

# Nigeria's twin scandals

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*By Okey Ndibe*

If Nigeria is to make a serious job of combating money laundering and graft, then the nation had better deal with two fertilizers of corruption. One is the weird notion that the president and governors must not be prosecuted during their tenure even when they commit grave crimes. The other is the farcical idea called "security vote." These twin scandals foster the germination and flowering of corruption.

It is encouraging that a few Nigerian politicians are voicing the opinion that immunity, as currently conceived and enshrined in our constitution, is an odious idea. And that the idea of handing millions of naira to unaccountable politicians, in the name of addressing security problems, is a recipe for pervasive corruption.

Last week in Davos, Switzerland, Mr. Umaru Musa Yar'Adua stood up to be counted as an opponent of the expansive immunity clause. In a parley with representatives of multinational corporations who have convoked the Partnership Against Corruption Initiative, Yar'Adua underscored corruption's dehumanizing effect. Then he told his audience: "One of the raging debates in Nigeria today is the issue of constitutional immunity from prosecution conferred on the president, vice president, governors and deputy governors. It is a raging issue and I have

confidence that the next constitutional amendment will strip these public officials of this immunity and I am personally in support of that."

Amen! It was a bold renunciation of what is clearly a constitutional encourager for quick-fingered fiends who run, and ruin, our lives. Whether Yar'Adua's actions will match his words remains to be seen. But the case for stripping the mask of immunity from congenital looters of the treasury is unassailable.

Section 308 (1) of the Nigerian constitution offers a virtual carte blanche to the country's president and vice president as well as state governors and their deputies. It states that "no civil or criminal proceedings shall be instituted or continued against" any holders of the aforementioned offices. It further prohibits the arrest or imprisonment of any "person to whom this section applies." Finally, it provides that "no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued."

Such blanket immunity is a bad idea anywhere—even in climes where public officials evince a capacity for moral restraint. The cover of immunity is an incentive to absolutism, raids on the public purse, and an invitation to mindless abuse of power. Even if

politicians were saints, it would still make little sense to assure them that their actions, however criminally exceptionable, would never invite prosecutorial scrutiny much less trial.

The doctrine of executive immunity was borrowed, like much else in Nigeria's extant constitution, from America's document. But the difference is telling. Nowhere in the American constitution is the doctrine of immunity explicitly inscribed. Instead, the idea of immunity that attaches to the office of the American president as well as state governors has derived from judicial pronouncements. In other words, the conferral of immunity has flowed from the deliberative wisdom of American judges.

Immunity, it ought to be stated, is not an inherently deplorable idea. In fact, cast in the right light and context, it is an eminently sensible notion. Presidents and governors as well as their deputies shoulder profound public responsibilities. A president is called upon to steer the ship of a nation, and governors to pilot the component states. Those doing such jobs deserve as little (undue) distraction as possible. It makes sense, then, to spare them the plague of capricious legal harassment. It would amount to absolute chaos if every Tunde, Dike and Haruna who was aggrieved with a government policy could drag a president or a governor before a court.

It is judicial contemplation of such weighty questions that led to the evolution, in the U.S., of the principle of immunity. Its object was to shield presidents and governors and their deputies from the nuisance of litigious nemeses. Immunity was then construed narrowly to protect certain public officials

from personal legal jeopardy arising from the legitimate exercise of their constitutional duties.

Since the American judiciary was the parent, so to speak, of immunity, it has also fallen to judges to determine the applicable scope of the doctrine. The result is a prudent, carefully calibrated and narrow conception of immunity. In an essay titled "To Catch a King," Eric Friedman, an American law professor, wrote that "while [American] courts have invented doctrines of official immunity, they have done so only in civil cases, not criminal ones."

Therein lies the difference between the legal, political and philosophical soundness of the American model and the monstrous effect created by the authors of the Nigerian constitution. American judges set out to remove unnecessary burdens that could be placed on leaders entrusted with high public office. The framers of Nigeria's constitution went out of their way to give comfort, and infinite roaming space, to politicians determined to turn their exalted offices into dens of crime.

Since 1999, when Nigeria commenced its latest experiment in feigned democratic governance, the notion of executive immunity has frustrated any effort to hold many corrupt officials accountable. When a serving governor was found to be corrupt, the anti-corruption agencies had invoked the immunity clause as the source of their helplessness. Even when former Governor Ayo Fayose of Ekiti was accused of murder, the nation's law enforcement looked on in stupefaction. What manner of nation would let an accused murderer waltz free—on the absurd ground that he is a governor!

By contrast, consider the experience of Mr. John G. Rowland, a former governor of the State of Connecticut. Rowland was once regarded as a politician on the rise. Pundits even predicted that he had the charms, eloquence and profile to become a national political player. This fantasy was deflated in 2005 when Rowland was prosecuted for trading the influence of his office for approximately \$100,000 in gratification.

Rowland had not taken raw cash; instead, he had accepted such favors as chartered trips to Las Vegas, vacations in Florida and Vermont, and renovations to his lakeside cottage. Officials of the Federal Bureau of Investigation (FBI) did not fold their hands and turn glum faces and wait for Rowland's gubernatorial term to run out. They went after him with aggressive investigative tactics. Rowland resigned—and then was put on trial. Before his sentencing, he stood before the judge and the people of Connecticut whose trust he had betrayed. A portrait of contrition, he admitted to his crimes. He confessed to having cultivated "a sense of entitlement and even arrogance."

His act of self-flagellation earned him little reprieve. If he were a Nigerian governor, he might have been decorated with national honors and declared humble and God-fearing—for pocketing a miserly \$100,000! But an American judge sentenced him to a year in jail—and four months of house arrest afterwards.

That's the kind of harshness Nigerians ought to borrow. Thieving politicians should be given sentences stiff enough to deter others of their mindset. Nigeria has paid, and pays, a steep price for the bestowal of immunity on crass creatures

who presume to be leaders. Given the unconscionable conduct of most of Nigeria's past and present "leaders," it seems clear that the principle of immunity has served to embolden criminals in power. Let's yank immunity out of the constitution, or indemnify the president and governors only against civil prosecution.

Then there is the scandal of security votes. On November 12, 2007, the Punch reported a plea by former Governor Rasidi Ladoja of Oyo State to the effect that the Federal Government should stop allocating security votes to governors. Ladoja, whose gubernatorial term was marked by an unseemly running battle with Lamidi Adedibu, the garrulous self-styled "godfather" of Oyo politics, said his prescription would "reduce corruption."

Ladoja was right on the mark. His feud with Adedibu was actually fueled by the "godfather's" claim on part of the governor's security funds. Why, then, did Ladoja's suggestion seem to have had little or no traction? It was as if the nation's editorial writers and columnists yawned and went to sleep. Which is a shame, for the ex-governor struck at the heart of a major scandal in this country's political history.

Like the doctrine of immunity, the idea of "security votes" is also rooted in a facet of America's diplomatic practice. Each year, the U.S. Congress approves a budget for the Central Intelligence Agency (CIA) that is devoted to espionage and other covert operations. Owing to the surreptitious nature of its assignments, the intelligence agency does not publicly account for its budgetary earmarks. It only briefs a select committee of

Congressmen whose members are sworn to secrecy.

From that understandable idea mutated the Nigerian distortion of entrusting “security votes” to the discretion of particular office holders. In our case, the security funds are handed, not to an agency, but to governors and the president to be spent entirely at their pleasure. What’s worse, we also dressed up this scandalous arrangement in the borrowed robes of the CIA’s covert procedure. We stipulated that no questions may be asked of any governor or president about how the security votes were spent, and on what. To be inquisitive about security votes is to constitute a veritable threat to security!

Bad as it is to put so much cash into the unaccountable hands of the president and governors, the security vote culture has since festered. A few years ago, I learned that local government chairmen and councilors now draw “security votes” as well. How does anybody justify this ludicrous notion? Like many other facile ideas that take root in Nigeria, the only justification is that it makes the nation’s so-called “stakeholders” happy. Politicians versed on gorging at the expense of the populace are only too delighted to be spared any obligation to explain the expenditure of security votes. The pocketing of public funds has never been easier, or more primitive.

It’s about time labor groups, students and voters rose up to insist that this scam be squelched. Security funds ought to be sent to the police or agencies constitutionally charged with securing public safety and national security. If a president and governors are to spend security votes, let’s insist that they

account for where each kobo went—and why.

## Readers' Favorites

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2. The war we ordered is here
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4. Murder Incorporated
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10. A female speaker's manly vices
11. The education of Umar Yar'Adua
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14. Andy Uba Goes to War (1)
15. Andy Uba Goes to War (11): What OBJ taught Uba
16. Why I Take It Personally
17. Andy Uba's highest bid
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### Speaking Engagements

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