
**THE SIGNIFICANCE OF THE IMMUNITY CLAUSE FOR
DEMOCRATIC CONSOLIDATION IN NIGERIA**

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Abstract

This paper interrogates the relevance of the constitutional provisions on immunity for certain categories of elected political-office holders to the quest for democratic consolidation in Nigeria. It traces the history of immunity for political office-holders to the 1963 Republican Constitution and examines the rationale or justification for its inclusion in Nigerian constitutions. On the strength of evidences from case studies from Nigeria's Second (1979 to 1983) and Fourth Republic (1999 till present), the paper notes that, while the original intention for its inclusion in the Nigerian constitution was good, politicians have used the clause to the detriment of democracy. For this reason, the constitutional provisions on immunity have become a threat to the consolidation of Nigeria's nascent democracy. Rather than throw away the baby with the birth-water, the paper recommends a review of the provisions to take cognizance of the need for transparency, accountability and good governance while ensuring that political chief executives are not unduly constrained in the performance of their constitutional duties. In this way, the paper concludes, the excesses of elected political chief executives can be curbed while Nigerians can reasonably expect to reap more dividends of democracy now and in the future.

Introduction: The Concept of Immunity

The concept of 'immunity' originated from a Latin word 'immunitas' which the ancient Romans used in describing the exemption of an individual from service or duty to the State (Silverstein, 1999:19). Before then, however, in some of the earliest recorded histories of human society, such as Babylon from about 2,000 B.C., the ancient Egyptian dynasties, the Athenians around 430 B.C., and even among other primitive peoples of the world, diseases were thought to be punishments from the spirits and demons for some infraction of tribal taboos and sins against the gods. Such beliefs provided rationalizations for the epic of Gilgamesh and the Plague of Athens. Even in the Biblical Old Testament, there are accounts of God continuously smiting those who trespassed against him with pestilence (Exodus 9:9; 1 Samuel. 5:6 and Isaiah. 37:36, among others).

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While atonement was the remedy for pestilence in the Old Testament, keen observers and historians in ancient Babylon, Greece and Athens such as Thucydides and Procopius observed that once diseases like the bubonic plague, measles and smallpox afflict an individual; such a person was often spared in the event of a re-occurrence of the pestilence. In time, this occurrence came to be known as *acquired immunity*, which was supposed to be the result of an individual turning a new leaf to living a new pious, 'sinless' life that deserved no further punishment before the gods. If an individual was spared the first time a plague struck, it was reckoned as *natural immunity*. The Islamic physician Rhazes later propounded the first explicit theory of acquired immunity, stating clearly that recovery from small-pox infection provides lasting immunity (Silverstein, 1999).

Immunity in the Modern Age

The modern idea of immunity is related to, and derives largely from the foregoing analyses of the origin of the concept. Nevertheless, its widest application is in the area of international law where immunity can be conveniently subsumed under three headings: *sovereign immunity*, *diplomatic and consular immunity* as well as immunity of other categories of persons such as *international organizations and special missions*.

Sovereign Immunity

Sovereignty is the attribute of every state by reason of which it earns the freedom to conduct its affairs free of control by any other state in the international system, without its consent. Because independent states are sovereign, they are equal such that no state may exercise jurisdiction in matters concerning another state without its consent. As Okeke (1986) argues, dominance, if it exists, is *de facto*, not *de jure*. Even then, no state, however powerful, can exercise *de facto* dominance today without co-operation with other states. An example of this was the 1991 Operation Desert Storm on Iraq by the United States of America – led Allied Forces. Another was the recent operation in Iraq by the coalition forces, led by the U.S.A., Britain, Japan and others.

Sovereign immunity implies that states are free from external control because they have the ability and privilege to run their affairs the way they like. It implies also that the courts of one state may not assume jurisdiction over another state. However, due to the increasing involvement of states and their governments in international trade, more states now distinguish between purely governmental functions and commercial activities, thus restricting immunity to the former. In purely commercial activities involving the state and its agents, this distinction is viewed as necessary in the interest of justice to individuals having transactions with states, to allow them bring their grievances before the courts. Therefore, asking a state or its agents to answer a claim based upon such transactions would not constitute a challenge to the governmental act of that state. Indeed, as an informed opinion argues, it is “neither a threat to the dignity of that state, nor any

interference with its sovereign function” (Lord Wilberforce, cited in Umozurike, 1993:94).

Diplomatic and Consular Immunity

States in the international system do establish relationships to facilitate workable mutual co-operation and assistance. As such, they appoint diplomats and consuls and other categories of officers to oversee such bilateral and multilateral relationships. Diplomats oversee exclusively political relationships between and amongst countries. Therefore, their duties include representation, negotiation, and protection of their national interests, the ascertainment of conditions and developments by lawful means and the promotion of friendly relations between and amongst states, (Article 3 of the Vienna Convention on Diplomatic Relations). Consuls-General, Consuls, Vice-Consuls and Consular Agents on the other hand, protect and promote the commercial and economic interests of the sending country in the receiving country. As such, they are responsible for the processing and issuing of passports and visas, assisting nationals of the sending state as well as oversight functions in shipping, treaty implementation and notarial acts (Umozurike, 1993; Dixon, 1990).

Diplomatic and consulate staff requires immunity and other privileges to perform their functions effectively in the host country, even though such services are established by mutual consent of both countries. Diplomatic immunity is based on the following three major theories in international law.

The extritorial theory that justifies the assimilation of diplomatic premises into the territory of the sending state; The “representative character” theory submits that the diplomatic mission personifies the sending state while the functional theory views the granting of immunities and privileges as conditions necessary for the diplomatic team to perform its functions effectively (Umozurike, 1993: 97).

The privileges and immunities that are accorded diplomatic and consulate staff are contained in articles 31 and 32 of the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963, respectively (Shearer, 1984; Okeke, 1986 and Wallace, 1992) that came into force on April 24th, 1964. (Dixon, 1990). Such immunities relate to the person, with the most extensive applying to the head of the mission (Ambassador or *Charge de Affairs*), members of the diplomatic staff (diplomats proper), the administrative and technical staff (secretaries, etc), the service staff (kitchen staff, butlers, etc) and private servants (e.g. personal valet) in descending order of importance. Members of the families of the mission members may also be covered, but members of staff who are citizens of the host country will enjoy immunity only with respect to their official duties (Dixon, 1990). Article 29 makes diplomats inviolable and may not be arrested or detained. The host state must protect and prevent any attack on their persons,

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freedom and dignity. Also, they are immune from the criminal jurisdiction of the host state and also from civil and administrative jurisdiction, except where such relates to private real property, succession under a will or an action relating to any professional or commercial activity outside his official functions. They are exempted from paying taxes, custom duties and public service such as conscription into the army and jury service (Dixon, 1990).

Other immunities relate to mission property such as offices, land and residence. Article 22 makes the embassy inviolable so that agents of the host state may not enter into them without the permission of the mission head. Property and means of transport of the mission are immune from search and seizure. Archives and documents of the mission are inviolable even if they are not on the embassy premises. Furthermore, if diplomatic relations are broken off, these immunities remain for some time to enable the mission to leave peacefully. If, however, any of them lives in the host country permanently after the end of diplomatic assignment, the immunities cease. Free communication to the home state and free movement are part of the privileges, except where entry is barred for reasons of national security. They also enjoy immunity with respect to parking tickets, shoplifting, and rape and in every other criminal offence and in majority of civil actions (Dixon, 1990).

Also, the 'diplomatic bag' that may range from a small purse to an airplane duly marked so cannot be searched, except where there is suspicion that it contains banned items like explosives, arms, drugs, or other banned items. In that case, a member of the diplomatic mission may be required to open it or the 'bag' is returned to the country of origin. In recent years, rising cases of abuse of diplomatic immunity has led to attempts at finding ways around it. For instance, after complaints by the receiving state, the sending state may recall the diplomat or cancel his duties. If this is not done on time, the receiving state may refuse to recognize him by declaring the envoy *persona non grata*.

Prior to 1962, diplomatic and consular relations were carried on by Nigeria on the basis of the Diplomatic Immunities and Privileges (Commonwealth Countries and Republic of Ireland) Act (Okeke, 1986). Soon after, Nigeria acceded to the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963 and adopted the Diplomatic Immunities and Privileges Act, 1962. (Okeke 1986). By so doing, Nigeria embraced the standard codes for the practice of diplomatic relations.

Provisions for Immunity under the Nigerian Constitution

With respect to the internal affairs of Nigeria in general, and particularly Nigerian constitutions, the idea of granting immunity to elected political -office-holders has a long history. In the 1963 Constitution of Nigeria, provisions for immunity for the President, Vice-president, Governor and Deputy-Governor of a region existed under Section 161 Subsection 1(a-c) and Subsection 2. Under the 1979 Constitution, they existed under Section 267 Subsections 1 (a-c), and

Subsections 2 and 3 (Nwamara, 1992 (Vol. 9). Under the 1989 Constitution, they were codified under Section 320 Subsections 1(a-c), 2 and 3 (Federal Military Government of Nigeria, 1989) while the 1999 Constitution has these provisions in Section 308 Subsections 1(a-c), 2 and 3 (Federal Government of Nigeria, 1999).

With particular reference to the 1999 Constitution, the provisions are as follows:

Section 308 Subsection (1):

Notwithstanding anything to the contrary in this Constitution but subject to Subsection (2) of this Section –

- a. no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;
- b. a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and
- c. no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office.

Subsection 2

The provisions of Subsection (1) of this Section shall not apply to civil proceedings against a person to whom this Section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.

Subsection 3

This section applies to a person holding the office of President or Vice President, Governor or Deputy Governor; and the reference in this section to “period of office” is a reference to the period during which the person holding such office is required to perform the functions of the office.

Origin and Rationale for inclusion of the Immunity Clause in the Nigerian Constitution

The origin of the immunity clause in the Nigerian constitution can be traced to colonialism and Nigeria’s affinity to Britain in the immediate post-independence

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period (Olaoye, 2004). Due to Nigeria's colonial background, many of her laws and statutes simply mirror those of her former colonial overlord, the United Kingdom. As a Nigerian Law Report has indicated, the subsection (on immunity) was designed to ensure that the political Chief Executive has immunity similar to that enjoyed by the British monarch, such that his actions would not be challengeable in court. It adds, however, that such immunity would be without prejudice to any ministerial duty of answering to the legislature for the advice tendered. The inclusion of the clause in Nigerian constitutions may even be designed to mark out the sphere in which the legislature, rather than the judiciary, might call the executive to order (see Attorney-General (East) V. Briggs (1965) N.M.L.R. 45, SCN, cited in Nwamara, 1992 (Vol.13).

A second and arguably more plausible reason for the inclusion of the immunity clause in the Nigerian constitution is the need for the political chief executive to be able to perform his/her duties without inhibition. This was well summarized in the case between *Obih Vs Mbakwe* in the Second Republic where it was held that:

The purpose of this section is to prevent the Governor from being inhibited in the performance of his executive functions by fear of civil or criminal litigation arising out of such performance during his tenure of office. The provision should not be extended beyond this purpose.

(*Obih Vs. Mbakwe* (1984) 1 S.C.N.L.R. 192, SCN, cited in Nwamara, (Vol. 9) 1992:195).

A third reason for the inclusion of the immunity clause in the Nigerian constitution is the effect of contagion. This is the feeling that if older polities such as the United Kingdom and near contemporaries like India have it in their constitutions, Nigeria could as well include it in hers, especially because it was identified with some merits. The influence of contagion in politics should not be overlooked when one considers its impacts in the making of many *coup-de-tats* and military regimes in sub-Saharan Africa between the 1950s and the 1980s.

Immunity in other Countries

Not all countries have the immunity clause enshrined in their constitutions. For those that have, it is clear that the reasons differ and their applications go to varying extents. Examples are Albania, Brazil, France, India and the United States of America. In India, according to Basu (1981), for instance, immunity is granted to the Prime Minister, the political chief executive because he does not exercise the executive function individually or personally. Thus, immunity is granted partly in order to absolve the political chief executive from blames over policy failures.

In the monarchical United Kingdom with a largely unwritten constitution, provisions on immunity are not clear but actions of the king or queen are not expected to be questioned by the subjects. This is because the monarch rules over them and they render him or her habitual obedience. The monarchy is practically immune to criminal litigations in the conduct of its office, exuding, as it does, royal elegance. However, British history and culture plays a moderating role to ensure sanity, civility and stability within the polity.

In the United States of America which, like Nigeria, operates a constitutional democracy of the executive presidential type, the constitution (*de jure*) does not grant immunity to political office holders. And it is so for many state constitutions in the U.S.A. with their provisions on ethics in government. Specifically, Article II Subsection 4 of the U.S. constitution makes provisions for impeachment of the President, Vice-President and all civil officers of state if convicted of treason, bribery, or other high crimes and misdemeanors. Article III Subsection 2 recommends such officers for trial by jury, not by ordinary courts. In *de-facto* terms, however, there is immunity for political office holders since the President, the head of the executive is given uncontrolled power of pardon, by which the President can make members of the cabinet immune to punishments for misdemeanors.

However, since a constitution is as good as its operators want it to be, the situation has worked to the advantage of the American system due to the sincerity of its operators. Therefore, several holders of high political offices in American history, including presidents, have faced the consequences of breaching these provisions of the constitution and betraying the public trust reposed in them. Among these were Presidents Andrew Johnson, Richard Nixon and Bill Clinton. While Johnson was impeached for abuse of power in 1868, Nixon was investigated for misuse of power and obstruction of justice in the investigation of the famous Watergate scandal. He resigned in 1968 before he could be impeached. Clinton was investigated and found guilty of an improper relationship with Monica Lewinsky, a White House intern. He was impeached in 1998.

Scope and Application of Immunity to Elective Political Offices in Nigeria

Immunity as applied to political office holders in Nigeria (particularly to the offices of the President, Vice-President, Governors and Deputy Governors) as specified by Section 308 1(a-c), 2 and 3 of the 1999 Constitution covers the following:

- (a) Civil or criminal proceedings; and
- (b) Arrest or imprisonment throughout the tenure of office.

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However, immunity does not cover all issues. The exceptions include the following:

- a. Civil proceedings like election petitions in which the re-election of the incumbent is being contested. This exemption was observed in the case of Obih versus Mbakwe in 1984. The same was also the case between Obasanjo and Buhari in the year 2004. By the same token, immunity does not extend to civil proceedings involving election petitions. However, in the Fourth Republic, several cases were decided (while others are still being heard) by the Election Petitions Tribunals only after the presumed winners had been sworn in. This raises a question of genuineness of purpose and seriousness of such tribunals since political chief executives whose elections are being contested can use their powers of incumbency either to influence or thwart the outcomes of such (tribunal) proceedings. Fortunately, pro-democracy groups are campaigning to effect electoral reforms that would ensure all election petitions are heard before the eventual winner is sworn in;
- b. While in office, Section 308 gives political chief executives immunity against being compelled or required to appear in court but does not disable them from instituting legal proceedings as the Chief Executive. Thus, although he cannot be sued, he can sue or offer evidence in defence of a matter pending in court in his private and personal status. Cases in this perspective include Onabanjo vs. Concord Press Ltd., 1984 2 N.C.L.R. 399 HC Ogun State and Aku vs. Plateau Publishing (1985) N.C.L.R. 338 at 342, H.C. Benue State (cited in Nwamara, 1992 (Vol. 13): 164);
- c. An elected Chief Executive, by virtue of Sections 1 and 3 of Section 308 cannot be charged to court for corruption or embezzlement of public funds during his tenure. A case in point here was Akume vs. N.P.N. Benue State (1984) 5 NCLR. 449 at 460, HC Benue State (cited in Nwamara, 1992, Vol. 13:164). During the current Fourth Republic, the Economic and Financial Crimes Commission (EFCC) could not charge several executive governors to court on trial for corruption until the end of their tenures in May, 2007. This was true in the cases of former Governors Chimaroke Nnamani of Enugu State, James Ibori of Delta State and Joshua Dariye of Plateau State, who were arrested and charged with the crime of money-laundering only after their tenures. However, as the arrest of former Bayelsa State Governor, Dieprieje Alamieseigha in Europe proves, a sitting Governor does not enjoy such immunity when he is not on Nigerian soil.
- d. A governor's immunity cannot be abridged by the court asking him to enforce the rights of citizens whose rights are affected by the

chief executive's declarations, for the maintenance of public order or peace, such as when citizens institute an action against the chief executive. Examples of such cases are *Obi vs. Mbakwe*, and *Onabanjo vs. Concord Press* (cited in Nwamara, 1992 (Vol. 13):164);

- e. A Governor cannot be compelled by the court to release the report and recommendations of an administrative board of inquiry if it is inequitable, or potentially administratively injurious to do so. That is, if releasing the report at that time will not prove fair to all interested parties such that it can lead to a breach of the peace. This was the case in *Egwuatu vs. Attorney General of Anambra State* (1984) 4 N.C.L.R. 472, H.C. Anambra State (cited in Nwamara, 1992 (Vol. 13):165).

Reactions to the Immunity Clause of the 1999 Constitution

The application of the immunity clause in the 1999 Constitution particularly in the Fourth Republic, has elicited varying responses from groups, institutions and individual members of the public. These responses have varied from the moderate to the radical. The National Judicial Commission (NJC) made a recommendation to the National Assembly Committee on the Review of the 1999 Constitution that the clause be amended to confer immunity on concerned political office-holders on civil matters only, and not on criminal matters, as a way of mitigating its negative outcomes.

However, Professor C.S. Momoh (2005) believes that the clause is inconsistent with the ideal of democracy and should, therefore, be removed from the constitution. He advances three reasons for this view. First, he argues that the provision constitutes a rude and reckless assault on, and a violation of the independence and powers of the judiciary. He supports this argument with the aid of two trite points in law. First is that a constitutional provision in its right and proper place and content takes precedence on, and is superior to a contrary provision in a wrong and improper place and context. He argues that the judiciary has powers to adjudicate over any criminal and civil matters dealing with fundamental human rights. Thus, a governor who might have committed murder is not covered by the immunity clause. Furthermore, Professor Momoh noted that the immunity clause was not provided for under "The Executive" (Chapter VI), suggesting that it was mentioned only as an after-thought under "Miscellaneous" and therefore, is untenable.

The second trite point in law, argues Momoh, is that equity holds sway between two equally formidable and contending provisions and positions. He submits that:

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The ouster clause in Section 308 is a matter of criminality, immorality and jurisprudence is yet to record a case where criminality supercedes innocence and piety ... equity ought never to support criminality over civility, morality, culturedness and civilization. (Momoh, 2005:4).

The third trite point in law on the basis of which the immunity clause becomes a nullity, according to Momoh (2005: 2) is that the phrase “period of office” which the clause adopts is not synonymous with “tenure”, which properly refers to the term of a political chief executive. He therefore argues that the provision stands against the ground norm (introduction or preamble) to the constitution that seeks to promote good government and the welfare of all persons in Nigeria on the principles of freedom, equality and justice and to consolidate the unity of our people.

Since the immunity clause constitutes detraction from the above objectives, it is evil, satanic, oppressive and aids the commission of crimes against the people, Momoh argued. He noted further that:

If a governor commits a crime during his period of office, he is not performing the functions of his office, and so he is not covered under section 308(3). Indeed, such an action will be contrary to the oath that he swore to and the code of conduct contained in the Fifth Schedule to the Constitution. (Momoh, 2005:4).

He concluded that since “Section 308 excuses and immunizes damnable and criminal executive conduct and behaviour; ... it (is) a constitutional vagabond and bastard, lawless area boy and legal miscreant, without any abode and without a home” (Momoh, Ibid: 10). He therefore argued that it should be removed from the constitution.

Effects of the Immunity Clause on Democracy and Democratic Consolidation in Nigeria

It is my contention that the inclusion of the immunity clause for certain categories of elected political office holders (specifically the President, Vice-President, Governors and their Deputies) in the Nigerian Constitution has had both positive and negative effects on democracy and democratic consolidation in the country. What is worrisome, however, is that its negative effects find a parallel in, and therefore reinforces and advances a typical African (and Nigerian) understanding and interpretation of public morality and community service according to which the primordial public takes precedence over, and invariably emasculates the civic public, partly through political corruption and personal aggrandizement. In an ideologically poor, nascent democracy like Nigeria’s, there

is the tendency for such negative consequences to outweigh the salutary effects of immunity and therefore, atrophy democratic consolidation.

In the first instance, since free, fair and periodic elections constitute essential hallmarks of democracy, elections into sensitive positions in a democracy should not only be free and fair, but *seen* to be so by all. Accordingly, while it has been demonstrated by virtue of the cases involving Obi vs. Mbakwe in the Second Republic and Buhari vs. Obasanjo in the Fourth Republic that civil proceedings concerning election or re-election may apply to elected political office-holders, a re-wording of Section 308(a) to reflect this would be in order to make this clearly unambiguous.

Second, although Section 308 (Subsections 1&3) exists in the bid to avoid chaos and public disorder and to ensure that the political office- holder is able to perform his executive functions without let or hindrance, such immunity from arrest, prosecution or imprisonment should not be made to cover financial impropriety, corruption, embezzlement and vindictive tendencies in government, as the situation currently is. These provisions imply that allegations of corrupt enrichment can only be made, but cannot be investigated and proved against incumbent executive political office-holders. As such, they can neither be called to account for their actions and inactions in office during their tenure nor made to resign on proof of gross misconduct as is the case in older, consolidated democracies since current Nigerian law is impotent in that area.

The direct results of these are unmitigated cases of corrupt enrichment by political office –holders who, unfortunately, cannot be brought to book because they enjoy immunity. For instance, former Governors Saminu Turaki of Jigawa State, Chimaroke Nnamani of Enugu State and, Orji Uzor Kalu of Abia State among others, could not be brought to book over allegations of corruption until the end of their tenures in May 2007 because they enjoyed immunity. Earlier, when the Economic and Financial Crimes Commission (EFCC) threatened to expose and possibly prosecute corrupt members of the National Assembly the way it did to former Senate President, Adolphus Wabara and the dismissed Minister of Education, Professor Fabian Osuji over the N55 million scam, members of the Assembly allegedly rose against the Presidency (Samuel, 2005:1). It is noteworthy that National Assembly members are not covered by the constitutional provisions on immunity.

It has been noted, democracy thrives when it has good governance as its cornerstone. In such a situation:

...the stakeholders are the people who must be the beneficiaries of government policies and programmes. Under a democratic dispensation, the government must

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respond to popular demands and implement good policies (Yahaya, 2003:149).

For the above to materialize, best practices like transparency, accountability, stakeholders' participation and quality service delivery must be promoted in the Nigerian public service. Nigeria is a signatory to the new Charter for the Public Service in Africa that incorporates the above values, among others. Therefore, she has the obligation not only to embrace it but also to provide quality leadership example for other African countries in doing so. A starting point could be a thorough review of the constitution to take care of this and other ills embedded in the Nigerian constitution through the review of the 1999 Constitution. It is therefore expedient that pro-democracy, civil-rights groups, non-governmental organizations and the general public also make positive inputs into the review in order to fashion a better constitution that would promote democratic consolidation in Nigeria.

Summary and Conclusion

In spite of its good intentions, the application of the constitutional provision on immunity for certain categories of elected public officers in Nigeria arguably has more negative than positive implications for democracy and democratic consolidation. It is particularly identified with lack of transparency, embezzlement, lack of accountability and other forms of abuse of power that detract from the beauty and essence of democracy.

The implications of the above for democratic consolidation in Nigeria are quite threatening. That a sitting governor or president cannot be prosecuted for crimes committed against the state simply puts such individuals above the law. It would be a means of breeding criminals in power. On the other hand, considering the super-competitive nature of Nigerian politics and the knack of losing parties in Nigerian elections to attempt to shoot down the administration of the winning party, it is necessary to give minimum protection to sitting governments by re-considering the circumstances, terms and conditions under which the immunity clause should apply. This is the need to strike a delicate, yet workable, stabilizing balance on the one hand, between granting unqualified, open-ended and potentially insidious protection to political office-holders to commit crimes against the state and the people with impunity and, on the other, exposing government to the destabilizing machinations of bad losers at elections, who may wish to truncate the smooth process of governance whenever they fail to win elections.

It is the contention of this paper that striking this delicate balance is a major means of ensuring democratic consolidation in Nigeria. Re-inventing the immunity clause in this creative way has several potential advantages. First, it will check the excesses and profligacy of political office holders. Second, it will protect government against frivolous and destabilizing machinations of political

opponents in order to ensure governmental stability and advance development. Third, it is a means of safeguarding the interests, freedoms and liberties of the citizenry against a government bent on taking vengeance on its perceived 'enemies'.

Although there have been calls for the total removal of the immunity clause from the constitution (*New Age*, 2005:1; Momoh, 2005), a review of the provisions to take care of its loopholes that political office holders have exploited to commit political and financial crimes against the Nigerian people and State in the past will be in order. This is in agreement with the recommendation of the National Judicial Council to the Sub-Committee on Review of the 1999 Constitution for the amendment of the clause to cover only civil matters, and not criminal ones. This is important for us to be able to combine accountability with performance in government so that democracy can be consolidated in Nigeria and the people can actually reap the dividends of their hard-earned democracy.

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