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IMMUNITY CLAUSE – A CONSTITUTIONAL DILEMMA IN NIGERIA

BY

N.A.O IJAIYA MPhil (Ife)

LECTURER, DEPARTMENT OF PUBLIC LAW, FACULTY OF LAW,

UNIVERSITY OF ILORIN

ijaiyanao@yahoo.com

IMMUNITY CLAUSE – A CONSTITUTIONAL DILEMMA IN NIGERIA

ABSTRACT

An attempt to amend the 1999 Constitution of Nigeria had resulted in controversies over the highly sensitive, legal and political issues. Among the issues that had raised dust is the tenure of office of the executive, revenue allocation formula and the retention or removal of the immunity provision in the Constitution. It is therefore necessary that one takes a critical look at the jurisprudential rational behind the concept of immunity.

INTRODUCTION

The removal or retention of immunity clause in the constitution has taken centre stage in political discourse in the polity no doubt because it has been abused by those it was meant to protect under the present Nigerian constitutional democracy.[1] However, much as the clause was aimed at protecting the stability of government institutions, there have been allegations that many public office holders had hidden under the cloak of the law to engage in the pillaging of treasuries.

We are so inundated with allegations of corruption by former governors in a way that makes one to become melancholic and sick. You just begin to wander if all that goes on in government is stealing. On the surface therefore, a case has been made for the criminalization of the office of the state governor. The general impression that most office holders rely on this clause to engage in criminal looting of their State resources gave rise to the current agitation for the removal of the clause from the nation's statute books.[2]

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[1] Oziegbe Okoeki 'The Soar Taste of Immunity Clause'. *The Nation on Sunday*, (Lagos February 17, 2008) pg.46 - Arguments by some political analyst that removing immunity for President, Vice-President, Governors and Deputy Governors from the constitution would not in anyway distract the Chief Executives or bring governance to a stand still drawn from experience of the First and Second Republics to back up their claim.

[2] John Alechemu 'Removal of Immunity Clause will be disastrous'. *The Punch*, (Lagos, Thursday March 6, 2008) pg.8 – The Economic and Financial Crimes Commission EFCC submitted a list of 23 corrupt governors in 2006. Those who made the list were alleged to be responsible for the disappearance of mind-bogging resources from public coffers within the last eight years. At least, seven of them are

WHAT IS IMMUNITY?[3]

Immunity is the legal protection that disables a person, whether natural or artificial, from buying an office hold. It is that legal toga that protects and fortifies a given government official from liability for his act while in office. All over the world, immunity has been accepted as forming part of civilized political culture, whether in Europe, Asia, America or Africa. It manifests itself in various forms. It may also be in form of diplomatic immunity for state plenipotentiaries overseas.[4]

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currently facing trial for financial crimes. Former Edo State Governor, Mr. Lucky Igbinedion, is facing various charges bordering on money laundering before a Federal High Court in Enugu. His former Delta State counterpart, Mr. James Ibori, is facing similar charges in Nigeria and London. The former governor of Jigawa State, Alhaji Saminu Turaki was charged for stealing N36 billion from his State coffers. Former Governor Orji Uzor Kalu of Abia State is answering charges of stealing and money laundering to the tune of N1.6 billion. Dr. Chimaroke Nnamani of Enugu State N5.6 billion. The list is endless with a sordid detail. Former military Head of State, General Abdulsalami Abubakar, Late President Umaru Yar'Adua, Presdient of the Senate, Senator David Mark are among the notable Nigeria who have so far spoken in favour of the removal of the clause.

[3] The immunity clause is an imported idea. We imported it from Britain. The idea dates back to 1066. It was meant to protect the king, an idea of deifying the king in Britain. It was believed that the king could never do wrong. Here, the immunity clause has been terribly abused. People commit murder, steal public money and launder money in the name of immunity clause. So, with this scenario, Nigerians have enough justifiable reasons to call for the removal of the immunity clause from the Constitution.

[4] Emmanuel Umohinyang 'Jurisprudential basis for Immunity'; *The Punch*, (Lagos, Monday March 10, 2008) pg. 14 - The privileges and immunities of U.S. citizens are dealt with in the U.S. Constitution in Article IV, in the 14th Amendment, and in the 5th Amendment, which provides that no person "shall be compelled in any criminal case to be witness against himself". This provision is applicable on the Federal or State level to persons charged with crime or to witnesses in any proceeding, defendants and witnesses may refuse to furnish evidence that might tend to incriminate themselves. In the U.S. a frequent use of