne Dovi has proposed that representatives should be assessed by their display of the three virtues of fair-mindedness, building of critical trust and being good gatekeepers.²¹

In a democracy, the represented will have the option of withholding the authority of representation granted the representative if the objective criteria is not met. One way of doing this is to not elect the representative after the term for which he or she was initially elected. Another way is the exercise by the represented of their power of recall in jurisdictions where there is in built process and provision for recall of representatives.

The Law and Practice of Recall in Nigeria

The recall of legislator process was introduced in Nigeria in 1999²², when the Constitution empowered INEC to conduct **Recall** proceedings against a member of the Senate, House of Representative, and the State House of Assembly of a state, upon the receipt of a valid petition alleging loss of confidence in the member, by more than 50 per cent of voters registered to vote in that member's constituency. Recall differs from the method for removing from office the President and Vice President of Nigeria, the Governor and Deputy Governor of a state in Nigeria. These elected executives are removed by the process of impeachment. Recall of legislators is essentially a political device while impeachment of the President, Vice-President, Governor and Deputy Governor is a legal process. Impeachment requires the legislature to bring specific charges, and a Committee set up by the Chief Justice of Nigeria (in case of the President and Vice President), and Chief Judge of a State (in case of Governor and Deputy Governor of a state) looks into the charges and submits a report to the legislature for confirmation. In the case of a legislator and the recall process, specific grounds are not required, and the recall of legislator is held by a referendum.

¹⁷ Madison, James "The Federalist No. 10" (1787), op. cit., Pitkin, Hanna Fenichel, 1967. *The Concept of Representation*, Berkeley: University of California.

¹⁸ Pitkin, Hanna Fenichel, 1967. *The Concept of Representation*, Berkeley: University of California.

¹⁹ *Ibid.*

²⁰ Suzanne Dovi, *The Good Representative*, 2007 Willey-Blackwell, chapter 1

²¹ *Ibid*

²² See Constitution of the Federal Republic of Nigeria 1999, Sections 69 and 110 of the Constitution of the Federal Republic of Nigeria. See also section 116 of the Electoral Act 2010 (as amended) which makes provision for the recall of a member of the Area Council of the Federal Capital Territory.

The legal foundation for recall process in Nigeria is section 60 of the Constitution (for Senators and Representatives), and section 110 (for Members of the House of Assembly).²³ The Electoral Act 2010 also has similar provisions for the recall of members of the Area Councils in the Federal Capital Territory.

For the Senators and Representatives, the Constitution provides that:

“69. A member of the Senate or of the House Representatives may be recalled as such a member if -

- (a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and
- (b) the petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

For members of the House of Assembly of a State, the Constitution provides that:

“110. A member of the House of Assembly may be recalled as such a member if -

- (a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and
- (b) the petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of the receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.”

For members of Area Councils of the Federal Capital Territory, section 116 of the Electoral Act 2010 has the following similar provisions:

“116. A member of an Area Council may be recalled as a member if-

- (a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by not less than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member and which signatures are duly verified by the Independent National Electoral Commission; and
- (b) the petition is thereafter approved in a referendum conducted by the Commission within 90 days of the date of the receipt of the petition by a simple majority of the votes of the persons registered to vote in that member's constituency.”

In addition to the legal foundation for the recall of legislators in Nigeria, which is settled and well established by provisions of the 1999 Constitution and the Electoral Act 2010, there are Guidelines issued by INEC²⁴ on the recall of a member of the National Assembly or House of Assembly of a State, and procedure for the conduct of a referendum for recall, which Guidelines are also applicable to the Area Councils in the Federal Capital Territory.

Purpose of Recall

The main purpose of the recall process is for the constituents to be able to remove and replace their representative in the legislature who no longer meets or represent the needs and aspirations of the constituents. The process provides the legal tool necessary for the citizens to

²³ Constitution of the Federal Republic of Nigeria 1999

²⁴ In exercise of the powers conferred on it by Section 4 of the Independent National Electoral Commission Act 1998

retain control over their elected officials who are not representing the best interests of their constituents, or who are unresponsive, incompetent or embarrassment for the constituents. As stated clearly by Ubaezonu, JCA in *Igbo Peter v. Architect George Ike Okoye and Independent National Electoral Commission*²⁵ an elected legislator holds his or her position in trust for the constituents. The legislator is an agent or a servant. It is not intended that he or she converts or transforms to become the master of his constituents who cannot be challenged or questioned, even when it becomes glaring that his or her performance in the legislature falls below expectations and has become intolerable. A recall proceeding may be triggered by merely alleging in the petition, loss of confidence in the legislator. The recall provisions give a legislator an opportunity to go back to the electorate and test his or her popularity as to whether the mandate they gave him still subsists. Nobody should shy away from it or try to block it by judicial technicalities.²⁶

It has been argued by opponents of recall that the process can lead to an excess of democracy, that the threat of a recall lessens the independence of elected officials, that it undermines the principle of electing good officials and giving them a chance to govern until the next election.²⁷ It can also be argued that the process can lead to abuses by powerful individuals, powerful political opponents, and well-financed special interest groups.

The Recall and Replacement Process

The recall and replacement of the legislator process is strictly in accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act 2010 and the Guidelines issued by INEC under the Electoral Act 2010. It begins with a petition signed by not less than 50 per cent of registered voters in the legislator's constituency addressed to the Chairman of INEC. The Guidelines require that the petition must be signed, and arranged according to polling units, wards, Local Government Areas, and constituency. This is a daunting task for the generally impecunious, pauperised, and dissatisfied rural electorates.

On receipt of the petition, INEC notifies the legislator sought to be recalled, stating that it has received a petition for his or her recall, if the petition is valid, and issues a public notice or announcement stating the date, time, and location of the verification of signatures to the petition. This is followed by INEC verification of the signatures to the petition. The cross-checking to verify the signatures as signatures of persons whose names are on the register of voters for the ward and constituency is to be carried out at such centres as may be designated by INEC within the constituency. Only persons who are registered as voters in the Constituency are qualified to vote at a referendum for recall. Each voter must present his or her voter's card at the centre on the day of the referendum. Voting is by open secret ballot and in accordance with the procedure specified in the INEC Guidelines. Voting takes place at INEC designated referendum centres on the same day between the hours of 8.00 a.m. and 2.00 p.m. throughout the Constituency.

If more than one half (that is to say not less than 50 per cent +1) of the signatories are verified, INEC will proceed to conduct a referendum. If less than one half (that is to say 50 per cent – 1) of the signatories are verified, INEC writes to the petitioners stating that the minimum requirements for a referendum were not met, the petition will then be dismissed, the process ends, and the legislator continues representing the dissatisfied and malcontent constituents.

²⁵ FWLR 8 July 2002

²⁶ Ubaezonu, JCA in *Igbo Peter v. Architect George Ike Okoye and Independent National Electoral Commission*. FWLR 8 July 2002

²⁷ Wendy Underhill, Recall of State Officials, <http://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx> (Accessed at 9.05 hrs Nigerian time 31/05/2018)

If the minimum requirements for a referendum are met (that is if 50 per cent +1 or more signatories are verified), INEC proceeds to conduct a referendum within 90 days²⁸ of receipt of the petition. The referendum will be a simple YES or NO vote on whether the legislator should be recalled. A simple majority YES votes of the persons registered to vote in that legislator's constituency confirms the recall request. The Chairman of the INEC will thereafter send a Certificate of Recall to the presiding officer of the particular legislative house (that is Senate President in the case of a Senator, Speaker of the House of Representatives in case of the House of Representative, Speaker of the House of Assembly in case of a State House of Assembly and Chairman of the Area Council, in case of a Member of the Area Council of the Federal Capital Territory) to enforce the recall. On receipt of the Certificate of Recall, the head of the legislative house will immediately take all necessary actions to enforce the will of the constituents. Soon after the recall, INEC gives notice of vacancy in the constituency and commences the process of electing a new representative of the constituency. The recalled legislator may recontest if nominated as a candidate by his party.

Recall Procedure and Implications for Intendment of the Law and Democracy

The recall provisions in the Constitution of the Federal Republic of Nigeria 1999, and the Electoral Act 2010 are a confirmation, an attestation, and a testament that sovereignty belongs to the people and that democracy is indeed of the people, for the people and by the people. It is an affirmation that when the constituents elect their representatives to hold authority in trust for them, they the constituents ought to be able to retake the authority when the trust is betrayed. This is the message in Ubaezonu, JCA statement quoted above that "*The position held by the law-maker in the legislature belongs to his constituency. He merely holds it in trust for them. The sooner our legislators realise this the better for them and the country.*"²⁹ Also, it fits well into Pitkin warning that "*representatives must act in ways that safeguard the capacity of the represented to authorize and to hold their representatives accountable...*"³⁰ It is also important and desirable that "the capacity of the representative to act independently of the wishes of the represented"³¹ but in the overall interest of the greater community or in the national interest is upheld. However, the criteria for determining whether the autonomy of the representative and the autonomy of the represented have been breached is the objective interest.³²

The Guidelines issued by INEC for the recall of elected representatives make it virtually impossible for any constituency to succeed in the recall of somebody on whom they had built absolute trust but who no longer enjoys their trust or confidence.

²⁸ In *Dino Daniel Melaye v. INEC and others* Suit No. CA/A/299/M/2018, the Appeal Court said the 90 days required for the recall process is not static and has not lapsed because the inability of INEC to conduct the referendum within 90 days was because of the action of the plaintiff who took INEC to court and obtained the injunction of the lower court to stop INEC from proceeding with the recall. The court ruled that INEC's powers are statutory having been given by the constitution. It noted that not even the court could take away the powers of INEC to conduct a referendum. Melaye proceeded to the Supreme Court and wanted the Supreme Court to, among others, declare that the statutory 90-day period for INEC to conduct a recall process, provided in Section 69(b) of the Constitution, having elapsed by effluxion of time on September 23, 2017, INEC can no longer validly proceed on the basis of the petition for his recall, presented on June 23, 2017. The Supreme Court had not listed the case when the recall process collapsed because only 5.3 per cent of the signatories to the recall petition could be verified. The requirement is a petition signed by more than 50 per cent of the persons registered to vote in that member's constituency.

²⁹ *Igbo Peter v. Architect George Ike Okoye and Independent National Electoral Commission*. FWLR 8 July 2002, 1864

³⁰ Op. cit

³¹ Pitkin, Op. Cit.

³² Suzanne Dovi, *The Good Representative*, 2007 Willey-Blackwell, chapter 1

Table 1. Some Recall Petitions and Attempts to Commence Petition Process Under the Constitution of the Federal Republic of Nigeria 1999, as at 31 May 2018³³

	Name	Constituency	Outcome
1	George Okoye	Njikoka-2, Anambra State Assembly	After legal tussles between the lawmaker and INEC, the commission proceeded with the process, but a low turnout of registered voters expected to 'stamp the quit notice' stalled it.
2	Simon Lalong	Shendam, Plateau Federal House of Representatives	Although he attempted to stop it when he filed a suit, alleging that the signatures collected for his recall were "not genuine and authentic," the commission was later able to proceed with it. His recall process failed. Just as in the case of Okoye, the required number of voters needed for the recall could not be found.
3	Chinonyerem Macebuh	Ukwa East/Ukwa West Federal House of Representatives	In 2004, INEC went as far as conducting a verification exercise to authenticate the signatures of persons listed to be requesting the recall, but the verification result fell short of constitutional requirements and INEC Guidelines.
4	Farouk Aliyu	Birnin-Kudu/Buji, Jigawa. Federal House of Representatives	Less than the required number of voters turned up in the referendum.
5	Umar Jibril	Lokoja/Kogi/Koton Karfe, Kogi. Federal House of Representatives	Process smeared in controversies as some of the constituents filed a counter-petition to INEC, alleging that their signatures were forged and as such they were not in support of the recall process as originally claimed.
6	Alhaji Mamman Barguma	Hong, Adamawa. State Assembly	The constituents in April 2018 expressed intention to recall him and requested INEC to provide them the Registers of voters for all the Polling Units in the Constituency. There was no further information as at 31 st May 2018.
7	Abubakar Galadima Kuki	Bebeji, Kano, State House of Assembly,	Petition to recall received 11 August 2017. On 17 August 2017, INEC announced withdrawal of the petition by the petitioners.
8	Ben Murray-Bruce	Bayelsa East, Senate	Process collapse at the very beginning as the aggrieved members of his constituency who had accused him of neglect and no plan for the constituency later apologized.
9	Senator Suleiman Hunkuyi	Kaduna North, Senate	Constituents petitioned INEC to recall him, but signatures gathered were less than the required number.
10	Enyinnaya Abaribe	Abia South, Senate	Recall forms were distributed in 6 local government areas in his constituency on April 24, 2018. No signature has been submitted to INEC till date.
11	Dino Daniel Melaye	Kogi West, Senate.	52.4per cent of 360,098 registered voters in Kogi West submitted a petition to recall him for poor representation. Of 189,870 signatories to the petition for his recall, only 18,742 (5.3per cent) were verified by the Independent National Electoral Commission. The process failed.

³³ Some other failed attempts include Senator Ibrahim Mantu, 2006 (Plateau State), Senator Jubril Aminu, 2005 (Adamawa State), Senator Arthur Nzeribe, 2006 (Imo State), Senator Faruk Aliyu, (Jigawa State), Hon. Dr. Patrick Oziokoja Asadu, April 2018 (Nsukka/Igboeze South, Enugu State), Senator Shehu Sani, February 2018 (Kaduna State), etc

Between 1999 and 2018, twenty-one recall attempts were made and not a single one was successful. Table 1 shows some of the recall attempts under the 1999 Constitution. The reasons for failure range from inability of dissatisfied constituents to get 50 per cent of the registered voters in the constituency to sign the petition; not able to ensure the presence of more than 50 per cent (i.e. not less than 50 per cent +1) of the signatories to verify their signatures on the days set for the verification; pauperized level of the rural populace and electorate that makes them vulnerable to being induced with pittance to stay away and not participate in the process; and financial muscle of the elected legislator that enable them to negotiate and pay off agitators or leaders of the campaign to recall them. Furthermore, the requirement in the guidelines that the petition must be signed, and arranged according to polling units, wards, Local Government Areas, and constituency is impossible to achieve within the time frame for the process. The Guidelines that ought to guarantee the smooth recall process and thus assist in entrenching, engraining, and sustaining good and effective representation by elected legislators, and thus accentuate and consolidate democracy has become the major source of the failure of the recall process with grave implications for the development democracy in the polity. The judiciary has demonstrated determination to uphold the recall provisions of the Constitution and made it quite clear that the position held by the law-maker in the legislature belongs to his constituency on whose behalf the legislator holds it in trust³⁴. The Court of Appeal in *Dino Daniel Melaye v. INEC and Others*³⁵ also held that INEC's powers are statutory having been given by the Constitution. It noted that not even the Court could take away the powers of INEC to conduct a referendum for the recall of a legislator. The Court further ruled that the 90 days' time limit from the receipt by INEC of a valid petition to conduct of a referendum³⁶ is not static and has not lapsed in the case of Melaye because the inability of INEC to conduct the referendum within 90 days was because of the actions of the plaintiff who used the court process and legal technicalities to delay the recall process.

To ensure that the constituents reap the benefit of the provisions of the Constitution, the Electoral Act, and the positive activism of the Nigerian courts, the INEC should review and analyse all recall attempts so far, to unravel the reasons for the 100 per cent failure. Thereafter, the Guidelines should be revised as necessary to remove the obstacles therein that make it impossible to recall elected officials that no longer enjoy the confidence of the constituents that elected them.

Recall in some other jurisdictions.

Countries that have recall provisions in their laws include Canada, Philippines, Switzerland, United States of America (USA), United Kingdom of Great Britain (UK), Venezuela and India. In the USA and India, there is no provision for the recall of federal legislators. In India, there is also no provision for the recall of state legislators. While in India local government legislators can be recalled, in the USA some states have provision for the recall of all elected public officials in the three arms of government – the executive, the legislature and the judiciary.

Three gubernatorial recall elections have been held in USA history. In 2012, Wisconsin Governor Scott Walker survived a recall attempt. The first state to successfully recall a governor was North Dakota in 1921, when the voters removed from office not only Governor Lynn J. Frazier, but also the attorney general and the commissioner of agriculture. In 2003,

³⁴ *Igbo Peter v. Architect George Ike Okoye and Independent National Electoral Commission*. FWLR 8 July 2002, 1864

³⁵ *Dino Daniel Melaye v. Independent National Electoral Commission and Others*. Suit No. CA/A/299/M/2018. See footnote 12 above.

³⁶ See Ss. 69(b) and 110 (b) of the 1999 Constitution and 116 (b) of the Electoral Act 2010

California voters became the second constituents to successfully recall a governor when Governor Gray Davis was recalled. California voters have initiated thirty-two gubernatorial recall attempts between 1911 when the law on recall of public officials took effect and 2018. The recall of Governor Gray Davis in 2003 was the first to ever reach the ballot. In 1988, Arizona voters filed enough signatures to trigger a recall election for Governor Evan Mecham, but he was impeached by the state's House of Representatives before the date of the scheduled recall election.

On the whole, state legislators and public officials can be recalled in eighteen states and the District of Columbia in the USA³⁷ as shown in Table 3 below. In seven of these states,³⁸ for a state legislative recall to take place, it must be established that the legislator engaged in certain types of conduct as shown in Table 3, before a recall petition can be approved for circulation. In the eighteen states, fifteen base the number of signatures required to force a recall election on a percentage of the number of votes cast in the most recent election for the office held by the incumbent whose recall is sought. In just three states³⁹, the number of signatures required is a percentage of the number of votes cast for the office of governor in the legislative district where the incumbent is targeted. In any of the states that allow state legislative recall, the shortest number of days allowed to collect the required number of signatures is sixty days, and only three states⁴⁰ allow sixty days. The remaining eight states allow more than ninety days; with two states not explicitly giving a time within which the signatures must be collected.⁴¹

Though recall efforts against state legislators in the USA are more common, they are still unusual.⁴² Recall attempts against legislators have gathered sufficient signatures to trigger an election just 38 times, in USA history. Eleven of those occurred in 2011. Fifty-five percent of all legislative recall elections have succeeded in unseating a legislator, and additionally two legislators resigned after petitions with sufficient signatures were submitted. Seventeen recall attempts have failed, and the legislators subject to the recall remained in office. While there have been increasing legislative recall elections in recent years⁴³, they have been less successful than in the past. Only eight of the seventeen recalls attempted between 2011-2018 were successful.

In Canada, British Columbia passed the *Recall and Initiative Act*⁴⁴ in 1995 to give a voter the right to petition to recall the member of the electoral district in which they registered to vote. The voter must collect signatures from more than 40 per cent of voters eligible to sign the petition in that electoral district. Under the law, applications for recall petitions can only be submitted to Elections BC (the British Columbia electoral umpire) eighteen months after the Member was elected. If enough registered voters sign the petition, the speaker of the legislature announces in parliament that the member has been recalled and the lieutenant governor drops

³⁷ See Ballotpedia, "States where state legislators can be recalled"

https://ballotpedia.org/States_where_state_legislators_can_be_recalled (accessed 02 September 2018 at 10.30 am Lagos Nigeria time). Note that the state of Virginia has a process that is similar to a recall, but it is not listed here as a recall state because its process, while requiring citizen petitions, calls for a recall trial rather than an election. In Virginia, after sufficient petition signatures are gathered and verified, a circuit court decides whether a Virginia official will be removed from office. In the recall states, the voters decide through an election.

³⁸ Alaska, Georgia, Kansas, Minnesota, Montana, Rhode Island and Washington.

³⁹ Oregon, Michigan and Wisconsin

⁴⁰ Colorado, Idaho and Wisconsin

⁴¹ See Ballotpedia, *op. cit*

⁴² Recall of State Officials, National Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx> (accessed on 02 September 2018)

⁴³ 45 percent in the years 2011-2013, and increasing numbers since then

⁴⁴ Recall and Initiative Act (RSBC 1996) Chapter 298

the writ for a by-election as soon as possible, giving voters the opportunity to replace the Member in question.

The Chief Electoral Officer has approved 26 recall petitions since the *Recall and Initiative Act* came into force in 1995. Six of those petitions were returned to Elections BC for verification. Of the six, five did not have enough valid signatures and one was halted during the verification process because the Member resigned. Paul Reitsma, resigned in 1998 when it looked as if the petition to recall him would have enough signatures to spur a recall election. He resigned during the secondary verification stage and the recall count ended.⁴⁵

In Canada, the recall process is unique to British Columbia⁴⁶ and no other province or territory has elected representative recall system in place.⁴⁷ The Legislative Assembly enacted the

In the UK, the *Recall of MPs Act 2015*⁴⁸ is the first law that made provision for constituents to be able to recall their elected Member of Parliament (MP) in the national parliament by by-election.⁴⁹ The Act introduced a process by which MPs can lose their seats in the House of Commons if there is a successful petition to recall them. The Act sets out the conditions for triggering a recall petition and the procedures that must be followed in running a petition. The Act also introduces rules which govern people and organisations who campaign for or against a recall petition.⁵⁰ Section 1 of the Act sets out the circumstances in which the Speaker of the House of Commons would trigger the recall process. These are a custodial prison sentence, suspension from the House ordered by the Committee on Standards or providing false or misleading expenses claims.⁵¹ Section 7 – 11 outline the procedure whereby the petition for recall of an MP is forwarded by the electoral returning officer for the constituency to the MP's constituents for ratification, approval by 10 per cent of the registered electors triggering the loss of the MP's seat and a by-election. Pretty straight forward. Section 15 confirms that the seat becomes vacant if the petition is successful, if it has not already been vacated by disqualification or death, or otherwise.

The first recall petition under the Act, and indeed the first recall of MP petition in the UK was filed in 2018. The petition was formally commenced after Members of Parliament voted

⁴⁵ Recall Elections: https://en.wikipedia.org/wiki/Recall_election#Canada (accessed on 03 September 2018)

⁴⁶ British Columbia (BC) is the westernmost province of Canada, located between the Pacific Ocean and the Rocky Mountains. With an estimated population of 4.8 million as of 2017, it is Canada's third-most populous province. The inhabitants of British Columbia make up more than 13per cent of the country's population, and the population density of the area is higher than the national average.

https://en.wikipedia.org/wiki/Recall_election#Canada (accessed on 03 September 2018)

⁴⁷ Elections BC, "Recall & Initiative", <https://elections.bc.ca/recall-initiative/recall/> (accessed on 03 September 2018)

⁴⁸ The Act came into effect on the 4th day of March 2016

⁴⁹ The Act received Royal Assent of the Queen and became law on 26 March 2015. The Bill leading to the Act of Parliament was introduced on 11 September 2014, following the UK coalition government commitment in the 2010 Coalition Agreement to bring forward legislation on power of the constituents to recall their Member of Parliament (MP).

⁵⁰ The Electoral Commission, "Introduction to the Recall of MPs Act 2015.

https://www.electoralcommission.org.uk/__data/assets/pdf_file/0004/184324/Recall-Act-Factsheet.pdf (accessed on 03 September 2018)

⁵¹ The UK parliamentary expenses scandal in 2009 is a major reason the advocates of the recall legislation advanced to garner support for the legislation. In the aftermath of the scandal, a number of MPs involved in wrongdoing resigned after related court cases— e.g., Eric Illsley, whose resignation caused the Barnsley Central by-election, 2011, and Denis MacShane, who caused the Rotherham by-election, 2012, were cases brought up by supporters of recall to allow voters to "sack" MPs who break the rules

Table 2 States where state legislators can be recalled in the USA

State Legislature	Recall Laws	Signature Needed	Time Allowed to Collect
Alaska	Alaska's laws	25 per cent of the number of votes cast in the last election for that office.	Unspecified in the law
Arizona	Arizona's laws	25 per cent of the number of votes cast in the last election for that office.	120 days
California	California's laws	20 per cent of the number of votes cast in the last election for that office.	160 days
Colorado	Colorado's laws	25 per cent of the number of votes cast in the last election for that office.	60 days
Georgia	Georgia's laws	15 per cent of the number of votes cast in the last election for that office.	90 days
Idaho	Idaho's laws	20 per cent of the number of votes cast in the last election for that office.	60 days
Kansas	Kansas' laws	40 per cent of the number of votes cast in the last election for that office.	90 days
Louisiana	Louisiana's laws	33.3 per cent of the number of votes cast in the last election for that office.	180 days
Michigan	Michigan's laws	25 per cent of the number of votes cast in the last election for the office of Governor of Michigan in the targeted state legislative district	90 days
Minnesota	Minnesota's laws	25 per cent of the number of votes cast in the last election for that office.	90 days
Montana	Montana's laws	15 per cent of the number of votes cast in the last election for that office.	3 months
Nevada	Nevada's laws	25 per cent of the number of votes cast in the last election for that office.	90 days
New Jersey	New Jersey's laws	25 per cent of the number of votes cast in the last election for that office.	160 days
North Dakota	North Dakota's laws	25 per cent of the number of votes cast in the last election for that office.	Unspecified in the law
Oregon	Oregon's laws	15 per cent of the number of votes cast in the last election for the office of Governor of Oregon in the targeted state legislative district	90 days
Rhode Island	Rhode Island's laws	15 per cent of the number of votes cast in the last election for that office.	90 days
Washington	Washington's laws	35 per cent of the number of votes cast in the last election for that office.	180 days
Wisconsin	Wisconsin's laws	25 per cent of the number of votes cast in the last election for the office of Governor of Wisconsin in the targeted state legislative district	60 days

Source: Ballotpedia, "States where state legislators can be recalled"

https://ballotpedia.org/States_where_state_legislators_can_be_recalled (accessed 02 September 2018).

Table 3 Required reasons, where reasons are required for recall in USA states

State	Grounds Required
Alaska	Lack of fitness, incompetence, neglect of duties or corruption.
Georgia	Act of malfeasance or misconduct while in office; violation of oath of office; failure to perform duties prescribed by law; wilfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed. Discretionary performance of a lawful act or a prescribed duty shall not constitute a ground for recall of an elected public official.
Kansas	Conviction for a felony, misconduct in office, incompetence, or failure to perform duties prescribed by law. No recall submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured.
Minnesota	Serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office or conviction during the term of office of a serious crime.
Montana	Physical or mental lack of fitness, incompetence, violation of oath of office, official misconduct, conviction of certain felony offenses (enumerated in Title 45). No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct.
Rhode Island	Authorized in the case of a general officer who has been indicted or informed against for a felony, convicted of a misdemeanour, or against whom a finding of probable cause of violation of the code of ethics has been made by the ethics commission.
Washington	Commission of some act or acts of malfeasance or misfeasance while in office, or who has violation of oath of office.)

Source: Ballotpedia, “States where state legislators can be recalled”
https://ballotpedia.org/States_where_state_legislators_can_be_recalled (accessed 02 September 2018).

in favour of a critical report against the North Antrim MP Ian Paisley Jr.⁵² If the petition process, had been successful, it would have ended in the vacation of the constituency and the moving of a writ for a by-election, under the rules of the *Recall of MPs Act 2015*. By approving the critical report against Ian Paisley Jr, MPs approved the committee’s recommendation to suspend him for 30 days.⁵³ This is one of the longest bans ever to be handed down in the British parliament at Westminster and, it is the longest suspension since 1949 which is as far as online records go.⁵⁴

⁵² North Antrim recall petition 2018, https://en.wikipedia.org/wiki/North_Antrim_recall_petition,_2018

⁵³ *ibid*

⁵⁴ *ibid*

Under the UK regulations of the recall procedure, 10 per cent of the electorate of North Antrim have to sign the recall petition, which would have caused a by-election. Ian Paisley Jr would have been permitted to stand in the by-election as a candidate. He survived the recall after the “recall petition fell short of the 10 per cent of electorate signatures required to force a by-election.”⁵⁵ It is interesting to note that a recall process was initiated in the UK barely two years after the recall law was passed by Parliament and received Royal Assent of the Queen. The process for recall under the UK legislation is less cumbersome than the applicable laws in the USA states, Canada and Nigeria.

Conclusion

Though the history of the recall of elected officials who have failed their constituents dates back to the early development of Athenian democracy about the fifth century BC in the Greek city-state of Athens (comprising the city of Athens and the surrounding territory of Attica)⁵⁶, not all modern democracy nations have provisions for recall of elected officials in their constitutions. Nigeria is one of the few democracies with recall provisions in her constitution and electoral law. The statutory provisions in Nigeria are good and meet the standard expected for the guarantee of an effective recall process. However, good statutory provisions are not enough. The umpire of the process has to equally meet the standard and devise a process of implementation that will support the legislation. There also has to be a judiciary that will not tolerate frivolous applications on legal process technicalities from lawyers representing persons to be recalled, aimed at delay or making the recall impossible. The Nigerian courts have demonstrated the will to enforce the provisions of the Constitution and also to support INEC, the national electoral commission. It is now up to INEC to provide suitable and implementable Guidelines and processes to make it possible for the will of the electorate to prevail always.

There is always room for improvement to make any recall legislation and guidelines easy to practice and enforce effectively. In this regard, Nigeria could benefit from considering the laws and practice in the other countries in efforts to effect the desired improvement.

⁵⁵ Ben Kelly, *DUP MP Ian Paisley Jr avoids by-election after recall petition over Sri Lanka holiday scandal*. Available at: <https://www.independent.co.uk/news/uk/politics/ian-paisley-dup-recall-petition-north-antrim-special-by-election-sri-lanka-scandal-northern-ireland-a8545641.html> Independent, Thursday 20 September 2018, 1:41pm last visited 20 December 2018

⁵⁶ The first known democracy in the world.