

# THE CITIZENS' CONSTITUTIONAL POWERS TO RECALL: A COMPARATIVE ANALYSIS OF THE PROCEDURE IN NIGERIA AND THE UNITED STATES OF AMERICA

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## ABSTRACT

*Unaccountability in governance, corruption and pursuit of self-interest are almost synonymous to Nigeria's democracy. Every now and then, there is an attempt to make the executives and the legislature more responsive and accountable through legislative and administrative measures. Among other measures are Impeachment and Recall. Recall epitomizes the sovereignty of the electorate. It is a mechanism used to remove public officials for reasons of misconduct, fraud or unaccountability. This ensures that elected officials are kept within reasonable check of abuse or misuse of their powers. The ultimate aim is to protect the smooth operation of government without ignoring the voter's right. Whether the recall provision has served its function of creating more responsive representation is still a topic of debate. Questions have been raised as to the feasibility of the process and the procedural and judicial challenges encountered in the application of the recall system in Nigeria as against its American counterpart. While recall has been successful in the United States of America, the same result has not yet been achieved in Nigeria. This paper employs of a combination of doctrinal and comparative methodologies to evaluate and appraise the constitutional provisions on recall referendum and compare the provisions for recall in Nigeria and the United States of America. It critically analyzes the role courts play in the administration of the process and further shows the extent to which citizens in the respective countries enjoy this right. The paper concludes that, although against the intent of the drafters, the 1999 constitution and the court system do not offer practicability to the recall provisions as obtained in the practice of the United States of America. The paper closes with recommendations on how the process can be fine-tuned to achieve its objectives as it has been achieved in the United States of America.*

## INTRODUCTION

The respect for human rights as encapsulated in the "Right to Democracy" is a determinant factor of a nation's development. Nations that are governed democratically are usually characterized with security, stability, prosperity and continuous development. Historically, the

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first document to recognize and respect “Right to Democracy” universally is the United Nations Charter on Human Rights.<sup>1</sup> Article 21 of the charter provides for citizens’ right to participate in the government of his country directly or through freely chosen representations. This is said to be the right to vote and be voted for. This article has served as an inspiration and a guide in many national constitutions and international documents, thus substantiated in a number of international treaties, regional human rights instruments, national constitutions and laws.<sup>2</sup> Presently, 123 out of 192-195 countries are being governed democratically through periodic elections, Nigeria and the United States of America inclusive.<sup>3</sup>

When elected into the legislative houses in Nigeria and the United States, members have the primary function of serving the best interest of their constituents. In so doing, the members monitor and scrutinize the administration and operation of the executive government and also provide a forum in their constituencies to voice out their concerns which are subsequently raised by the legislators in their respective houses for deliberation. Another important function of the legislative houses and the congress is the function of making the law which is done by enactment of statutes or Acts and Laws. Another unique function of the legislators is that of impeachment which is only peculiar to the senate. Members of the senate have the powers to impeach judges and other high ranking officials of the executive.

Where any of the members of either the congress in the United States or the legislative houses in Nigeria is found wanting for incompetency or unwillingness in the discharge of the above duties, he may be recalled by the voters in his constituency. The recall process is made to serve as a check and balance mechanism for the discharge of their legislative powers. A petition for recall may also be made on grounds of corruption or gross misconduct by the said member through a vote of no confidence. Recall means to summon a member back or to withdraw mandate given to an elected official.<sup>4</sup> It may be done by the procedure provided under sections 69 and 110 of the Constitution of the Federal Republic of Nigeria. The right of recall in the United States is provided for under State laws that apply.

By nature, the concept of recall has its own peculiarities in all laws and democracies in which it is applicable. Some maintain that the “Right to Democracy” cannot be given its dues unless there is the operation of the concept of recall in the laws of a state. This, they argue is an extension to the rule of law in that it provides the citizens the right to remove an elected representative who is not serving public interest or a representative who is incompetent or

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<sup>1</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at [www.unchr.org/refworld/docid/3ae6b3930.html](http://www.unchr.org/refworld/docid/3ae6b3930.html) last visited on 11th June, 2017

<sup>2</sup> The Universal Declaration of Human Rights under Article 21 enforces democracy and democratic elections. The International Covenant on Civil and Political Rights<sup>2</sup> under Article 25 (a) (b)(c) provides for right to democracy. The European Covenant on the protection of Human Rights<sup>2</sup> under Article 3 also provides for holding free elections by way of secret balloting at intervals. The Charter for Organization of American States<sup>2</sup> guarantees rights of citizens to vote and be elected in genuine periodic elections, and the African Charter of Human and Peoples Right<sup>2</sup> under Article 13 provides that every citizen shall have the right take part freely in their government

<sup>3</sup> Democracies in the world [www.nobelprize.org](http://www.nobelprize.org) last visited on 10th March 2018

<sup>4</sup> Initiative, Referendum and Recall; National Conference on State Legislature; found at [www.ncls.org](http://www.ncls.org) last visited June 20<sup>th</sup>, 2017

unresponsive to the call and needs of his people.<sup>5</sup> Others argue that it can lead to excess of democracy in that it lessens the autonomy of elected officials. It may also lead to support of unfounded accusations and result in serious political implications. Others critique its application due the enormous role political rivalry plays in the operation of the recall process.<sup>6</sup> Although there exists the citizens' power to recall in Nigeria and in the United States, the procedure provided for under the Nigerian Constitution is almost a mirage. This is due to the cumbersome, almost impracticable nature of the provision and court intervention in the process. It is against this background, this paper seeks to examine citizens' constitutional right to recall and the extent to which this right is enjoyed.

## **CITIZENS' CONSTITUTIONAL RIGHT TO RECALL**

The recall process is the citizens' prerogative right to determine whether an errant or non-performing representative should continue in office for a full term or not. It is an instrument for constituents to scrutinize the performance and conduct of their representatives. For a democracy to succeed, if one can be directly elected into office to represent the common goal of the people, there should be a mechanism put in place to de-elect the errant or non performing legislature before their tenure ends. The major function of the procedure is to restore the sovereignty of the people, avoid dictatorship in governance and restore and reassure public trust in delegated governance. It is also meant to encourage good practices and delivery of services by the elected officials.

In an inaugural address of Hiram Johnson as Governor of California in 1911, he explains the need for recall due to corruption and governmental inefficiency. He says '... those of us who espouse this measure do so because of our deep-rooted belief in popular government and not only in the right of the people to govern, but in their ability to govern; and this leads us basically to the belief that if the people have the right, ability and intelligence to elect, they have as well, the right, ability and intelligence to reject or to recall'.<sup>7</sup>

The recall has two major rationales behind its working and implementation. The rationales become effective more often than not, in jurisdictions where an official can only be recalled where there are sufficient grounds. In jurisdictions where an official may be recalled on any ground or no ground at all, these rationales become defeated. This is because an official may be recalled through political blackmail or to settle political scores.

The first rationale is based upon the theory of agency relationship. It is implied that once a person is elected into an office by his constituents, he becomes an agent of his electors and thereby must exercise his legislative function in a manner consistent with the will of his

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<sup>5</sup> Bowler S.; "Recalling the Recall: Reflections on California's Recent Political Adventure"; Vol.7, (2004), *Journal of Political Science and Politics*.

<sup>6</sup> Ibid

<sup>7</sup> Judge D.; "Recall of MPs in the UK: If I Were You I wouldn't Start from Here" Vol.5, (2012), *Advance Access Publication*

constituents<sup>8</sup>. Munro in his book,<sup>9</sup> best describes this rationale saying “officeholders stand in the same position as the agent does to the principal. They are simply the instruments for carrying on the business of the public, and if they are faithless in performing those duties, the law should provide adequate means of getting rid of them and putting others in their place.”

The second rationale behind the recall provision is that of countering wrongdoings. There has to be a mechanism put in place to remove corrupt, unskilled and lethargic legislators. This happens in cases of misfeasance, malfeasance and nonfeasance. In furtherance to this objective, it provides an incentive for government officials to perform throughout their tenure rather than only in their last year when they will be seeking for re-election. According to the Committee on Standards in Public Life 2011,<sup>10</sup> an official may be recalled in the following instances: If he acts in a way which is financially dishonest or disreputable, intentionally misleads the body to which he was elected, Breaks any promise made by him in an election address, behaves in a way that is likely to bring his office to disrepute or loses the confidence of his electorate.

The recall procedure varies from jurisdiction to jurisdiction depending on the officials that may be recalled. While some jurisdictions limit the application of the procedure to members of the legislature, some extend the application to members of the executive arm including governors and president. The procedure for recall, although with some variations have major similarities cutting across jurisdictions. Usually, for a recall to be effected, a requisite number of signatures have to be collected from the electors of the official in question,<sup>11</sup> The collected signatures are then verified. In some jurisdictions, once the number of signatures collected amount up to the requisite signatures needed, the official automatically vacates his office. In other jurisdictions, after verification of such signatures and once they reach the requisite number needed, a poll is initiated at which the electors decide whether the official’s tenure in office should end or not. If majority of the electors vote for the official to be recalled, a recall procedure takes effect and another election is scheduled to fill in the post of the recalled official.

## **THE RECALL PROCESS IN THE UNITED STATES OF AMERICA**

There are no recall provisions at Federal level in the United States. In the Supreme Court decision of *Burton V. United States*<sup>12</sup> and a similar decision of *U.S. Term Limits, Inc V. Thornton*<sup>13</sup> and *Cook V. Gralike*<sup>14</sup> it was held that states do not, individually, possess the authority to change the terms or qualifications for federal officers agreed upon by states in the United States Constitution under Article I, Section 4, clause 1. Nineteen<sup>15</sup> out of forty four States have provisions for recall at State-wide level in their State Constitutions. Eight states

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<sup>8</sup> Quortrup M.; “ A Comparative Institutional Analysis of the Recall” Vol.47, (2011) [www.landfonline.com](http://www.landfonline.com) accessed 15 March 2016

<sup>9</sup> Munro W.; *The Initiative, Referendum and Recall*; (Appleton, 1916)

<sup>10</sup> House of Commons Mode Committee (HC, 1758,2012q.)

<sup>11</sup> These numbers vary from jurisdiction to jurisdiction.

<sup>12</sup> 202 U.S. 344 (1906)

<sup>13</sup> 514 U.S. 779 (1995)

<sup>14</sup> 531 U.S. 510 (2001)

<sup>15</sup> Index on table for state recall; National Conference of State Legislatures, found at [www.ncls.org](http://www.ncls.org) last visited on December 5<sup>th</sup>, 2017

require specific grounds to be stated on a recall petition usually on basis of malfeasance, nonfeasance or misfeasance. In the other 11 states, recall can be sought on any grounds.<sup>16</sup> The United States Court of Appeals (Fifth Circuit) has held that while governments are required to act fairly, voters are not. The court held in *Gordon v Leatherman*<sup>17</sup> that an elector may vote for a good reason, a bad reason or for no reason whatsoever. In an effort to restrict random and baseless recall in some states of the US, it requires detailed description including estimated date, location and nature of each act of malfeasance or misfeasance. Although with variation, most states employ citizen initiated and citizen decided recall except for Virginia where the voters initiate the recall but is decided by a court<sup>18</sup> in a ‘recall trial’.<sup>19</sup>

Although no two states have the same requirements for recall, the procedure for recall is usually initiated by preliminary filing of a proposed petition for the recall. With states that require grounds for recall, same has to be attached and submitted to the body responsible for conducting the referendum. Once the petition is submitted with the requisite number of signatories, it is reviewed for conformance with statutory requirements. The official sought to be recalled will be notified giving him reasonable time to reply to the allegations. Within a certain timeframe stipulated by State Constitutions, a recall referendum will be held to decide whether the official should be recalled or not. While some states hold the recall election and the replacement election on different states, others hold both elections on the same day. In states where two elections are held on the same day, there is the risk that the recalled member will be re-elected because of split supporters especially where the percentage of signature is relatively low.

Despite being operative for decades, its applicability is mostly at municipal level and rarely used at state levels. There have been two gubernatorial elections held in the U.S history. In 2012, Wisconsin Governor Scott Walker survived a recall attempt. In 2003, California voters successfully recalled Governor Davis and in 1921, voters in North Dakota removed from office Governor Fraizier. In 1988, Arizona voters filed enough signatories for recall of Governor Mecham but he was impeached by the state’s house of representative before the scheduled date of recall election.<sup>20</sup>

Recall efforts against state legislators are more common than that of state officials. Only 38 attempts have been made to recall legislators.<sup>21</sup> This is for a number of reasons. In state-wide recall, there is low voter turnout because it is much easier to mobilize a small community to respond to an unpopular decision than it is to mobilize a whole state. Absence or ineffectiveness of alternative formal mechanism of control, such as monitoring agencies or informal accountability mechanism such as intra party discipline contributes to its ineffectiveness.

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<sup>16</sup> NCSL, 2011

<sup>17</sup> 450 F 2d 562,567 (5<sup>th</sup> circuit 1971)

<sup>18</sup> Either by a judge alone or with a jury

<sup>19</sup> Zimmerman J.; *The Recall- Tribunal of the People*; (Praeger, 1997)

<sup>20</sup> Underhill W.; “*Recall of State Officials*” found at [www.ncls.org](http://www.ncls.org) last visited on May 13<sup>th</sup>, 2017

<sup>21</sup> *Ibid*.

Because of its infrequent use, it has not usually been a disruptive representative government in states having the recall mechanism.

## **THE RECALL PROCESS IN NIGERIA**

On 29<sup>th</sup> May 1999, Nigeria began its journey on a democratic voyage which ended a long period of military rule.<sup>22</sup> In order to make the democratic governance operational and constitutionalism supreme, new mechanisms were included in the new 1999 constitution. One of such is the recall process, which was made operational for the first time.

Being a federation, the constitution provide for Federal and State Legislatures. The Federal Legislature known as the National Assembly is a bicameral legislature comprising of the National Assembly and the House of Representatives while each State has a unicameral legislature. Members of the Federal and State Legislature are empowered to make laws for the peace, order and good governance of the Federation and States respectively. Members of the legislature are elected by popular votes.

Historically, the use of recall referendum first showcased in 1986 in a recommendation by Political Bureau set up during the regime of Ibrahim Babangida, the then Military Head of State. The Bureau reasoned that “Recall” requires that elected officials must vacate their seats even before their terms are up if certain percentage of the voters demands it. It is one way of ensuring that elected officials who might do as they wish between regular elections are kept in reasonable check. The objective of this form of control is to make elected officials constantly relate to the wishes and aspirations of the electorate. In other words, it is a way of getting the people’s representatives to behave responsibly and, through that, secure the ends of government.<sup>23</sup>

The constitutional requirement for recall is encapsulated in sections 69 and 110 of the 1999 constitution of the Federal Republic of Nigeria.<sup>24</sup> The procedural and technical requirement for recall is provided for under the INEC Guidelines on Recall of Legislators.

## **PROCEDURE FOR RECALL IN THE UNITED STATES AND NIGERIA**

1. Initiation of a recall petition: this is the first step of initiating a recall. In the United States, it is usually done by filing of notice of intention to circulate a recall petition which must be signed by 10 voters. This notice contains a 200word statement of why

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<sup>22</sup> The fourth democratic republic ended a long period of military rule which lasted 1984-1999. The then Military Head of State, General Abdusalam Abubakar transferred power to a democratic regime led by Gen Olusegun Obasanjo.

<sup>23</sup> Report of the political Bureau, March 1987

<sup>24</sup> Section 69 provides: *A member of the Senate or of the House of 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 the receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member’s constituency.*

the official should be recalled. The notice is then served to the official in question and he has the right the right to respond to the allegation. The form of the petition containing the allegation and the response is then prepared by the Secretary of State. When the form is prepared, it is returned to the persons who initiated the notice in order for them to collect requisite number of signatures stating.

In Nigeria, the 1999 constitution and the INEC Guidelines on Recall of Legislators<sup>25</sup> provides that a petition shall be submitted to the Chairman if it is signed by at least one half of registered voters of the constituency of the member sought to be recalled. The Guidelines further states that the member sought to be recalled shall be given notice of the petition soon after its receipt stating the facts of the receipt<sup>26</sup>. There is no provision of the form for the petition.

2. Grounds for recall: 8 out of 19 States of the United States that have recall provisions require grounds of misconduct or malfeasance. Alaska requires incompetence, violation of oath of office or the willful misuse, conversion or misappropriation of public property or public funds in Georgia, physical or mental lack of fitness for office in Montana, breach of code of ethics in Rhode Island, and conviction of a drug-related crime or hate-crime in Virginia. In the other 11 States that permit state-wide recall, no grounds are required. In California, no grounds are required and recall petitions may be circulated for any reason.<sup>27</sup>

In Nigeria, Sections 69 and 110 of the 1999 Constitution proves for grounds of recalling a member of the National House of Assembly and State Houses of Assembly respectively. The section requires loss of confidence of the Member by his constituents. In practice, loss of confidence may relate to corruption, personal misconduct or simply because the constituents dislike the policies of the official.

3. Timeframe of petition: by law, there is a limited amount of time within which the requisite number of signatures has to be collected. In the United States, the timeframe vary from jurisdiction to jurisdiction with 60 days being the minimum and 270 day as the maximum.<sup>28</sup>

In Nigeria, the INEC Guidelines on Recall of Legislators does not specify the time frame within which the signatures have to be collected.

4. Number of signatures required: this also varies in different States with recall in the United States. Most states require signatures amounting to 25% of votes cast in the last election for the targeted office. There is also a distinction between the requisite numbers of signatures needed. While in some states, the requisite number needed is a percentage

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<sup>25</sup> Section 1 of the INEC Guidelines on Recall of Legislators

<sup>26</sup> Section 2 (1) of the INEC Guidelines on Recall o Legislators

<sup>27</sup> Opcit.

<sup>28</sup> 60 days for Colorado, Idaho and Wisconsin. 90 days for Kansas, Michigan, Minnesota, Montana, Nevada, North Dakota and Oregon 180 days for Louisiana 270 days for Washington

of the registered voters, in other jurisdictions, the requisite is a percentage of votes cast in the previous election for that office. In some States, there is also variation as regards the percentage into different offices.

In Nigeria, the requisite number needed is more than one-half of the persons registered to vote in that member's constituency which shall be arranged according to polling Units, Ward, Local Government and Constituency.<sup>29</sup>

5. Collection of signatures: In some states of the United States including California, signatures are collected by professional signature collection agencies. The commercialization of this field is largely the consequence of the significant number of Citizen's initiated referenda that are proposed every year.<sup>30</sup> In states where signatures are collected through designated agencies, such collection agencies are paid; this has however been criticized because this can corrupt the system and allow people to buy their way onto the ballot if they were wealthy enough.

In Nigeria, the INEC Guidelines do not mention the body responsible for the collection of the signatures. It may be initiated by any registered voter and collected by the campaigners of the recall.

6. Verification of signatures: the signatures collected in the United States are usually verified by Secretary of State or another government official such as the registrar of voters. This is done through statistical sampling which is done within a period of 10 days in California, Colorado, Idaho, Minnesota, New Jersey and Oregon and 90 days in Rhode Island.

In Nigeria, the INEC upon receipt of the petition signed by more than one-half of registered voters in the constituency of the legislator in question, shall within 90 days, cross-check the signatories and conduct a referendum upon its authentication.<sup>31</sup> The verification procedure shall be done at such centers in the constituency as designated by the INEC. The Commission shall cross-check the names of the signatories to the petition as they appear on the authentic voters register. The Commission shall then enter the result of the cross-checking in the appropriate form to have a summation of the total authenticated signatures.<sup>32</sup>

7. Recall election: in the United States, there is variation with regards to the timing of the election and whether or not the referendum should be held simultaneously with election for replacement or there should be another election for the replacement. As for the timing of the election, California requires it to be done within 60 to 80 days, while Nebraska and Georgia require the election to be carried out within 30-45 days after certification of the signature3s. Louisiana and Michigan require it to be held on the next

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<sup>29</sup> Section 1 subsection 1 and 2 of INEC Guidelines on Recall of Legislators

<sup>30</sup> Twomey A., *The Recall and Citizens' Initiated Elections- Options for NSW*, September 2011, University of Sydney Constitutional Reform Unit, Sydney Law Scholl Report Number 1

<sup>31</sup> Section 1 (1 and 2) of the INEC Guidelines on Recall of Legislators

<sup>32</sup> Ibid.

scheduled election date.<sup>33</sup> In some states, two elections are held, one to choose whether or not the official should be removed and another to replace him if he is recalled. Other states hold 2 separate elections, one for the recall and a subsequent one at a later date for the replacement if the recall is successful.

In Nigeria, where more than one-half of the registered to vote in a member's constituency endorses his petition and such endorsement is verified by the INEC, the Commission shall issue a public notice stating the days, time and location of referendum. The control and supervision of the referendum shall be done by the Commission giving rules, regulations, manuals and directives of the referendum which shall be binding.<sup>34</sup> Members of that constituency shall be qualified to vote so long as they produce a valid voter's card whether or not they took part in the election of the member in question.<sup>35</sup> The voting shall take place between 8am and 2pm throughout the constituency and shall be by way of open secret ballot. All other protocols at general election follow.<sup>36</sup>

## **SUCCESSFUL RECALLS IN THE UNITED STATES**

In the United States' history, there have been three gubernatorial recall elections. The first was in North Dakota in 1921. California voters have initiated 32 gubernatorial recall attempts since 1911 but the 2003 recall attempt of Gray Davis was the first to reach ballot. In 2012, Wisconsin governor Scott Walker survived a recall attempt.

Attempted recall against state legislators is more common. There have been 38 attempts with 55% success. Some petitions for recall did not make it to election stage either because they were abandoned by their initiators or because they failed to gather sufficient valid signatures to trigger an election.

### **i. Recall of Davis, California State Governor**

He is the second governor in American history to be recalled by voters of his state.<sup>37</sup> Gray Davis, a Democrat was elected in November 2002 to a second four-year-term as California's governor. In office, he became mired in problems not necessarily of his own making. The recall has its origin from how the governor was unable to tackle the electricity debacle, the stalled economy and a budget deficit of \$38 billion. More so, he did not talk to voters, to legislators and he did not attend political dinners<sup>38</sup>. This prompted a move for his recall.

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<sup>33</sup> Book of the States 2010 (Council of State Governments, Lexington, 2010) Table 66.20 found at [www.knowledgecenter.csg.org](http://www.knowledgecenter.csg.org) last visited 25<sup>th</sup> April 2015

<sup>34</sup> Sections 2-5 of the INEC Guidelines on Recall of Legislators

<sup>35</sup> Section 7 of the INEC Guidelines on Recall of Legislators

<sup>36</sup> Part II of INEC Guidelines on Recall of Legislators

<sup>37</sup> Spivak J.; "California's Recall: Adoption of the "Grand Bounce" for Elected Officials"; Vol.5, No.82, (2004) *California History Journal*

<sup>38</sup> Seelye K.; "The California Recall: The Governor: For Gray Davis, Great Fall From the Highest Height" The New York Times, 8 Oct. 2003 found at [www.nytimes.com](http://www.nytimes.com) last visited on August 23<sup>rd</sup>,2016

California requires signatures equal to 12% of those who voted at the last gubernatorial election to initiate the removal of a governor.<sup>39</sup> The recall was conceived of, campaigned and fuelled by Republicans but it grew to become ‘an expression of frustration by an electorate fed up with dysfunction in Sacramento’.<sup>40</sup> The signatures for petition were collected by Bader & Associates, Inc, a petition management company in California and the funding was handled by a congressman.<sup>41</sup> Recall proponents gathered about 1.6 million signatures, of which 1,356,408 were certified as valid.<sup>42</sup>

On October 7<sup>th</sup> 2003, a total of 9.4 million voters cast a ballot on the recall question out of which 55 percent voted to turn Davis out of office.<sup>43</sup> A total of 135 candidates were on the replacement ballot and Arnold Schwarzenegger, a Republican was elected to replace governor Davis.<sup>44</sup>

Commenting on the recall, Gray Davis said “tonight the voters have decided it’s time for someone else to serve... I accept their judgment”. He asked his supporters to “put the chaos and division of the recall behind us and do what’s right for this great state of California”.<sup>45</sup>

## **ii. Recall of Giron, Colorado State Senator**

On June 10 2013, Pueblo constituents of Angela Giron gathered and turned in 13,466 signatures to recall her from her political office. Senator Angela Giron, a Democrat angered her constituents for supporting the gun control and renewable energy measures for rural electric co-ops and this mounted the effort to unseat her.<sup>46</sup>

A threshold of 11,285 is needed to trigger her recall election and 13,466 signatures were gathered. Of the collected signatures, 12,648 were validated and the recall election was allowed. On a 100% count, Giron was successfully recalled by 56% of her constituents while 43.9% voted against it.<sup>47</sup>

Giron conceded to the defeat and said “we couldn’t have done any more... I’m a little perplexed. This is what I know: I know that I have not one Iota of regret from what I voted on...this is only going to make us stronger and better... We will win in the end, because we are on the right side”.<sup>48</sup>

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<sup>39</sup> Book of the state 2010 (2010) , Table 6.19 available at [www.knowledgecenter.org](http://www.knowledgecenter.org) last visited August 23<sup>rd</sup>, 2016

<sup>40</sup> Burn L.; “Gubernatorial Recall 2003” found at [www.ballotpedia.com](http://www.ballotpedia.com) last visited September 10<sup>th</sup>,2016

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Alvarez M., and Kiewiet R.; “Rationality and Rationalistic Choice in the California Recall” Vol.39,No.2, (2009) *British Journal of Political Science*

<sup>44</sup> Ibid.

<sup>45</sup> Ibid

<sup>46</sup> Bunch J.; “Angela Giron Ousted in Colorado Recall Election, Thanks Supporters in Pueblo”, The Denver Post (Colorado), 10 September 2013 found at [www.denverpost.com](http://www.denverpost.com) last visited on 13<sup>th</sup> May 2015

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

### **iii. Recall of Scott, Michigan House of Representatives**

Paul Scott, a Democrat, is a member representing District 51 of the Michigan House of Representatives. A recall move was initiated his constituents against his support for cuts to taxing pensions, business taxes and education, including per-pupil cut to the state's k-12 foundation grant. The 25% signatures of the ballot cast for the governor in the most recent election required were file with the Michigan Secretary of State.<sup>49</sup>

After the petition for recall was filed, Paul filed an appeal in Genesee Circuit Court alleging that the recall language did not have "sufficient clarity" as required by Michigan law. Additionally, he filed a suit in the state Court of Appeals, stating that the signatures should not be verified while his first suit was pending.<sup>50</sup> An injunction was granted by a lower court to restrain the conduct of the recall election. The organizers of the recall appealed to the Michigan Court of Appeal and the court reversed the decision of the lower court. November 8 2011 was set for the election.

12,358 votes representing 50.5% of the District voted yes to the recall and 12,126 votes representing 49.5% of the district voted against it. Scott lost his seat only by 197 votes. As Scott admitted, defeat, he said "we took the state by storm and we've made fundamental changes."<sup>51</sup>

### **ATTEMPTED RECALLS IN NIGERIA**

Despite glaring non-performance of members of the legislature, unaccountability and unjust enrichment, no member of either the state or national legislature has ever been recalled from the introduction of the mechanism till date. Although unawareness, poverty and illiteracy have played a great role, the recall provision has not been practicably feasible largely due to shortcomings of the provision. This can be seen in a number of unsuccessful attempts from 2006 till date.

#### **Farouk Aliyu Member, Birnin-Kudu/Buji Federal Constituency**

The first referendum that reached the polling stage to recall a federal lawmaker happened in 2006. This was a bid recall Farouk Aliyu Adamu, member of House of Representatives representing Birnin-kudu and Buji Federal constituency from 1999-2007.<sup>52</sup> Early in 2006, a petition signed by 130,000 signatures was submitted to INEC Chairman claiming 'loss of confidence' in the member.<sup>53</sup> Birnin-kudu has 118,299 registered voters and Buji has 42,005 registered voters bringing the Federal Constituency to a 160,304. The signatories to the petition were more than one-half of persons registered to vote in the constituency. In Accordance with

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<sup>49</sup> Beran J.; "Paul Scott Recall, Michigan House of Representatives (2011)", November 2011 found at [www.ballotpedia.com](http://www.ballotpedia.com) last visited 23th April 2016

<sup>50</sup> 'Judge Halts Recall Vote for State Rep. Scott' The Detroit News, October 13<sup>th</sup> 2011 found at [www.Detroitfreepress.com](http://www.Detroitfreepress.com) last visited on 3<sup>rd</sup> October 2016

<sup>51</sup> Beran J., supra

<sup>52</sup> Karofi H., Nigeria: Jigawa-Politics of Recall And Referendum, Weekly Trust (Abuja) 20 August 2006 found at [www.allafrica.com](http://www.allafrica.com) last visited on 25<sup>th</sup> February 2015

<sup>53</sup> Adamu Duku critical analysis of impeachment and recall of elected officials in Nigeria from 1999-2007

Section 1(1) of the INEC Guidelines, the INEC chairman arranged for the signature verification exercise at the headquarters of the two local governments. Out of the 160,304 signatures, the team was able to verify 120,000 signatories.<sup>54</sup> After the verification exercise, the Commission ordered for the referendum in May 2006. The member sought to be recalled applied to court seeking for an injunction to restrain INEC from conducting the recall. He maintained that people have the right to recall their representatives but that the mode of verification was indeed, faulty. There was fraud in the process as a large number of the electorates were fictitious and therefore, the numbers inflated. The numbers in the register did not reflect the true number of electorates in the constituency. The court denied such application stating that according to laid down procedures; INEC is to make sure that the names of persons who signed the petition appear in the registers of the voters in the constituency in question. The authenticity or otherwise of the electorates is another matter entirely which the court admitted as a shortfall of the system due to ghost voters, multiple voters and impersonation.

On 12<sup>th</sup> August 2006, a recall referendum was held in Birnin-kudu/ Buji federal constituency. The recall election was thus:

- Number of registered voters: 161,000
- Number of 'Yes' votes: 61,398
- Number of 'No' votes: 20,324
- Total votes cast: 81,722
- Absentees: 79,278
- Remarks: the candidate is not recalled

Nigeria's electoral climate played a great role in the recall referendum of Farouk Aliyu. The attempt failed largely due to manual registration of voters and politicking. During the registration of voters in 2002, the exercise was characterized with inflation of numbers through multiple registration and ghost registration. The provision for recall requires the number of petitioners to be out of the number of registered voters. This made it impossible to attain the required number. It is alleged that the recall of the member was initiated, campaigned and engineered by his opposition.

### **Dino Melaye, Senator, Kogi West Senatorial District**

On 21<sup>st</sup> June 2017, some registered voters from the Kogi West Senatorial District submitted a petition to the INEC to initiate the process of recalling the Senator representing their district. The commission formally acknowledged the receipt of the petition, and relying on Sections 69 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 116 of the Electoral Act 2010 (as amended), announced the timetable and schedule of activities for the recall of the Senator on 3rd July. The first activity in the schedule, slated for 10th July, was the release of detailed guidelines for the recall, starting with the pasting of the Notice of Verification at the Kogi West Constituency (INEC Office in Lokoja). However, the Commission on the slated date received an order given by the Federal High Court, Abuja and

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<sup>54</sup> According to Section 1(1 and 2) of the INEC Guidelines, verification is done by comparing the signatories of the petition to the manual register of voters in the constituency. Once this is done and the signatories tally, the exercise is concluded.

dated 6th July, directing the “parties to maintain the status quo till the determination of the plaintiff’s motion on notice” in respect of the suit filed by the concerned senator, seeking orders of injunction against the Commission to stop it from acting on the petition by the registered voters of Kogi West Senatorial District. The Judge, in granting the relief sought by the Senator, also fixed 29th September 2017 as the date to hear the motion on notice. The Commission took immediate steps to vacate the court order and for the matter to be heard and determined expeditiously, while staying action on the process in compliance with the order. Judgment in the suit was delivered on 11th September 2017, clearing all legal hurdles.<sup>55</sup>

The Commission scheduled the 14<sup>th</sup> of October as verification date. However, the verification exercise failed because the 51% signatories to the petition could not be verified. On 18,742 out of 189,870 signatories to the petition could be verified due to low voters’ turnout at many polling units.<sup>56</sup>

### **Osita Izunaso, member, Orlu Senatorial District, Imo State**

On February 9<sup>th</sup> 2009, the people of that zone under the auspices of Political Responsibility Platform (PRP) presented a detailed petition of signatories of 136 wards and 82 signatory centers within the 12 local governments which the senator represents. The petitioners alleged that they lost confidence in him following orchestrated attempts to cause division and strife among the people of the zone. Moreover, he lacked the capacity to bring peace and stability that had evaded the state.<sup>57</sup>

Before INEC could conduct the verification exercise, the senator rushed to the Federal High Court in Abuja to seek an injunction restraining the Commission from conducting a referendum. According to him, the group lacked the locus standi to institute an action it being an artificial person. It is not a registered voter which is a requirement of the INEC Guidelines. Days later, the Federal High Court in Abuja referred the case to the Federal High Court in Umuahia, Abia State since it was closer. The presiding judge struck out the case for lack of jurisdiction. Again, the case was brought before the High Court of Imo State sitting in Owerri. The court granted him an injunction restraining the Commission from conducting the recall. INEC asked the court to strike out the suit as it lacked merit and the court lacked jurisdiction. It also asked the court to set aside and discharge the order and staying all actions relating to or affecting the process of recall. The court granted a ruling restraining INEC from conducting the recall pending determination of the suit. Till date, INEC is yet to conduct the referendum and the court has not given its verdict.

### **Hembadon Amena, Member, Benue State House of Assembly**

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<sup>55</sup> Found at [www.inecnigeria.org](http://www.inecnigeria.org) last visited 5<sup>th</sup> July, 2018

<sup>56</sup> Adekunle A., Breaking: Attempt to Recall Dino Melaye Fails, Vanguard News, found at [www.vanguardngr.com](http://www.vanguardngr.com) last visited 15<sup>th</sup> July, 2018

<sup>57</sup> Iriekpen D., Campaign for Isunazo’s Recall Heightens in Imo, Thisday Live, 14 May, 2014, found at [www.thisdaylive.com](http://www.thisdaylive.com) last visited 12<sup>th</sup> August, 2016

Hembadon Amena is the lawmaker representing Katsina-Ala West in the Benue State House of assembly. The Local Government has 60,000 registered voters. In February 2014, a petition by over 38,000 signatories was filed to the Chairman of INEC seeking to recall her for loss of confidence in her.<sup>58</sup> Although no grounds were required by law other than loss of confidence, the petitioners alleged that the representative has been frustrating government projects and failing to organize constituency briefing.<sup>59</sup> Upon verification by INEC, 71.5 percent of the signatures were confirmed which were greater than the one-half requirement. The member sought an injunction in court to restrain the recall from going on. Relying on Peter V Okoye, Counsel to the petitioners said no court of law had the power to interfere with section 110 of the constitution which stipulated that the recall process must be completed within 90 days. He explained that the 90 days stipulated was sacrosanct and if the 90 days expire, then the case becomes useless.

The trial court in its ruling gave an injunction restraining INEC from conducting the recall referendum pending the termination of the matter. Based on this ruling, the INEC through its State Resident Commissioner, Alhaji Baba Yusuf postponed indefinitely, the recall referendum. As the 2015 general elections drew nearer, the heat of the recall withered down.

### **Macebuh, Ukwa East and West Federal Constituency, Abia State**

In August of 2004, a petition signed by 35,495 voters, more than one half of the registered voters of the constituency was submitted to INEC for the recall of their representative.<sup>60</sup> According to them, they have lost confidence in his ability to provide proper leadership for the people. Upon receipt of the petition, INEC slated a date for the verification exercise.

During the verification exercise, only 24,888 registered voters were verified according to the INEC Guidelines. In effect, the fifty percent support was not gathered because the total number of registered voters in the constituency was 66,068. The number amounted to only 37.7 percent.

As such, the recall attempt failed before referendum stage.<sup>61</sup>

### **Amena, Benue State House of Assembly**

Hembadon Amena is the lawmaker representing Katsina-Ala West in the Benue State House of assembly. The Local Government has 60,000 registered voters. In February 2014, a petition by over 38,000 signatories was filed to the Chairman of INEC seeking to recall her for loss of confidence in her.<sup>62</sup> Although no grounds were required by law other than loss of confidence,

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<sup>58</sup> Ejembi R., Recall of Benue Lawmaker Thickens, The Sun Newspaper, 25 March 2014 found at [www.sunnewsonline.com](http://www.sunnewsonline.com) last visited 10<sup>th</sup> January 2017

<sup>59</sup> Akor G., 40 Houses Burnt Over Benue Lawmaker's Recall, Newswatch Times, found at [www.mynewswatchtimesng.com](http://www.mynewswatchtimesng.com) last visited 10<sup>th</sup> October 2016

<sup>60</sup> Okocha C., Macebuh's Recall: INEC Commences Signature Verification, ThisDay News found at [www.biafranigeriaworld.com](http://www.biafranigeriaworld.com) last visited 20<sup>th</sup> January 2016

<sup>61</sup> Ehrim C., Macebuh Can't Be Recalled, Says INEC, BNW News, found at [www.biafranigeriaworld.com](http://www.biafranigeriaworld.com) last visited 20<sup>th</sup> January 2016

<sup>62</sup> Ejembi R., Recall of Benue Lawmaker Thickens, The Sun Newspaper, 25 March 2014 found at [www.sunnewsonline.com](http://www.sunnewsonline.com) last visited 10<sup>th</sup> January 2017

the petitioners alleged that the representative has been frustrating government projects and failing to organize constituency briefing.<sup>63</sup> Upon verification by INEC, 71.5 percent of the signatures were confirmed which were greater than the one-half requirement. The member sought an injunction in court to restrain the recall from going on. Relying on Peter V Okoye, Counsel to the petitioners said no court of law had the power to interfere with section 110 of the constitution which stipulated that the recall process must be completed within 90 days. He explained that the 90 days stipulated was sacrosanct and if the 90 days expire, then the case becomes useless.

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### **SHORTCOMINGS OF THE RECALL PROVISIONS IN NIGERIA**

Looking at the critical analysis of the provisions for recall in the United States and in Nigeria and attempts made in both jurisdictions, there are a number of reasons for its numerous attempts and successes in the United States as against its Nigerian counterpart. In Nigeria, the provisions of recall are mired with lacunas and loopholes. Despite attempts, the recall has failed to see the light of the day as the lacunas have made the provision a mirage. Among several others, the shortcomings of the provision for recall under the 1999 Constitution of the Federal Republic of Nigeria and the INEC Guidelines on Recall of Legislators include:

1. Sections 69 and 110 of the Constitution of the Federal Republic of Nigeria provides that a recall is initiated by a petition signed by one-half of a member's constituent alleging 'loss of confidence' in the member in question. This is highly criticized for 2 reasons:
  - a. 'Loss of confidence' has not been defined in the constitution or by the INEC Guidelines. Going by its literal meaning, 'loss of confidence' connotes 'loss of trust or reliance' of the official<sup>64</sup>. Therefore, this 'loss of confidence' may be totally unrelated to the discharge of the member's legislative functions. Therefore, in Nigeria, 'loss of confidence' lacks objective parameter for determination and such important criterion is left to the subjectivity of the voters. This may also be abused by justifying every irrelevant reason for recall in contrast to the Bureau's recommendation, which is to ensure that elected officials constantly relate to the wishes and aspirations of the electorates.<sup>65</sup>
  - b. There is no parameter set out by the Constitution in determining 'loss of confidence'. There should be some laid down parameters to determine the 'loss of confidence' in order to avoid abuse of the process. In Lagos State, the process was sought to be used to punish a member of Lagos State House of Assembly. On

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<sup>63</sup> Akor G., 40 Houses Burnt Over Benue Lawmaker's Recall, Newswatch Times, found at [www.mynewswatchtimesng.com](http://www.mynewswatchtimesng.com) last visited 10<sup>th</sup> October 2016

<sup>64</sup> Black H.; *Black's Law Dictionary* (West Publishing Co. St. Paul Minn. 1990)

<sup>65</sup> *Supra*, note 3 at pg 8-9

January 17 2008, the member of reported to have slapped Mrs Aishat Esan of Sterling Bank for repeatedly asking him to repay a loan facility he obtained from the bank. A non-governmental organization, Women Unity Forum (WUF), submitted a petition to initiate a recall of the member if he fails to tender an apology to the victim and all Nigerian women. This attempt however, did not scale through.<sup>66</sup>

In contrast, most states of the United States of America provide for criteria of recall. This ranges from incompetence, violation of oath of office or the willful misuse, conversion or misappropriation of public property or public funds, physical or mental lack of fitness for office, breach of code of ethics, and conviction of a drug-related crime or hate-crime. These criteria can easily be determined and measured. Moreover, they are connected to the discharge of his functions as a legislator.

2. Another criticism is regarding the percentage needed and out of what. The recall in Nigeria is based on number of registered voters. This provision puts the strictest signature requirement because the number of registered voters is significantly higher than the number of actual voters in any given election. The requirement of more than one half of registered voters makes it even more difficult because the percentage needed is ridiculously high. As such, there is great difficulty in collecting the requisite number of signature in a state-wide ballot. It is much easier to mobilize a small local community to a particular unpopular action than in it is mobilize an entire state.
3. In the United States there is provision made for the petitioned member to make a statement and defend himself on allegations levied against him. Therefore, baseless and irrelevant petitions are dealt away with even before verification of signatures. Also, where the defense given by the official is cogent and reliable, the petition will lack credence and the recall election will not be weighty. In Nigeria, the official against whom the petition is raised does not have the right of defense under the Constitution and the INEC Guidelines. Therefore, the veracity of the petition solely depends on the outcome of the referendum either validating or refuting it. This gives rise to intervention by the judiciary as most petitioned members seek court injunction to restrain the conduct of the referendum. This is criticized because the recall, unlike impeachment, is a political and not a legal process.
4. In Nigeria, the amount of signatories needed to initiate the petition is high. Also, there is no time frame within which the signatures have to be collected. Also, the INEC guidelines do indicate who collects the signature. Any person who initiates may go round and campaign the collection of the signatures. This is highly criticized because most of the collection in attempts of recall in Nigeria were initiated, financially fuelled, campaigned and signatures collected by political rivals or opposition parties. Therefore, the 'loss of confidence' needed as a basis is by-passed and the procedure left at the hands of influential politicians and elites.
5. Another shortcoming associated with the recall process in Nigeria is largely that of the verification procedure. According to Section 8 of the INEC Guidelines, verification is done by cross-checking the name of the signatories to the petition against the authentic

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<sup>66</sup> Supra, note 3 at pg 23

voters' register of the area in question. Once the name appear on both the petition and the authentic voters' register, a tick will be made against the name in the petition and the certified true copy of the voters' register and the exercise is complete. This verification procedure is highly inadequate because it is prone to impersonation, multiple signatures and ghost signatures.

6. The only attempt that reached polling stage failed because of the 'loose voters register'. Because it is a manual voters' register,<sup>67</sup> most voters' registers are highly inflated due to ghost voters, impersonation, multiple voting, under aged voters and voting by proxy. This is usually employed by political parties to cushion inflated results for systematic election rigging. The inflated figure makes it impossible to attain the requisite number during the referendum despite true loss of confidence and massive turnout during recall election.
7. In Nigeria, there are questions raised as regards the court roles in the recall process. Can the courts intervene to stop the recall of a member and if so, in what circumstances? These questions arise because the Constitution and the Independent Electoral Commission (Establishment) Act<sup>68</sup> are silent on the role of the judiciary in the recall process. Members of the legislature facing recall have often resorted to court proceedings praying to the court to grant an injunction restraining INEC from conducting the referendum. In *Igbo Peter V Goerge Okoye & INEC*,<sup>69</sup> the plaintiff sought the Federal High Court Enugu to restrain INEC from conducting a recall against him. The plaintiff argued that the petition was fuelled by his political rivals and that some of the signatories were either dead, overseas or never signed the petition. In granting the injunction, the trial court held that the plaintiff had an image and ego and is not only a politician but a literate one to the extent that he is an Architect. On appeal, the Court of Appeal reversed the decision of the trial court and held that the image and ego of an applicant is not a basis for denying recall; granting interlocutory injunction based on this basis will lie prostrate Nigeria's fledging democracy; and restraining same would mean that a member will sit in the House of Representatives against the wish of his constituency. In all of the cases highlighted above, the courts have interfered with the process and stopped the Commission from carrying on with its duties.

## **OBSERVATIONS AND RECOMMENDATIONS**

From the critical comparative analysis of the research, the following findings were made:

In the United States of America, the recall process is applicable in 19 states. No two state constitutions have the same procedure or requirement. Some states apply recall to legislators and others to legislators and executives. While in some states the mechanism is employed at municipal level, other states employ it at state-wide level. The recall is usually initiated by a

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<sup>67</sup> Manual voters register has been used by INEC up until 2015 general election when electronic voters' card was obtained. Every voter has his unique thumb print attached to his register which will be used to verify the voter.

<sup>68</sup> Independent Electoral Commission (Establishment) Act, Cap. 15 Laws of the Federation of Nigeria, 2004

<sup>69</sup> 2002 3 NWLR part 755, at pg 529

petition signed by a number of people calling for recall of their legislator or executive. The requisite number of signatories needed for the petition varies from state to state at an average of 30 percent. In some states, there is a requirement of legal grounds for recall while others are based on political grounds. In California, no ground is needed for recall. In states that require grounds for recall, the petition must be submitted with a statement on grounds for the recall.

Once the petition is submitted, adequate time is given for the official sought to be recalled to respond to allegations raised. Bodies saddled with verification exercise conduct verification of signatures within days stipulated by each state constitution. If the signatures verified equals the requisite number needed, a date is fixed for the referendum and election. Some states conduct both the referendum and the election, if the member is recalled, on the same day while others conduct same at different times. The requirement for yes or no votes in the referendum also varies from jurisdiction to jurisdiction. In most state constitutions, the recalled member may contest for election into the same office again. There is also variation as regards courts' role in the conduct of recall.

In Nigeria, the recall process is clearly provided for under section 69 and 110 of the constitution of the Federal Republic of Nigeria for members of national and state assemblies respectively. The procedure for recall is provided by the INEC Guidelines on Recall of Legislators. The recall is initiated based on 'loss of confidence' and by one-half of registered voters of the constituency of the member sought to be recalled. Once the petition is submitted to the chairman of INEC, a date is set for verification of the signatories. During that period, a delegation from INEC is sent to the constituency concerned to cross-check the names as they appear on the petition against the names in the voters register. If the names tally, the exercise is complete and a date is set for the referendum for electors to decide whether or not the member should be recalled. If a simple majority chooses the member to be recalled, the member stands recalled and a date is set by the INEC for election to fill in the member's post. The law is not clear as to whether the recalled member may contest for the same office again.

In Nigeria, most attempts start and end before reaching the polling stage. Out of the numerous attempts for recall at both state and national assemblies, only the unsuccessful attempt for recall of Aliyu of Jigawa State made it to polling stage. This is largely due to discrepancies in the manual register which contains ghost voters, multiple voters or impersonated voters. Another issue holding back the procedure is court intervention. In all the attempted recalls highlighted, the courts have at one point intervened to grant an injunction restraining the conduct of the referendum by the Commission.

Based on the comparison made between the United States and Nigeria, it has been found that failed attempts of recall in Nigeria and the successes in the United States of America are largely based on the provisions for recall, political climate and courts' roles. Whereas in the United States, the provisions are clear and detailed, the political climate is calm and the courts have identified roles in the recall process, the position is short of that in Nigeria. Unfounded rivalries

in the political climate, inadequacy of the electoral system and courts regular and unfounded intervention have contributed to its failure.

The provisions for recall procedure under the 1999 Constitution of the Federal Republic of Nigeria, the INEC Act and the INEC Guidelines on Recall of Legislators are highly impractical. The most important issue is to determine the legal, procedural and technical requirements of the procedure as well as functions of the court, if any, in carrying out the laid down procedures.

From the above findings, the following recommendations are made: In order for recall to remain a pillar to direct democracy without necessarily destroying a public official's ability to work effectively, it is suggested that the recall petition should show strong cause related to the officials' duties and should exclude acts of discretion associated with the office rather than 'loss of confidence only'. The constitution should state clearly on what grounds a member may be recalled just as is obtainable in states of the United States that require legal grounds for recall. The 50 percent signature requirement for petition is too high. It is suggested that the requirement be changed so that they are neither too little to warrant abuse of the process and harassment of public officials on trivial matters or too much to make the procedure impractical. An average of 30 percent is recommended.

It is suggested that the constitution or the INEC Act be amended to state clearly, the role of the judiciary. In the absence of clear provision by constitution and the INEC Act on judicial intervention in the recall process, the courts should be careful to intervene. Courts can only intervene where there is a violation of procedure for the recall.

It is further recommended that the INEC Guidelines be amended to reflect the use of the electronic voters register introduced in the 2015 general election for the verification of signatories. It is also suggested that INEC documents in its archive, all attempts of recall and court processes thereof.

## **CONCLUSION**

Nigeria now relies on the ballot box to vest political aspirants with authority to govern their society. In the United States, as has been seen in the recall of Gray Davis, Angela Giron and Paul Scott, politicians and political officeholders believe in the spirit of democracy where they only serve at the demands of the electors. In Nigeria, it is a do or die affair. Instead of the legislators to respect the demands of the people, they rush to court to stop the process from going on. Moreover, when people's mandates are short changed and the electoral fraud with its perpetrators not punished, it reduces voters' confidence in a democracy. Although the courts' roles are yet to be defined in the conduct of recall elections, they have played a great role in dawdling the recall mechanism as a tool of direct democracy.

As has been seen in most cases, recall cuts across the basic principle of cabinet government. While in some situations it can serve as a check and balance mechanism, others may employ it to make members vulnerable to the destruction and harassment by outside pressure groups,

extremist forces and opposing political parties. It may be used at a time of political passion to tear down a man who held honest views on a subject, which, on later investigation, might be proved right, but it would then be too late to correct the error.<sup>70</sup>

Poverty, unemployment, unawareness and illiteracy have played a great role in ineffectiveness of the recall. Most do not know of their right to recall. For the few that know, they lack confidence in Nigeria's electoral system which they can use to recall the officials. This is because any attempt made by them to exercise right to democracy is castigated or frustrated. This has invivded a nonchalant attitude towards the attainment of a full-fledged democracy in Nigeria

Although a mechanism for change, the practicability and effectiveness of the recall procedure is more often than not questionable. Even in developed constitutional systems, the procedure is usually characterized with lack of credibility, manipulation and fraud. This is mainly related to the initiation and verification procedure. Most attempts to recall public officials have proved abortive. This in recent years has made the procedure rather a mirage. Despite the problems highlighted the jurisdictions under review, the recall process is the only tool and option open to the electors to call back a non performing legislator. While the recall process is sometimes used to call to accountability, non performing representatives, it is possible to employ it as a tool to settle political score.

In conclusion, it is my considered opinion that although there are loopholes in the provisions for recall, the drafters of the constitution and the INEC Act intended an unending continuation of direct democracy in Nigeria. Therefore, the will and spirit of democracy should not start and end with election but rather, election and de-election

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<sup>70</sup> Crisp L., The Australian Federal Labour Party 1901-1951 ( Hale & Ireminger 1978) p.213