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Operation of the Doctrine of Sovereign Immunity in Contemporary World: Nigeria in Focus

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Abstract: In Nigeria, the sovereign power resides in the people, hence, Section 14 (2) (a) of 1999 Constitution provides that: "Sovereignty belongs to the people of Nigeria from whom the government through this Constitution derives all its power and authority." In Nigeria, the people are the sovereign and the people exercise sovereignty through their electoral vote, and by way of constitutional government in accordance with the Constitution which is the express will of the people for the regulation of government and national life. The provisions of the Constitution are binding on all authorities and persons throughout Nigeria. The sovereignty of the people is called constitutional sovereignty. However, people usually confer upon an elected sovereign all the rights necessary to ensure peace and protection for each member of the society. Immunity is the exemption of a person or body from legal proceedings or liability. This paper examined inter-alia, the concept of sovereign immunity, which shields the actions of state in respect of its domestic affairs. This is deskbased research which relies on both primary and secondary sources of data. This paper reveals that the concept is no longer immutable in the contemporary time. The paper rounds up with concluding remarks.

Keywords: Sovereignty, Immunity, Forms, Nigeria, International Law

1. Introduction

One doctrine which some people in positions of power have used to escape judicial sanctions and criminal liability is the concept of sovereign immunity. Sovereign immunity refers to the fact that the government cannot be sued without its consent. There are two forms of sovereign immunity: (a) immunity from suit (also known as immunity from jurisdiction or adjudication) and (b) immunity from enforcement.

Sovereign immunity is an English doctrine of great antiquity originating from the old feudalistic structure of the English society [10, 12, 17].[1]

Inspite of the argument of Dicey that one of the pillars of the Rule of Law is the right of action by the people in the ordinary court against the officers of the State,[3][2] he appears to have overlooked the immunities from suit enjoyed by the Crown [8, 21].[3]

Sovereign immunity in England was anchored on the believe that the King being the great overlord of all and at the apex of the English feudal pyramid, could not be sued either in his own court or in the court of any of his vassals[4]. Similarly, the notion that "the king can do no wrong"[5] [6] implies that no act or omission of the sovereign was open to impeachment, investigation or condemnation on the ground that it was wrongful or tortuous.

[1] Iluyomade, B. O. and Eka, B. U. (1992) Cases and Materials in Administrative Law in Nigeria, Obafemi Awolowo University Press, 1st Ed. P. 237.
Malemi, E. (2016) Administrative Law Cases and Materials, Bemnybooks, 4th Edition; see also Oyewo, O. (2016) Modern Administrative Law and Practice in Nigeria, Lagos: University of Lagos and Bookshop Limited.

[2] Dicey, A. V (1885) Introduction to the Law of Constitution, 10th Ed. p. 193.

[3] Griffith, J. A. G and Street, H. (1969) Principles of Administrative Law, Pithman& Sons Ltd, 4th Ed. p. 251.

[4] Street, H. (1958) Government Liability, p. 1.

[5] Garner J. F. (1963) Administrative Law, p. 215.

The doctrine has since been reformed in England with the passing of the Crown Proceedings Act 1947 which now gives the common man a rights of action against the Crown both in tort and in contract [1, 16].[6]

2. Transplant of the Concept of Sovereign Immunity into Nigeria

By virtue of the Petition of Rights Act 1860, which is a Statute of General Application, no action could validly lie against the Crown unless the Crown had consented and in practice the consent is often refused because it is largely discretionary. This 1860 Act was received into the *corpus-juris* of Nigeria,[7] hence, no action could validly lie against the government in a court of law in Nigeria unless the Attorney General had consented. The injustice suffered by intending litigants under the Petition of Rights Act can be seen in the case of *Garuba-Hamzar and orsv. A. G East Central States*.[8]

The plaintiff was at the mercy of the Attorney General thereby making the Act to become anachronistic and obnoxious.

The promulgation of the Crown Proceedings Act of 1947 marked a turning point in the doctrine of crown immunity. The immense expansion of government activity from the later part of the 19th century onwards made it intolerable for the government, in the name of the crown, to enjoy exemption from the ordinary law.

The Crown Proceeding Act 1947 abrogated the doctrine of sovereign immunity, thereby removing the requirement of consent as required under the Petition of Rights Act. Section 1 of the 1947 Crown Proceeding Act provides thus: "where any person has a claim against the Crown after the commencement of this Act… the claim may be enforced as of right and without the fiat (consent) of his majesty."

Hence, the latin words: "*fiat –justitia- Ruat- coelum"* -meaning let justice be done even if heaven will fall" received a boost in the promulgation of the Crown Proceeding Act 1947 which liberalized right of legal action against the government.

In effect, in England, now the Crown can be sued and will be liable like an ordinary person or a private person of full age and capacity.[9] It should be noted that there is no Nigeria statute equivalent of the Crown Proceeds Act 1947. Hence, even when unfortunate Petition of Rights Act Procedure was abandoned in its country of origin, it remained operative in Nigeria notwithstanding the enactment of the Law Reform (Torts) Act and the Law Reform (contracts) Act of 1961.[10]

However, Uganda was ahead of England with the promulgation of Government Proceedings Ordinance of 1912, so also, Tanzania promulgated the Government Suits Ordinance in 1921, South Africa also has a similar statute. The foregoing statutes further justify the latin phrase "*ibi-jus-ubi-remedium*"meaning when there is a wrong, there should be a remedy. And in the word of Braton "the king himself ought not to be subject to man, but subject to God and to the law, because the law made him king".[11]

3. Comparative Survey of the Operation of the Doctrine of Sovereign Immunity in Selected Jurisdictions

The common law doctrine of Crown immunity which emanated from England as it were found its way into the legal systems. of many other countries in the world, some of which were never colonies of Britain. In America, the doctrine was received, observed and applied with fanatism, however it is baffling how the English doctrine came to be applied in the United States which is a federal state with written constitution unlike Britain which has monarchical institutions with unwritten constitution and conventions.[12] Justice Frankfurter an America jurist posited that sovereign immunity is an anachronistic survival of monarchical privilege.[13] By virtue of the Federal Tort Claims Act of 1946 promulgated in America, the doctrine of state immunity received a deadly blow. The Act made the Government liable in tort claims like any other private individual. And in 1961, the Supreme Court of California in the case of *Muskopf v Corning Hospital Distric*[14] *t* held that the state immunity in fact must be discarded as oppressive and unjust. Besides, U.S Supreme Court *in United States v Nixon*[15] allowed an action against President Nixon personally. The U.S. Supreme Court in the earlier case of *Chilson v Georgia*[16] radically held that it was legitimate to institution an action against the state.

In France, the French legal order according to Prof. Schwartz has graduated from the "state immunity" to "state liability" in all case of administrative wrong against the citizen.[17] In Jamaica, the doctrine of state liability has been long recognized as was manifested in the case of *Musgrave v Pulido***.**[18]

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[6] Oluyede, P. A. (1995) Nigeria Administrative Law, p. 427. Also, Amusa, K. O. (2004) "Advancing Human Right Through the International Criminal Courts: Problems and Prospects" in Ibidapo-Obe, A. and Yerima, T. F. (eds.) international Law, Human Rights and Development, Essays in Honour of Professor Akin Oyebode, Ado-Ekiti; PETOA Educational Publishers.

[7] Section 3 Petition of Rights Act, CAP 149 LFN1958 as amended by 1964 Act thus: "all claims against the government of the federal or against any ministry or department thereof, …May with the consent of the Attorney General of the Federation be preferred…" In traditional American history, the courts supported the traditional view that United States could not be sued without congressional authorisation, as exemplified by *Chisholm v Georgia, (1793), 2 U.S {2 Dall.} 419; Cohens v Virginia [1821], 19 U.S [6Wheat] 264*. This immunity applied to suits filed by states as well as individuals, as exemplified by *Kansas v United States [1906]204 U.S.331*.

[8] *Garuba Hamzar and ors v A. G East Central State (1975)* the plaintiff had a claim of N340.000 to collect from the government of East Central States. The plaintiff commenced an action through Petition of Right but consent was refused by the Attorney General.

[9] Section 2 Crown Proceeding Act 1947.

[10] G. D. Oke: Sovereign Immunity and its Limitation. P. 8.

[11] Wade: Administrative Law 5th Ed. P. 698.

[12] Iluyomade and Eka*: op.cit*. p. 238.

[13] 359 p. 2d 457 cap (1961).

[14] 359 p 2d 457 cap (1961).

[15] United States v Nixon (1979) 41 L. Ed. 2nd 1039, (1890).

[16] 2 dall 419 (U.S) 1973, *Hans v lousian* 134 us.

[17] Iluyomade and Eka: *op.cit.* P. 238. Thus, in France, the state will seek to repair the damages caused by its wrongful acts and will not attempt to avoid liability by taking refuge behind the fictitious doctrine of sovereignty.

[18] (1879) 5, APP. Case 102 where the Governor of Jamaica who ordered the

In the Republic of Ireland, the doctrine of state immunity also reared its ugly head.[19] Also Schwatz said in addition that "why the English doctrine of sovereign immunity came to be applied to the United States is one of the mysteries of legal evolution"

The Supreme Court of Ireland in a landmark case of *Macaulay v The Ministry of Post and Telegraph*[20] declared that the Irish Act of 1924 was repugnant to section 40 of the Irish Constitution.

In Africa today, many countries have embraced the doctrine of state liability and discarded the oppressive doctrine of state immunity. It should be noted also that this doctrine of state immunity flourishes better under military dictatorship, fascism and other oppressive regime such as the Nazi Germany.

4. Operation of Sovereign Immunity in Nigeria: Before and After 1979

As earlier on said, the existence of the doctrine in Nigerian legal system could be attributed to colonial heritage. The doctrine of state immunity was transplanted to Nigeria by the British colonial government.[21]

After independence in 1960, this doctrine continued to rule our life as a county, hence, no action could lie against the state (government) without the fiat or consent of the Attorney General which consent was often refused, thereby leaving the citizens without remedy as against the maxim *ibu-jus-ubi-remedium*. Worse still, there was no Nigeria equivalent of the Crown Proceeding Act of 1949 which liberalized right of legal action against the government.

In summary, the situation in Nigeria before 1979 was that the state could not be validly sued both in tortuous and contractual claims. The foregoing is buttressed by the celebrated case of *Ransome-kuti V A. G. Federation and ors*[22] wherein, the plaintiff's appellants brought action against the defendants jointly and severally for damages suffered when soldiers set fire to the plaintiffs two-storey building and other properties, and for assault and battery of the plaintiffs.

Apart from invoking the fundamental rights provisions of the 1963 constitution, it was a claim for vicarious liability of the federal government of Nigeria for the wrongful acts of its servants and agents- the soldiers.

The learned counsel for the defendants submitted that the federal government of Nigeria could not be sued and that a petition did not lie for tort. The claim was dismissed by the trial court. On further appeal, the Supreme Court dismissed the appeal and held, that the Petition of Rights Act CAP 149, 1958 as amended preserved the immunity of the state. This judgement herein confirmed the fact that government was above the law.

In contract, before 1979 the government could not be held liable, the case of *Garuba-Hamazar and ors v A G. East Central State*[23] is very instructive. The plaintiffs had a contractual sum of N390.000 to collect from the defendant. After repeated demands by the plaintiff, the defendant failed to pay. The plaintiff commenced an action via petition of right. By a letter dated 27th May, 1975 the Senior Registrar of the High Court of Enugu wrote to the plaintiff thus: "*I have to refer to your letter of 17th –May, 1975 and to inform you that the honourable Attorney General has refused to give consent to you to prosecute the claim"*

Unfortunately, the refusal is final. From the foregoing, it could be deduced that the period before 1979 was marked and characterized by oppression and deprivation of the citizens right of access to court and justice through statutory usurpation. Unfortunately, up-till today, the Petition of Rights Act and Laws are yet to be expressly repealed by statute in Nigeria.

Interestingly, the promulgation of the constitution of the Federal Republic of Nigeria 1979 marked a significant turning point from the anachronistic doctrine of state or sovereign immunity.

The Petition of Rights Act and its equivalent laws in the states were in force in Nigeria until 1st October 1979 when the statutes became null and void for being contrary to the provisions of the 1979 Constitution which came into force on that day.[24] The Petition of Rights Act was contrary to many provisions of the 1979 constitution.

Every Nigerian constitution since 1979 has maintained the abolition of the Petition Rights Act and Laws. 1979 Constitution came to pronounce death sentence on the doctrine of state immunity, and today (Petition of Rights Act) would have breached, Sections 6, 17, 36, and 46 of the 1999 Constitution, reproduced below:

Section 6 (1)[25] provided thus:

The judicial powers of the federal shall be vested in the courts

Section 6 (6) (b)[26] provides thus:

The judicial powers vested in the courts shall extend to all matters between person, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to civil rights and obligations of that person.

Section 17 (2) (c)[27] provided thus:

The independence, impartiality and integrity of court of law, and easy accessibility thereto shall be secured and maintained.

Section 36 (1).[28]

seizure of a ship chartered by the plaintiff without any legal justification was held personally liable in damages for trespass.

[19] Ministers and Secretaries Act (Irish Act) 1924 required that the fiat or consent of the Attorney General be obtained before any court action is taken against a minister of state.

[20] (1964) IR no 400. Note that Section 40 Irish Constitution in similar to section 33 and 46 of 1979 and 1999 Constitution of Fed. Rep of Nigeria.

[21] Section 1 Nigeria Independence Act 1960.

[22] (1985) 2NWLR pt. 6 p. 211 SC; *Williams v AG of Nigeria* (1932) 11NLR 49 where the Crown was held liable for therecovery of property tortuously seized by the Crown; *Olasupo andors v AG in Nigeria and ors* (1961) 1 ANLR. 84.

[23] Garuba Hamazar and ors v AG East Central States (1975) ENR.

[24] EseMalemi, op.cit p. 258.

[25] Section 6 (1) 1979 and 1999 Constitution Fed. Rep. of Nigeria.

[26] Section 6 (6) (b) 1979 and 1999 Constitution of Fed. Rep of Nigeria.

[27] Section 17 (2) (e) 1979 and 1999 Constitution Fed. Rep. of Nigeria.

[28] Section 33 (1) 1979 and section 36 (1) 1999 Constitution Fed. Rep. ofNigeria.

In the determination of civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

In view of the above laudable constitutional provisions among others, the doors and windows of the courts are now wide opened to hear and determine the claims of any aggrieved party.

Today, the doctrine of state liability in tort as well as contract is beyond controversy. There are plethoral of authorities to show that the post 1979 era witnessed a judicial radicalism and revolution wherein the court did not hesitate in appropriate cases to pronounce the state liable in torts[29] and in contract.[30]

5. Immunity of President and Governors

Section 308[31] of 1999 Constitution provides immunity from legal action in a personal capacity, for the President and Vice-President of the Federation and for the Governor and the Deputy Governor of a State respectively.

During their tenure in office, no civil or criminal proceedings can be brought or continued against any of the public officers (mentioned in Section 308) in which relief is sought against him in his person capacity. Hence, any suit pending against any of these public officers cannot be continued during his term of office[32] such suit is either adjourned *sine-die* or settled amicably.

In the Supreme Court case of *Abacha v Fawehinmi*,[33] per Uwaifo J. S. C in his concurring judgement put the *raison-de-tre* of immunity granted these officers of state thus:

The immunity is to protect such a person from the harassment of his person while in office for his action done in private capacity before or during his tenure in office.

As a matter of public policy, the principle of personal immunity of the holders of the offices of the head of the state and state governors during their tenures, is perfectly consistent with long standing traditions all over the world.[34]

A learned author, Professor Ben Nwabueze also remarked thus:

The protection is essentially for the office, not for the individual as such. It is the majesty and dignity of the nation that is at stake. To drag an incumbent president to court or expose him to the process of examination and cross-examination cannot but degrade the office. The interest of the nation in the preservation of the dignity of its highest office should outweigh any objection to the immunity [14]*".*[35]

6. Limitations to Sovereign Immunity Under Section 308 1999 Constitution

This constitutional immunity does not protect these officers of state forever. It only operates when such public office holder is in office. The immunity only suspends the enforcement of liability by civil or criminal proceeding until the time when office is vacated.[36]

The question whether police investigation is part of criminal proceeding as envisaged under section 308 (1)(a) of the 1999 Constitution has been answered in the negative affirmation.[37]

It has also been held further in *Fawehinmi v Inspector General of Police*[38] that a governor or any person holding office under section 308(1) of the 1999 constitution can be investigated without a breach of the said section.

The immunity enjoyed by persons holding office under section 308 (1)[39] of 1999 constitution does not protect the holder of such office from impeachment.

Hence, impeachment proceedings can be initiated against the public officers under consideration.[40]

Also, the state officers mentioned under s. 308(1) of the 1999 constitution are not immunized from election petition.[41] These state officers can be sued in their official capacity or may be joined as a nominal party.[42] These public officers who have immunity under the constitution may nevertheless sue other persons.[43] The constitution expressly stated that the governor and president cannot be sued in his personal or private capacity nevertheless the constitution is silent on whether or not a governor or president can sue in his personal or private capacity. Since the governor or president is not expressly incapacitated by any provision of the constitution, then they can sue in their personal or private capacity.

The doctrine of sovereign immunity does not cover

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[29] *Shugaba v Minister of Internal Affairs (1981) 2NCLR 459* where the courtawarded N350.000 as damages against defendants; Gov. *Lagos state v Ojukwu (1986) 1NWLR pt. 18 p. 621 SC.*

[30] *GreecoConstruction and Engineering Associate ltd v Governor of ImoState (1985) 3 NWLR pt. 11 p. 71* where the appellate court held that the plaintiff was entitled to the payment of the sumclaimed without any fiat or consent, Balogun v AG Federation (1986) 5NCLR 385 HC; Bello v Att. Gen. Oyo State (1986) 5NWLR pt. 45 p. 828 SC.

[31] Section 308 1999 CFRN which is similar to section 267 1979 Constitution and section 161 1963 Constitution.

[32] Governor Bola Tinubu v IMB securities (2004) 16 NWLR pt. 740. P. 670.

[33] (2000) 6 NWLR pt. 228 p. 351- 352. [34]Iluyomade and Eka: op.cit. p. 263.

[34] NwabuezeB. (1983) Military Rule and Social Justice in Nigeria, Spectrum Law Series. P. 59.

[35] Ibid. p. 60.

[36] The incumbent become amenable to civil and criminal action after he ceases to hold office.

[37] *GaniFawehinmi v Governor Bola Tinubu (2000) 7 NWLR pt. 665* where it was held that the police can investigate allegations of crime against the respondent the Governor of LagosState even as an incumbent Governor while in office but that the actual prosecution of same cannot come up until he vacates office.

[38](2002) 10 NSCQR 826 ratio 11.

[39] 1999 Constitution, Fed. Rep. of Nigeria.

[40] Section 143 and 188, 1999 Constitution provides for impeachment of the president and governor respectively. The constitution ousted the jurisdiction of court to question impeachment proceeding of legislature.

[41] *Buhari v Obasanjo (2004) 1WRN1; Egolum v Obasanjo (2004) 1WRN 87; Ige v olunloyo (2004) 2WRN; Umana v Attah (2004) 4WRN 117*. Note that election petition is *sui-generis* (neither a civil nor criminal action) section 272 (1) and 285 1999 Constitution draws a distinction between civil *proceeding and election petitions.*

[42] *Section 308(2) provides for this exception, Adesanya v President of Federal Republic of Nigeria (1982)2 NCLR358; Att.Gen Ogun State and Ors v Att.Gen Federation and ors (1982)3 NCLR 166 SC.*

[43] *Bisi Onabanjo v Concord Press Nigeria Ltd (1981)2 NCLR 399 HC.*

independent statutory bodies and parastatals.[44]

7. Other Forms or Variants of Immunity

Apart from the public officers referred to under Section. 308(1) of the Constitution, the following categories of people also enjoy immunity from legal actions:

Judges[45] are agents of the state and as such they enjoy special immunity from action in tort for act or omission committed in the course of performing their judicial functions. Provided they act in good faith and incorruptly. Diplomats[46] too enjoy special immunity, diplomats are immuned to legal process and legal liability in their host country. Public bodies or statutory authoritiesare usually sued after a Pre-action Notice has been on them.[47] Also, generally, Public Officers Protection Act[48] and Laws of the various States offer three months limitation period within which to sue and prosecute an erringpublic officers.

In view of the limitations earlier on discussed it should be clear by now that sovereign immunity is not absolute. Even under the traditional set up the King's powers are subject to checks and balances.[49]

It is necessary to distinguish between the state and agents of state. This is because, at times, both are sued jointly while at times only the state is sued and held vicariously liable for the deeds and misdeeds of the agents. State for this purpose means the government at the Federal, State and even Local level, while agents mean individual administrators, corporations, departments and other statutory bodies through which function of the state are performed.

8. Sovereign Immunity Under International Law

The doctrine of sovereign immunity according to the US Supreme Court in *Nevada v Hall,*[50] is an amalgam of two quite different concepts: (a) one applicable in the sovereign's own national courts and (b) the other applicable in the courts of another sovereign. Even though the U.S Supreme Court overruled *Nevada v Hall*, (supra), in *Franchise Tax Board of California v Hyatt,*[51] the definition in *Nevada v Hall* still stands. This principle that a state may claim immunity from legal action in the courts of another state in respect of strict government activities carried on in that other state was laid down in *The Parliament Belge [5].*[52]

Sovereign immunity or state immunity is a rule of customary international law, and a legally binding principle. If not bound by detailed treaty obligations, states are free to frame and define the scope and limits of sovereign immunity within their legal orders as long as they observe the boundaries set by other principles of international law.[9][53] Example of such restrictive sovereignty clause can be found in the constitutions of the Federal Republic of Italy, Germany, France etc. Article II of the Italian constitution provides that; *"Italy accepts subject to reciprocity from other states, such limitations of its sovereignty as are necessary for the establishment of the system of securing mutual peace and justice among nations of the world".*[54]

Until the end of the 19th century, state immunity was absolute immunity [2, 7, 13].[55] However, international trade and the process of globalization have led to the development of the doctrine of restrictive immunity under which a foreign state has immunity for decisions *iureimperii* (i.e. public acts of states) not *iuregestionis* (i.e. private acts of states)[18, 19, 22].[56] There appears to be little good reason why states should never have to face the consequences of their actions, whereas private individual certainly did.

While a state and its government may continue to enjoy immunity from civil and in some cases, criminal law, the position in relation to Heads of State and government officials who commit serious human rights violationsor international crimes has long been different [15, 20].[57] Article 7 of the Charter of the Nuremberg Tribunal expressly provides that official position is irrelevant to criminal liability and punishment. Under Articles 26 and 27 of the Charter, the Tribunal was empowered to impose death penalty or any other punishment as it shall deem just [4].[58]

The Nuremberg Tribunal's Charter expressly and flatly

[44]Such as the Nigeria Railway Corporation; Nigerian BroadcastingCorporation, the Local government, the State government, the Federal government ministries.

[45]*Egbe v Adefarasin* (1985) 1NWLR pt. 3,549 SC*, Okeke v Baba* (2000) 3NWLR pt. 650 p. 644. Judicial immunity has limits.

[46]Diplomatic immunity and privileges Act cap 99 LFN1990 Noah v the British High commissioner to Nigeria (1980) ANLR 208.

[47]Ese Malemi: op. 250.

[48]Obiefuna v Okeye (1961) All NLR 537, Atiyaye v Perm-Sec of Borno State (1990)1 NWLR pt. 129 p. 728. Note that Public officers protection act/ laws do not protect against criminal prosecution- Yabugbe v Commissioner of Police (1992) 4 NWLR pt. 234 p. 152 sc.

[49]F*or instance, in old Oyo empire the King was above the law, except in certain exceptional in stances when the King may be removed especially by the Council of King-Markers. In pursuance of the general will of the people.in old Oyo Kingdom a king may be asked to open calabash after vote of no confidence has been passed on him.see Ese- Malemi, op. cit. P. 252.*

[50](1979) 440 US 410, 414.

[51](2019)587 US.

[52](1880) 5 PC 197; Elias, T. O (1983) "Sovereign Immunity and Commercial Transactions", in The International Court of Justice and Some Contemporary Problems, Springer, Dordrecht, pp167-179.

[53]Jasper, F. (2010) "Sovereign Immunity: Rule, Comity or Something Else" European Journal of International Law, vol. 21, issue4, pp. 853-881.

[54]Article II of Italian Constitution.

[55]Claire de Than & Edwin Shorts, "International Criminal Law and Human Rights", Pub by Sweet & Maxwell, 2003, P. 51. See also The Porto Alexandre (1920), P. 30, CA. See also T Graditzky, "Criminal Responsibilityfor Violation of International Humanitarian Law Committed in Non-International Armed Conflicts," IRRC, No 322, March 1998, P. 29. See also T. Meron, "International Criminalization of Internal Atrocities", A. J. I. L. 1995, P. 554.

[56]Xiaodong, Y. (2001) "State Immunity outside the State Immunity Act", The Cambridge Law Journal, Vol. 60, No. 1, pp17-20; Schmitthoff, C. M. (1958)"The Claim of Sovereign Immunity in International Trade Law", International and Comparative Law Quarterly, Vol. 7, No. 3, pp452-467; Sarzo, M.(2013) "The Dark Side of Immunity: Is There Any Individual Rights for Activities Jure Imperii?" Leiden Journal of International Law, Vol. 26, Vol. 1, pp. 105-125.

[57]Oddenino, A. and Bonetto, D. (2020) "The Issue of Immunity of PrivateActors Exercising Public Authority and the New Paradigm of International Law", Global Jurist, Vol. 20, No. 3.; Schmitthoff, C. M. (2020)"The Nineteenth Century Doctrine of Sovereign Immunity and the Growth of State Trading", Denver Journal of International Law and Policy, Vol. 2, No. 2.

[58]Edoardo Greppi: "The Evolution of Individual Criminal Responsibility Under International Law" Pub. in International Review of the Red Cross, (IRRC) No 835, PP. 531 – 553; See Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14th November, 1945 – 1st October.

rejected any such immunity argument, as did the ICTY (International Criminal Tribunal for Yugoslavia), ICTR (International Criminal Tribunal for Rwanda) and the ICC Statute (International [59] Criminal Court), etcetera. Many National Courts have followed suit in affirming individual responsibility for international crimes regardless of the identity of the suspect.

Accordingly, a long list of heads of states, heads of governments, foreign ministers, etceterahave been prosecuted for various international crimes. The Treaty of Versailles stated that an International Tribunal was to be set up to try Kaiser Wilhelm II of Germany, but in the event however, Kaiser was granted asylum in Netherlands.[60] Adolph Eichmann, the head of the Jewish office of the Gestapo was responsible for administering Hitler's "final solution". He was arrested by Israeli secret agents in Argentina in 1960 and abducted to Israel where he was charged with war crimes, crimes against humanity and against the Jewish race. He was convicted and sentenced to death by Israeli Court- Jerusalem District Court [60]. Charles Taylor was tried before Special Court for Sierra-Leone (SCSL) for crimes against humanity and war crimes. The SCSL also indicted Chief Samuel Hinga Norman a Deputy Minister of Defence in Sierra-Leone [23].[61] On the 16th October 1998, the immunity of Heads of State was further shaken when General Augustus Ugarte Pinochet a serving Chilean Head of State was arrested in London on the strength of a warrant issued by the Spanish Court.[62] As it were, Pinochet's immunity even in Chile had been destroyed. While standing trial for various violations of international humanitarian law, Augustus Pinochet died in Santiego, Chile's capital city on the 10th December, 2006. Saddam Hussein of Iraq was prosecuted, convicted and sentenced to death on December 27, 2006 by the Iraq Special Tribunal for crimes against humanity, torture, war crime, genocide, committed during his 26years misrule[63] Saddam was hanged on 30 – 12 – 2006.[64]

The arrest and subsequent remand in London prison of Diepreye Alamieyeseigha who was then an incumbent governor of Bayelsa State of Nigeria for money laundering further corroborates the arguments of this paper that the concept of sovereign immunity under international law no longer hold water particularly with respect to crimes against humanity [11].[65]

[59]See the Text in the Treaties of Peace 1919 – 1923, Vol. 1, Carnegie Endowment for International Peace, New York, 1915; http://en.wikipedia.org.

[60]"The Trial of Adolf Eichmann: Fifty Years Later" available @ www.npr.org, https://www.britannica.com>Adolf

[61]Zsuzsanna –Deen – Racsmany "Prosecutor V Charles Taylor: The Status of the Special Court for Sierra-Leone and Its Implications for Immunity*", Leiden Journal of International Law (2005) PP. 299 – 338;* See the decision of SCSL on immunity of Taylor from its jurisdiction, Taylor (SCSL) 2003-01-1) Appeal Chamber, 31 May, 2004, available at http://www.scsl.org; Prosecutor V Samuel Hinga Norman, Case No. SCSL 2004, 14AR-29E, Appeals Chambers.

[62]See The United Kingdom Case: In Re-Pinochet, R V Bow Street Magistrates Ex-parte Pinochet Ugarte No. 3, 1999.

[63]See The Nation Newspaper, Thursday 28, December, 2006, P. 42.

[64]The PUNCH, 31st December, 2006, the PUNCH 1st& 2nd January, 2007, TELL Magazine, January, 2007.

[65]Prof. Ijalaye, D. A. The PUNCH, October 10, 2005 P. 73 was of the well considered view that money laundering would qualify for a crime against humanity. See also, Gani Fawehinmi: "Alamieyeseigha has no immunity outside Nigeria". The PUNCH, Monday October 3, 2005, P. 46.

9. Conclusion

From the foregoing analysis, one thing is very clear, and it is the fact that the government in Nigeria is suable and not above the law, the era of absolute immunity is far gone. The court decisions in above cases of Pinochet and Saddam Hussein among others changed the law and opened the eyes of the law. The decision in the Trendex case which disallowed sovereign immunity from being a shield against commercial liability had gone full circle to recognise that irresponsible leadership or leaders who traumatise, torture, oppress and maltreat their subject and others can be held accountable anywhere in the world, even if their government or successors seek to protect them. Hence, there is prevalence of waiver of Sovereign Immunity Clauses in International Contacts, for instance the there was a clause waiving Nigeria's sovereign immunity in the 2008 rail construction contract executed between the Federal Government of Nigeria and the Export-Import Bank of China. This waiver clause does not amount to ceding Nigeria's sovereignty, rather it amounts to waiver of immunity of from jurisdictions of courts in the event that Nigeria defaults in repaying the loan.[66] However, wilfull disobedience of court orders is prevalent in Nigeria. As the wind of positive change continues to blow on this area of the law, one hopes that Nigerian judicial attitude too will continue to change progressively according to global trend. Finally, it is hoped that Nigeria will promptly become a signatory to the United Nations Convention on Jurisdictional Immunities of States and their Property2005. At the supranational level, the notion of sovereign immunity has already raised the sceptre of a new legal order based on a European super state with the potential to transcend the traditional views of state sovereignty.[67]

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