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# IMMUNITY OF PUBLIC OFFICERS: CHALLENGES FOR THE LAW IN NIGERIA

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### Introduction

Discussions pertaining to immunity granted to public officers<sup>1</sup> especially those granted to political office holders, have in recent times generated a lot of furore. The reason for this is that while a particular section of the society wants immunity completely expunged from the constitution, some others want it to be reduced to the extent that the public officer will not be able to hide under the cloak of immunity where he commits a crime<sup>2</sup>. The contention of those in support of immunity clause is that to expunge it would open the public officer to a flood of litigations which he would always have to contend with and as a result, will not have time to perform the duty that he has been primarily elected to perform.

The aim of this paper is to examine critically, the issue of immunity granted and enjoyed by public officers and the challenges faced by law enforcement agents in prosecuting public officers protected under the laws granting immunity to them.

## **Concept of Immunity**

Immunity is the exemption of a person or body from legal proceedings, obligations and liability which may arise as a result of the performance of some duties or functions. It has been defined as any exemption from a duty, liability or service of process especially such as an exemption granted to a public official<sup>3</sup>. The term immunity as it is today was derived from the concept of sovereign immunity, which was practised in early organised societies like England. It is a doctrine which disallowed the institution of suits against the crown/king. During this period, the King was the head of the society as well as the judge and he had the duty of hearing petitions brought by his subjects and adjudicating over such matters.

Based on the fact that the King was judge over all matters, it was impossible for actions to be brought against him in the courts established by him and over which he presided because, in such instances, there would be no one to hear the case. As a result of this, the king was regarded as being immune from legal actions because "he could do no wrong" (rex non potest

Blacks Law Dictionary, (1999) 7th Edition 752-3.

Though not specifically defined in the constitution, a public officer is someone who has been legally elected or appointed to office or a person who exercises governmental functions and falls under the categories listed in the code of conduct for public officers in Part II of the 5th Schedule of the 1999 Constitution. See also, Okonia Oil Palm Co v Iserhienthica (2001) 6 NWLR (pt 710) 660. Exe v Okechiikwa (2002) 18 NWLR (pt 799) 348; 2th Schedule to Code of Conduct Bureau (2004) 6 NWLR (pt 799) 6 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 6 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 6 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 6 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 Schedule to Code of Conduct Bureau (2005) 18 NWLR (pt 799) 18 Schedule to Code of Conduct Bureau (2005) 18 Schedule to Code of Code of Conduct Bureau (2005) 18 Schedule to Code of Code o

Ochereone Nixania, 'People & Politics: Let immunity Stay' (2004) < <a href="http://www.nigeriariflog.cognaire.com">http://www.nigeriariflog.cognaire.com</a> accessed 15 September, 2007.

peccare)<sup>4</sup>. The rationale for the rule was that since the law emanated from the king himself, he could not be held accountable in courts of his own creation.

The expression "the King can do no wrong" originally meant, "The king was not allowed to do wrong<sup>5</sup>" as he was meant to be a shining example to the people he ruled over. Another reason given for the expression "the king was not allowed to do wrong" is that the king had no legal power to do wrong since his position, the powers and prerogatives which distinguish him from an ordinary citizen, was given to him by law and the law gave him no authority to commit wrong. Overtime, the king became too busy to hear all petitions brought before him and had to appoint members to sit in judgment and administer justice on his behalf. In these instances, even though the king was not physically present in the courtroom as judge, it was assumed that he was there spiritually, so any disrespect or disobedience of a judge was considered to be disrespect to the King. With the development of Statehood, the expression "the King can do no wrong" can be said to have become "the state can do no wrong".

### **Petition of Rights**

Notwithstanding that the king could not be sued, in deserving circumstances, the king consented that suits be brought against him and his servants. In this instances, he endorsed the words "fiat justitia" meaning "let justice be done" on petition. Using this procedure, a person who feels he has been dealt with unjustly, writes a petition to the king, who after considering it, consents to the petition, where he feels such consent is deserved after which, the case is heard on its merit by the court and in deserving situations, the appropriate reliefs would be granted. In other words, the Petition of Rights is an application made to the crown (government) for the grant of consent to bring a case against it so as to remedy an injury, which was done to the applicant by the crown or its servants.

The Petition of Rights procedure was backed by the Petition of Rights Act 1860 until it was replaced by the Crown Proceedings Act of 1947, which liberalized the right of legal action against the government by providing that persons in the United Kingdom could sue the crown without first obtaining consent.

At the initial stages, the procedure of petition of rights was used strictly for matters relating to the recovery of land or other property. It was not until after the 1688 revolution that the judges agreed that the procedure could also be used to enforce the payment of debts and other matters<sup>7</sup>. Furthermore, while it was accepted under the Petition of Rights Act that the

Several authors, Harry Street, Liability of the State for Illegal Conduct of its Organs, 1967. P.W. Hogg, Liability of the Crown, 1971. Harrison Moore, Liability for Acts of Public Servants, (1907) 23 LQR 12. Eweluka, Proceedings by and against the State, 11 Nigerian Bar Journal, page 10 published in 1973.

L. Justic quoting Ehrlich. Proceedings Against the Crown 1216 - 1377, in 6 Oxford Studies in Social and Legal History, 1921, p.42.

P A Oluyede, Nigeriun Administrative Law, (University Press Plc. 1988) 427
 Bankers' Case, 14 How. St. Tv. 1; Thomas v The Queen (1874) LR 10 OB 31

crown could be liable in contract, it was held that it could not be liable in torts<sup>8</sup>.

After the repeal of the Petition of Rights Act 1860, the crown became liable for actions ranging from breach of contracts, recovery of land, and statutory compensation to action in torts. Under the Crown Proceedings Act, where a servant of the crown commits a tort in the course of his employment, the servant and the crown are jointly and severally liable?

Petition of Rights in Nigeria

In Nigeria, the Petition of Rights Act 1860, was applied as a Statute of General Application as the Petition of Right Act Cap 149 Laws of the Federation of Nigeria 1958 as amended by Legal Notice 112 of 1964<sup>10</sup>. This remained the position until it was abolished by the 1979 Constitution of the Federal Republic of Nigeria<sup>11</sup>. The implication of this was that prior to 1979, the government could not be sued unless the consent of the state was first obtained from the Attorney General<sup>12</sup>

The mandatory requirement that consent of the state must be obtained before the institution of legal proceedings came to the fore in the case of Ransome Kuti v A.G. Federation & ors<sup>13</sup> where the Plaintiff/Appellant brought an action jointly and severally against the Defendant/Respondents for damages suffered when solders set fire to his property. The court in dismissing the claim held that the Petition of Rights Act Cap 149 of 1958 preserved the immunity of the state. The 1963 Republican Constitution did not abolish the immunity while the 1979 Constitution under which the defendants could have been held liable was not applicable to the case as the events leading to it occurred before it came into force. Also, the plaintiff's claim being founded upon torts and the common law principle of state immunity being still applicable in Nigeria in 1977, when the cause of action arose, the state cannot be made liable for tortious acts of its servants as the state can do no wrong.

It should be noted that although the Crown Proceedings Act had abolished the principle of state immunity from tortuous liability in England in 1947, this was not the case in Nigeria because the 1947 Act did not apply to the country. The situation however changed with the 1979 Constitution, which abolished the principle of state immunity and petition of rights procedure for the initiation of suits for actions committed by the government or its agents. This position has been retained by subsequent constitutions including the 1999 Constitution of the Federal Republic of Nigeria. In Governor of Imo State v Greeco Construction & Engineering Associates Ltd

Section 2 of the Crown Proceedings Act 1947

<sup>8</sup> Canterbury Viscount v A.G. (1842) 1 Ph. 306; Tobin v The Queen (1864) 16 CBNS 310

See Sections 3, 4 and 9 of the Petition of Rights Act 1958 as amended by Legal Notice 112 of 1964.

The provision of State immunity was preserved by Section 45(1) of the Interpretation Act of 1958 and was not invalidated by the 1963 Republican Constitution.

Are v A.G. Western Region (1960) WNLR 108 SC, Lahan v A.G. Western Region (1961) WNLR 39. (1985) 2 NWLR (pt. 6) 211. See also Eche v State Education Commission (1983) 4 NCLR 735.

Williams v Atomey General (1932). 11 NLR 49. See also, Olosupo & ors v A.G. Western Region & ors (1961). 1 ALL
NJ R 84.

balance due in respect of a contract entered into by both parties for the building of residential quarters. The contract was duly executed but the appellants failed to pay the balance of the contract sum. The respondent sued claiming the contract sum. The appellant filed an application praying that the High Court should dismiss the suit on the ground that the plaintiff ought to bring the action by way of petition of rights. The trial court overruled the appellant's objection. Not satisfied, the appellants appealed to the Court of Appeal and the Appeal Court in affirming the abolition of the Petition of Rights Act held that the plaintiff/ respondent was entitled to payment of the sum claimed and it does not have to first obtain the consent of the defendant government.

The position of the courts is further confirmed by the provision of Section 6(6)(b) of the 1999 Constitution<sup>16</sup>, which provides that the judicial powers vested in the courts extends to "all matters between persons, or between government or authority and to any other person in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person<sup>17</sup>."

Consequent upon the above, the government like any other citizen can be sued both in civil or criminal matters<sup>18</sup>. In *Balogun & Ors v Attorney General Lagos State*<sup>19</sup>, the Judge, Balogun J in granting a perpetual injunction against the Lagos State Government went further to state the position of the law as regards the right to sue the government as follows:

It is important to stress that in this case, the government of Lagos State is sued through its Attorney General, the 1<sup>st</sup> defendant, as a nominal party, just as the Attorney General of the Federation was sued as a nominal defendant in the case of Attorney General of Eastern Nigeria v Attorney General of the Federation (1964) I ALL NLR 244, where the nominal capacities of the parties were well recognised and commented upon by the Supreme Court. Accordingly, in this case, it would be proper for me to make an order of perpetual injunction against the 1<sup>st</sup> defendant, that is to say the Government of Lagos State<sup>20</sup>.

# Immunity under the 1999 Constitution<sup>21</sup>

The Constitution of the Federal Republic of Nigeria in some cases grants immunity to public officers. This type of protection is usually referred to as Constitutional immunity. Constitutional immunity has been defined as the lawful exemption from prosecution in the performance of the duties required of the functionaries of government. It should be known that constitutional approach to governance is not a new phenomenon in the constitutional history of Nigeria as previous Constitutions have always made provisions for it and in this instance, it is the Constitution itself that clothes the affected set of officers with protection so that they can be protected from unnecessary distractions in the form of litigations which might distract them from the performance of their lawful duties.

Legislators are protected by legislative immunity which prevents and protects them from being sued for actions performed and decisions made while serving in government. In this respect, public officers who occupy legislative positions cannot be sued either by way of civil and criminal proceedings in respect of words spoken or written in the performance of their legislative duties by virtue of the Legislative Houses (Powers and Privileges) Act. 25 The provisions in this Act is further protected under Section 315 of the 1999 constitution which makes provisions for the preservation of laws in existence before the enactment of the constitution. As a result of the above no action can be brought against legislators whether of the National Assembly or the State Houses of Assembly for actions taken in the performance of their legislative duties<sup>26</sup>. Magistrates, Judges and other judicial officers are protected by judicial immunity from actions, which might arise as a result of their performing their duties. Such judicial officer must have however acted in good faith and he must have had jurisdiction or believed he had jurisdiction to do what ever he did at that time<sup>27</sup>.

Executive Immunity is the immunity granted to the President, Vice President, Governors and their Deputies, who are also public officers<sup>28</sup> under Section 308 of the 1999 constitution. It is in the area of Executive immunity that a lot of dust has been raised in recent times. The intention of the draftsman in inserting the immunity clause to protect public elected officers was to serve a public purpose in that these sets of people have to be protected from frivolous actions, which tend to distract them from the performance of the public duty to which they have been elected to perform.

<sup>15 (1985) 3</sup> NWLR (pt 11) 71; Balogua v Attorney –General Lagas State & ors (1981) 2 NCLR 589

Also provided for in Section 6(6)(b) of the 1979 Constitution.

<sup>17</sup> See also Sections 17(2)(e). Section 36 (1) & (2) and 46 (1) of 1999 Constitution. By virtue of these provisions, persons who have grievances against the state have an unfettered access to the law courts.

Obeya Memorial Hospital v Attorney General Federation & Ocs (1987) 3 N.W.L.R. (pt 60) 325; Governor of Lagos State v Ojukwa (1986) I NWLR (pt 18) 621.

<sup>(1981) 2</sup> NCLR 589

bit at p. 667; see also Anomey General of Bendel State v Anomey General of the Federation & Ory (1981) ANLR 85, 136.

The 1999 Constitution became operative from 29th May 1999. It repealed the 1979 Constitution.

J.A Yakubu, Constitutional Law in Nigeria. (Demyuxs Law Books, 2003) 245.

See sections 161 of the 1963 Constitution; section 267 of the 1979 Constitution and section 308 of the 1999 Constitution

Sections 308 and 315 of the 1999 Constitution. The latter section preserves laws which have been in existence before the encounent of the present Constitution.

Section 3 of the Legislative Houses (Powers and Privileges) Act Cup L12, LFN 2004. This law is protected by section 315 of the 1999 Constitution.

<sup>26</sup> Constitutional protection is not granted to legislators who are indicted for criminal acts.

See the cuses of Onitiri v Ojoma (1954) 21 NLR 19; Bayo v Atake (1970) MWSNLR 197; and Egbe v Adefarasin (1985)

Code of Conduct for Public Officers in Part II of the 5th Schedule of the 1999 Constitution.

Section 308 of the 1999 Constitution of the Federal Republic of Nigeria provides that:

- Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section:
  - no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;
  - 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;
  - (c) no process of any court requiring or compelling the appearance of a person too whom this section applies, shall be applied for or issued.
- The provision of subsection (1) 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 person is a nominal party.

From the provisions of the section, it can be garnered that the President, his Vice, the Governors and their Deputies are immune from prosecution and in fact all legal proceedings in their personal capacities throughout the duration of the period when they are in office. In Attorney General Federation v Abubakar, 29 the respondent, who was the Vice President of Nigeria, was charged before the Code of Conduct Tribunal by the Attorney General of the Federation based on investigation carried out by the Code of Bureau. Upon being served with the charge sheet, the respondent filed a suit at the Federal High Court challenging the competence of the 3rd Appellant/Code of Conduct Tribunal to try and convict him for any criminal offence on the ground that he was immune from prosecution. The appellants on their part upon service of originating summons from the Federal High Court filed a preliminary objection and counter affidavit to the originating summons. The court heard the substantive matter and preliminary objection to the suit together and held that the immunity of the respondent under section 308 of the Constitution extends to proceedings before the 3<sup>rd</sup> Appellant and thereafter dismissed the objection of the appellants. Dissatisfied, the appellants appealed to the Court of Appeal and in dismissing the appeal, the court per Aboki, JCA, noted:

"...immunity under the section prohibits every criminal and civil proceedings against the President, Vice President, Governor and Deputy Governor notwithstanding and regardless of the court where the

prosecution takes place, whether it is before a court of law established by section 6(5) of the Constitution or a tribunal established by paragraph 15(1) of the 5<sup>th</sup> Schedule to the Constitution, with the features of a court and performing the duties of a court "<sup>30</sup>.

It is clear from the above statement that the protection offered to public officers under section 308 of the Constitution is total in the sense that such officers cannot be arrested nor sued before any law court or tribunal during the pendency of their terms of office irrespective of the allegations levied against them.

Also in Tinubu v I.M.B. Securities31 the respondent company sued three people and the appellant was the 3rd defendant. At the trial court, the respondent claimed from the 1st defendant the sum of 2.5m being the outstanding balance owed in respect of an overdraft facility. He also claimed from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, the same amount together with the interest, upon the breach of their obligations under the contract of guarantee entered into by the parties and arising out of the overdraft facility. During trial, the 3rd defendant/appellant applied that the matter be struck out because the lifespan of the writ of summons had expired. The plaintiff /respondent on its part filed a motion on notice for the renewal of the writ of summons for a further period of six months. The trial court heard both applications together, renewed the writ of summons for a further period of six months and held that the writ was good and proper service. Dissatisfied the 3rd defendant/ appellant appealed to the Court of Appeal but whilst the appeal was pending, he was sworn in as Governor of Lagos State. When the appeal came up counsel for the respondent applied that the matter be adjourned sine die until when the appellant would cease to hold office as the Governor. After hearing arguments from both sides, the Appeal Court granted the respondent's application and adjourned sine die until the appellant would have vacated office. Again dissatisfied, the appellant appealed to the Supreme Court which dismissed the appeal. Karibi Whyte, JSC observed as follows:

"In my considered opinion, a fair, correct and acceptable construction of the pression 'no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office' in section 308 of the Constitution 1999 must take into account in the application of the prohibition the qualification of and limitation by the words of the prohibition. It seems to me obvious that the qualification and limitation by the expression prohibiting the institution of or continuing an action

<sup>9 (2007) 8</sup> NWLR (pt 1035) 117at 154.

bid: pg 154 parag D.E. See Inspector General of Police v Fayose (2007) 9 NWLR (pt 1039) pg 263 at 272

during the tenure of the persons mentioned in section 308 is clear and unambiguous. The plain words therefore means that mo action civil or criminal can be filed, and no pending proceeding continued during the period in office of the persons mentioned in section 308(3)". 52

### Iguh JSC also said:

"... this course of action of action is what section 308 expressly prohibits. I think that pursuant to the reasoning of the court in Colonel Olu Rotimi's case, the court below ought to have struck out the appeal pending before it as the same under the mandatory provi-sions of section 308(1)(a) of the 1999 Constitution was not liablie to be continued during the period in office of the appellant as Governor of Lagos State." 33

Consequently, it can be inferred that the immunity provisions of section 308 is an absolute prohibition on the courts from entertaining any proceedings, civil or criminal in respect of any claim or relief against a person to whom the section of the constitution applies during the period he holds such office. Also, the courts are bound in appropriate cases to give effect to the immunity prescribed under the section and in situations whereby an action is already pending before the installation of the public officer into office, the appropriate thing for the courts to do is to strike out such case and not adjourn *sine die*. The matter can however be re instituted after the public officer has vacated from the office he was occupying to warrant the grant protection. Once the action is discontinued, any interlocutory decision aimed at furthering the proceedings disappears with the discontinued proceedings.

With the grant of absolute immunity to the President, the Vice President, Governors and Deputy Governors however comes the attendant issue of abuse of office and corruption. Immunity as a concept was made so that holders of offices provided for under section 308 can have a free hand to act decisively, boldly and courageously for public good and in doing so, such governor or president etc would not be hindered, by fear for self, for repercussions of actions embarked upon, for general public interest of a state or for national interest. Clearly defined, all legitimate actions undertaken, during the pendency of a term of office by the governor or president, must be foreclosed from personal legal liability, hence the concept of immunity.<sup>34</sup>

Ibid; pg 712-713 purng E.F. Ibid; pg 698 parag B-D

Peurl Adajie, Immunity from Prosecution: Arguing both sides (2005) <a href="http://www.nigeriavillagesquare.com">http://www.nigeriavillagesquare.com</a> (accessed 15 September, 2007).

While conceding the fact that the public officer protected by section 308 of the 1999 constitution has to be given the freedom to act decisively on issues that affect the public, whom they govern and not be hindered by the fear of unnecessary law suits which would definitely slow down the operations of the machinery of government, a problem however arises when the public officers use the protection afforded them by the immunity clause to perpetuate fraud by diverting public funds for their personal use.

It is submitted that where a public officer protected under section 308 commits a criminal act or aides in the commission of a crime, his immunity should be lifted and the erring officer made to face the full wrath of the law as he is no longer deserving of the trust that has been imposed on him by the

generality of the Nigerian public.

Events have shown that some of these public officers usually hide under the cloak of immunity to commit fraud and embezzle state funds meant for the provision of utilities for the public whom they profess to serve<sup>35</sup> and where the various enforcement agencies investigates and seeks to prosecute them, they readily bring up the issue that they are protected from prosecution under the constitution. In these instances, the only thing the enforcement agencies<sup>36</sup> can do is simply to carry out necessary investigations and await the person in question to complete his term of office. In Gani Fawehinni v Inspector General of Police, 37 Chief Gani Fawehinmi, the appellant wrote a letter to the Inspector General of Police asking him to investigate certain allegations which he made against the person of Senator Bola Tinubu, the then Governor of Lagos State. The Inspector General of Police on his part replied the appellant saying that the Governor was protected by section 308 of the 1999 Constitution and that the appellant should allow the Lagos State House of Assembly do its job under section 188 of the Constitution. Thus, the Inspector General of Police refused to investigate the allegations. As a result of the above, the appellant took out an Originating Summons against the Respondent at the Federal High Court praying that the respondent be compelled to carry out necessary investigations. The respondent on its own part filed a preliminary objection to the effect that the Governor was protected from investigations under Section 308 of the 1999 Constitution. The trial court agreed with the respondent following which the appellant appealed to the Court of Appeal. The Court of Appeal in allowing the appeal held that although the respondents have discretion in matters of crime investigations, they were not precluded by section 308 of the 1999 Constitution from investigating allegations of crime committed by persons occupying offices under section 308(2). Again dissatisfied, the appellant appealed to the Supreme Court where Ogundare JSC said:

See Joe Nwankwo; "British Police Recovers E 34.6m from Dariye and Alumtereseighta" Daily Independent, 28th

The independent Corrupt Practices & Other Related Offences Commission which was established by the Independent Corrupt Practices & Other Related Offences Commission Act 2000; the Economic and Financial Crimes Commission established by the Economic and Financial Crimes (Establishment) Act. 2002 amended in 2004; the Police and Code of Combot Bureau.

<sup>(2002) 7</sup> N.W.L. R c pt 767) 606

"The Court of Appeal is clearly right in holding that section 308 of the Constitution of the Federal Republic of Nigeria, 1999 does not extend to the grant to the officer mentioned in subsection (3) thereof immunity from police investigations into allegations of crimes made against them. The court is equally right in holding that the police, however, have a discretion whether or not to conduct investigation into any complaint made to them and the court will not intervene if on the facts of a particular case, the discretion is properly exercised." 38

Consequently, the appropriate step to take where allegations of corruption are made against a serving public officer is for the appropriate agency to carry out necessary investigations as section 308 does not bar this but such enforcement agency would to wait until the officer leaves office either by impeachment or end of tenure before prosecution proceedings can start<sup>30</sup>.

In the United States, there are no legal provisions providing express immunity for the president. However the courts have developed a doctrine of official immunity whereby the president is entitled to absolute immunity in civil suits regarding all his official acts. The situation is different for criminal indictment of an incumbent president as there are various legal opinions as regards to this. The Vice President, Governors and their deputies can however be indicted and prosecuted while they are still in office, prior to impeachment. In the United Kingdom, the Prime Minister is not immune from criminal liabilities as he is subject to the law in the same manner as any member of the public.

The French Constitution on its part has some degree of immunity for the Parliamentarians and the President. For the parliamentarians, they have immunity for their actions and contributions to the debates in parliament. In the case of the President, Article 68 of the French Constitution provides as follows:

19 Ibid; pg 693 parag D.E.

The President of the Republic shall not be held accountable for actions performed in the exercise of his office except in the case of high treason. He may be indicted only by the two Assemblies ruling by identical vote in open balloting and by an absolute majority of their members. He shall be tried by the High Court of Justice.

From the above, it can be garnered that though protected by the Constitution, the French President can still be prosecuted where he commits acts which are treasonable in nature<sup>44</sup>.

In Canada there is no immunity for public officers under the Canadian Constitutional Act of 1867 and the 1982 amendment. The implication of this is that any public officer, be it the President or otherwise will be held responsible for his actions and inactions even while in office. The case of South Africa is also different in that the country allows for the prosecution of a sitting President.

Coming back to the situation in Nigeria, though protected by executive immunity under section 308, the President, Governors and their Deputies can be sued in their official capacities and they can be joined as nominal parties to a suit. Aside from the above, they are also not immune from impeachment proceedings by the National Assembly and their respective State Houses of Assemblies. In this regard, the Constitution outs the jurisdiction of the courts to interfere and inquire into any efforts to remove them from office. The Courts will only interfere where proper procedure is not followed. In such instances, the position of the courts has been to order the reinstatement of the affected public officer back to office.

### Conclusion.

Corruption is endemic in Nigeria. Past and recent events have shown that those who hold exalted offices such as the President, the Vice President, Governors and their deputies are not exempted from engaging in corrupt practices.

The purpose for inserting the immunity clause in the Constitution is to allow public officers concentrate on their duties while in office. Regrettably however, it has been discovered that these officers use the protection offered by the clause to perpetuate fraud and in such situations, they cannot be

See Joe Nwankwo: "EFCC dock Dariye, Turaki" Daily Independent, 14th July 2007; Festus Owete and Alex Oni: "EFCC Files N5.3b Theft Charge Against Musmani" Daily Independent, 18th July 2007.

Chou Pak-Kwan. "The Criminal Immunity of the Head of State! Government and Whether Impeachment Proceedings Prevede Criminal Prosectation" (2007) (www.legeo.gov.hb/yr> 06-07 (accessed Joth October, 2007).

Bagan E.B. "Imperichment: An Overview of Constitutional Provisions, Proceedings and Sections, 2001).
"The Law as King and the King as Low, is a President Immune From Criminal Prosecution Before Impeachment" (1992) cited by Chan Pak-Kwan, in "The Criminal Immune From Criminal Immunes of States Government and Whicher Impeachment Proceedings Precede Criminal Prosecution" (2007) 
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<sup>42</sup> John H. Kim, "Criminal Prosecution of an Incumbent President" (2005) <a href="https://www.codepink4peace.org">www.codepink4peace.org</a> (accessed 17 September, 2007).

Chao Pak-Kwan, "The Criminal Immunity of the Head of State! Government and Whether Impeachment Proceedings Procede Criminal Prosecution" (2007) < www.legeo.gov/bl/vr/06-07> (secessed 30th October, 2007).

<sup>44</sup> The situation is also the same in Korea as the President is entitled under Article 84 of the Korean Constitution to crimina immunity during his tenure of office except in cases of treason.

Section 308(2) of the Constitution, Anomey General Federation v Abubakar (2007) 8 NWLR (pt 1035) 117 at 154-155. Inspector General of Police v Fayose (2007) 9 NWLR (pt 1039) 263 at 278. Tinubu v 1.M.B. Securities (2001) 16 N.W.L. D. et 3160.

Sections 143 and 188 of the 1999 Constitution. See Balarahe Musa v Auta Hamza & Ors (1982) 3 NCLR 229; Abarabe v Abia State House of Assembly (2002) 14 NWLR (pt 788) 466.

Section 143(10) & Sec 188(10) of the constitution, Balarabe Musat v Ann. Hanta & Ors supra: Abarabe v Abia State House of Assembly supra.

Adeleke v Oyo State House of Assembly (2006) 16 NWLR (pt 1006) 608: Inukalu v Adeleke (2007) 8 NWLR (pt 1025)
 Bulomen v Peter Obi (2007) 5 NWLR (pt 1028) 489: Daptanlong v Darive (2007) 8 NWLR (pt 1036) 333 ut 421
 422.

immediately prosecuted by the appropriate enforcement agencies. Even when they vacate office, the probability of prosecuting the public officer is very dim. The system is such that most of the time there is no continuity of policies while the citizens who can readily agitate are incapacitated by reasons of poverty and lack of empowerment. If Nigeria's crusade of putting a stop to corruption is to have meaningful effect with respect to public officers, then, it is time to rethink our immunity clause.