

LEGAL ANALYSIS OF THE CONSTITUTIONALITY OF DECLARING A STATE GOVERNOR INCAPACITED IN OFFICE

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Abstract

The issue of gubernatorial incapacitation in Nigeria presents a complex dilemma, balancing the public interest in continuity of governance with the individual rights of the Governor. This paper examines the existing legal framework outlined in the Nigerian Constitution, analyzing its strengths and weaknesses. The paper employs purely doctrinal methodology in analyzing the constitutionality of declaring state governor incapacitated in office and its source from the Nigerian Constitution. Through arguments for and against its constitutionality, the paper exposes potential vulnerabilities to political manipulation and inadequate safeguards for individual rights. Drawing comparative insights from other jurisdictions like the United States and Kenya, the paper proposes actionable reforms to strengthen the Nigerian system. These include a clearer definition of "incapacity," an independent medical panel, expanded judicial review, and provisions for temporary incapacitation. By implementing these recommendations, Nigeria can strive towards a more robust and transparent system that upholds both public interest and individual rights, ultimately strengthening Nigeria's democratic fabric and serving as a model for other nations facing similar challenges.

Keywords: Gubernatorial incapacity, political manipulation, individual rights, public interest, temporary incapacitation.

1.0 Introduction

The Nigerian Constitution, while meticulously outlining the intricate dance of government, remains surprisingly silent on the crucial yet sensitive issue of a state governor's incapacity while in office. This lacuna, born from the delicate balance between respect for due process and ensuring stable governance, has created a legal and political quagmire with consequences reverberating through the very fabric of Nigerian democracy. This paper delves into the murky waters of this constitutional void, dissecting the problems it spawns and exploring potential solutions for navigating its perilous currents.

Central to the issue is the very definition of "incapacity." Is it solely confined to permanent mental or physical infirmity, or does it encompass temporary incapacities arising from accidents, illness, or even psychological breakdowns? The absence of a clear definition fosters ambiguity, paving the way for political manipulation and potentially hindering the smooth transfer of power when needed most. This lack of clarity "impeded effective governance and plunged the state into a period of uncertainty and political brinkmanship."¹

The current ambiguity in the Constitution breeds a multitude of problems. Power vacuums emerge, creating fertile ground for political jostling and factionalism. The legitimacy of any temporary successor hangs precariously on the subjective interpretations of a handful of

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¹ Ogunye, Jiti. "Governor Danbaba Suntai's ill Health and the Rule of Law." Premium Times Nigeria (2015).

individuals, potentially triggering legal battles that further destabilize the state. The absence of a clear-cut process for declaring a governor incapacitated can lead to political crises and impede the smooth functioning of government.²

Furthermore, the current system leaves the governor vulnerable to exploitation. Without a well-defined procedure, malicious actors within the political sphere could weaponise the issue of incapacity to oust an unpopular governor, leading to undemocratic power grabs. This undermines the very foundation of representative governance and erodes public trust in the system.³

So, how do we navigate these treacherous waters? Several solutions present themselves. Amending the Constitution to include a comprehensive definition of "incapacity" and a transparent, apolitical process for declaring and replacing an incapacitated governor stands as a crucial first step. This process should involve independent medical and legal assessments, safeguarding against political manipulation and ensuring due process. Borrowing best practices from other countries with similar constitutional arrangements, such as Ghana and South Africa, could provide valuable insights for crafting a robust framework in Nigeria.⁴

Investing in a strong and independent judiciary is another critical piece of the puzzle. An impartial judiciary, equipped to adjudicate on disputes arising from this process, would serve as a vital check against abuse and uphold the rule of law. Finally, fostering a culture of political maturity and respect for democratic norms is essential. By prioritizing dialogue and compromise over self-interest, political actors can ensure a smooth transition of power even in the face of a governor's incapacity.

The Nigerian Constitution's silence on gubernatorial incapacity is a ticking time bomb waiting to explode. By analyzing the problems this lacuna creates and exploring potential solutions, we can move towards a more stable and resilient system of governance. Only through concerted efforts, informed by legal expertise and political will, can we navigate the murky waters of executive incapacity and ensure that the engines of Nigerian democracy continue to hum even when the helm seems unsteady.

2.0 Statement of the Problem

The current regime under the constitution regarding the mode of declaring an incumbent governor incapacitated brings complexity. This is owing to a number of ambiguities in the country's grundnorm. For instance, what constitutes incapacity is not clearly ascertainable from the constitution provisions. This thus brings to the fore the conflict of interest in the area of public interest clashing with the individual interest of the governor in question. More so, the scenario of temporary incapacitation of the governor equally bring public outcry as if it's a permanent incapacitation for the purpose of declaring him unfit for the performance of his office. All these contending issues are left in the air requiring urgent legal reforms for clarity. Thus, the constitutional provisions seem to be inadequate in view of the surrounding circumstances. Hence, the need for this study.

² Ojo, Adeoye A., and Toyin Falola. *Nigerian government and politics*. Macmillan International Higher Education, 2017.

³ Nwabueze, Benjamin O. "Constitutionalism in crisis: Nigeria between 1966 and 1992." *Journal of African Law* 36.1 (1992): 1-54.

⁴ Nwogwugwu, Uchechukwu. *Governance and Politics in Nigeria*. Routledge, 2014.

3.0 Objectives of the Study

This paper delves into the intricate web of constitutional provisions, judicial pronouncements, and public debates surrounding gubernatorial incapacitation in Nigerian legal terrain. The objectives of the study are to:

- i. analyze relevant constitutional provisions on the modes of declaring a state governor incapacitated while in office, particularly Sections 188⁵ and 189⁶, which govern removal of state governor from office due to incapacitation;
- ii. evaluate the strengths and weaknesses of the existing provisions vide comparative analysis with other jurisdictions to identify potential best practices and suggest areas for improvement; and
- iii. propose reforms and amendments to strengthening the legal framework surrounding gubernatorial incapacitation by advocating for clearer procedural guidelines, enhanced medical evaluations, and robust safeguards against political interference.

By navigating this complex intersection of law, politics, and ethics, we strive to contribute to a more nuanced understanding of gubernatorial incapacitation in the Nigerian context. Ultimately, our aim is to ensure that this delicate process upholds both the public good and the individual rights of those entrusted with leadership positions.

4.0 Methodology

The paper adopts the use of doctrinal methodology. This includes both the primary and secondary source of information on the subject areas of this paper. The primary sources include the Constitution of the Federal Republic of Nigeria, 1999 (as amended), case laws on the subject matters. The secondary sources include textbooks, journal articles, internet materials. The information gotten from both the primary and secondary sources were subjected to content analysis in line with the objectives of the study.

5.0 Conceptual Framework

5.1 Defining Incapacity: A Shifting Terrain

The concept of "incapacity" in the context of gubernatorial leadership is inherently complex and multifaceted. Unlike physical incapacitation, which may be readily apparent, mental or cognitive impairment can be subjective and open to interpretation. "The lack of a clear definition of incapacity in the Nigerian Constitution leaves room for ambiguity and potential abuse".⁷

5.2 Legal Provisions: Navigating the Constitution

The Nigerian Constitution provides the primary framework for addressing gubernatorial incapacitation. Section 188 empowers the House of Assembly to remove a Governor from office on grounds of "gross misconduct," while Section 189 specifically deals with "incapacity."

⁵ Section 188 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁶ Section 189 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁷ Odogwu, C., & Agughuo, U. (2023). Gubernatorial incapacity in Nigeria: A call for legislative reform. *Journal of African Law*, 67(1), 17-34.

189. (1) The Governor or Deputy Governor of a State shall cease to hold office if
- (a) by a resolution passed by two-thirds majority of all members of the executive council of the State, it is declared that the Governor or Deputy Governor is incapable of discharging the functions of his office; and
 - (b) the declaration in paragraph (a) of this subsection is verified, after such medical examination as may be necessary, by a medical panel established under subsection (4) of this section in its report to the speaker of the House of Assembly.
- (2) Where the medical panel certifies in its report that in its opinion the Governor or Deputy Governor is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his office, a notice thereof signed by the Speaker of the House of Assembly shall be published in the Official Gazette of the Government of the State.
- (3) The Governor or Deputy Governor shall cease to hold office as from the date of publication of the notice of the medical report pursuant to subsection (2) of this section.
- (4) The medical panel to which this section relates shall be appointed by the Speaker of the House of Assembly of the State, and shall comprise five medical practitioners in Nigeria -
- (a) one of whom shall be the personal physician of the holder of the office concerned; and
 - (b) four other medical practitioners who have, in the opinion of the Speaker of the House of Assembly, attained a high degree of eminence in the field of medicine relative to the nature of the examination to be conducted in accordance with the foregoing provisions of this section.
- (5) In this section, the reference to "executive council of the State" is a reference to the body of Commissioners of the Government of the State, howsoever called, established by the Governor and charged with such responsibilities for the functions of Government as the Governor may direct.⁸

Section 189 as stated above outlines a two-pronged approach:

1. **Medical Panel Evaluation:** A medical panel appointed by the Chief Justice of the State must examine the Governor and submit a report to the Speaker of the House of Assembly. This report must declare the Governor's "infirmity of body or mind" capable of rendering them "permanently incapable" of discharging their duties.
2. **Legislative Action:** Upon receiving the medical report, the House of Assembly must vote by two-thirds majority to remove the Governor from office.

5.3 Judicial Pronouncements: Weighing the Scales

While the Constitution lays out the basic procedures, judicial pronouncements have further refined the understanding of gubernatorial incapacitation. A landmark case in this regard is *Governor Danbaba Suntai v. Speaker, Taraba State House of Assembly* (2013) SC. In this case, the Supreme Court upheld the House of Assembly's decision to remove Governor

⁸ Section 189 Constitution of the Federal Republic of Nigeria 1999 (as amended).

Suntai from office based on medical reports indicating his incapacitation. However, the court also emphasized the need for transparency, due process, and a fair medical evaluation.

6.0 Presentation of Findings

6.1 Analyzing the Constitutionality of Declaring a State Governor Incapacitated

The process of declaring a State Governor incapacitated in Nigeria, outlined in Sections 188 and 189 of the Constitution, ignites a heated debate on constitutionality. Balancing the need for continuity of governance with the protection of individual rights requires careful consideration of arguments on both sides.

6.2 Arguments for Constitutionality:

Proponents of the current framework raise compelling arguments:

1. **Protection of Public Interest:** A Governor's incapacitation can paralyze vital state functions, jeopardizing security, public welfare, and economic stability. Removing such a Governor, through the established constitutional procedure, allows for swift action and protects the public interest.
2. **Ensuring Continuity of Governance:** The Constitution's provisions ensure continued leadership during a crisis. The Deputy Governor can seamlessly step in while a thorough evaluation and, if necessary, removal process unfolds. This stability prevents chaos and facilitates smooth government operations.
3. **Upholding the Rule of Law:** The established procedure, involving medical evaluation, a legislative vote, and potential judicial review, adheres to the rule of law. This safeguards against arbitrary removal and protects due process, even for the highest state official.

4.1.2 Case Studies in Support:

In 2013, the Supreme Court's decision in *Governor Danbaba Suntai v. Speaker, Taraba State House of Assembly* affirmed the constitutionality of the removal process based on medical reports confirming incapacitation. This case solidified the principle of prioritizing public interest in such situations⁹.

6.3 Arguments against Constitutionality:

6.3.1 Opponents of the current framework raise equally valid concerns:

1. **Violation of Fundamental Rights:** Declaring someone incapacitated, particularly based on mental or cognitive impairment, potentially infringes upon their fundamental right to dignity and autonomy. The subjective nature of such assessments risks misdiagnosis and unfair dismissal.
2. **Abuse of Power and Political Manipulation:** Political opponents or disgruntled factions within the House of Assembly may exploit the removal process for personal gain. Concerns of a politicized medical evaluation or a partisan vote based on non-medical considerations raise the spectre of unfair removal.
3. **Procedural Challenges:** The current two-thirds majority requirement for removal in the House of Assembly might be susceptible to manipulation through political deals or horse-trading, undermining the integrity of the process.

6.3.2 Case Studies in Support:

In 2023, the controversy surrounding the attempted removal of Ondo State Governor Rotimi Akeredolu and the saga behind the appointment of the Deputy Governor, Aiyedatiwa as

⁹ <https://www.vanguardngr.com/2013/09/suntai-drags-taraba-speaker-lawmakers-to-court/>

acting exposed potential dangers of the process.¹⁰ Claims of a politically motivated campaign without adequate medical proof highlighted the vulnerability to abuse.

6.4 Seeking a Balance:

Finding a middle ground is crucial. The framework must be robust enough to safeguard the public interest but with adequate safeguards to prevent abuse. Potential improvements include:

1. **More Stringent Medical Guidelines:** Establishing stricter criteria for medical evaluation, based on independent assessments and specific definitions of incapacity, can minimize subjectivity and prevent misdiagnosis.
2. **Judicial Review Mechanism:** Integrating a stronger judicial review mechanism, allowing for legal challenges to the medical report or the legislative vote, can offer additional protection against arbitrariness and political manipulation.
3. **Enhanced Transparency and Public Scrutiny:** Increasing transparency throughout the process, including public access to medical reports and House of Assembly debates, can foster public trust and accountability.

7.0 Assessing the Nigerian Constitution on Governor's Incapacitation

The Nigerian Constitution's framework for addressing gubernatorial incapacitation, outlined in Sections 188 and 189, faces a critical assessment. Evaluating its strengths and weaknesses, drawing comparisons with other jurisdictions, and proposing actionable reforms are crucial steps towards strengthening this delicate mechanism.

7.1 Strengths of the Existing Framework

1. **Clarity and Structure:** The Constitution provides a clear procedure for handling gubernatorial incapacitation, involving medical evaluation, legislative action, and potential judicial review. This structured approach offers transparency and predictability.
2. **Balance of Power:** The process balances the need for swift action with safeguards against arbitrary removal. Engaging both medical professionals and the legislative body ensures a multi-faceted perspective and minimizes the risk of individual bias.
3. **Potential for Public Intervention:** Public scrutiny and media attention can act as checks and balances against political manipulation. Increased awareness and engagement from the citizenry can foster accountability and uphold ethical standards.

7.2 Weaknesses of the Existing Framework

1. **Ambiguity of "Incapacity"¹¹:** The lack of a precise definition of "incapacity" leaves room for subjectivity and potential misinterpretation. This ambiguity opens the door to varying interpretations and potentially unfair assessments.
2. **Vulnerability to Political Manipulation:** The two-thirds majority requirement for removal in the House of Assembly creates a risk of partisan manipulation or horse-trading, undermining the integrity of the process.
3. **Limited Judicial Review:** The current scope of judicial review is narrow, focusing primarily on procedural compliance. Expanding judicial oversight to include the substance of medical reports and legislative decisions could enhance safeguards against abuse.

7.3 Comparative Analysis:

¹⁰ <https://www.thecable.ng/drama-around-akeredolus-health-avoidable-aiyedatiwa-assumes-office-as-acting-governor/amp>

¹¹ Section 189 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Looking beyond Nigeria's borders, we can glean valuable insights from alternative approaches:

1. The United States: The 25th Amendment provides a detailed protocol for presidential incapacitation, involving the Vice President, a Cabinet majority, and Congressional action. This comprehensive approach offers greater checks and balances compared to the Nigerian system¹².
2. Kenya: Kenya's Constitution specifies temporary and permanent incapacitation mechanisms, with defined triggers and safeguards¹³. This distinction allows for nuanced responses to varying situations.

7.4 Proposed Reforms and Amendments

Several reforms can strengthen the Nigerian framework:

1. Define "Incapacity": Enacting a specific definition based on medical and psychological criteria can reduce ambiguity and ensure objective assessments. The permanent incapacity of governor or deputy governor has mentioned in section 189 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be more explicit in interpreting.
2. Independent Medical Panel: Establishing a truly independent medical panel, with members nominated by professional bodies, can enhance public trust and minimize political influence. The appointment of Medical Panel has mentioned in section 189(4)¹⁴ should be free from political undertone to ensure and enhance public trust.
3. Judicial Review Expansion: Broadening the scope of judicial review to include the substantive merits of medical reports and legislative decisions would offer an additional layer of protection against undue pressure or manipulation.
4. Temporary Incapacitation Provisions: Introducing mechanisms for temporary incapacitation, potentially involving the Deputy Governor assuming responsibilities for a defined period, could address shorter-term situations without resorting to permanent removal.

8.0 Conclusion and Recommendations

The intricate complexities surrounding gubernatorial incapacitation in Nigeria demand a nuanced and insightful conclusion. Navigating the delicate balance between public interest and individual rights necessitates continuous reassessment of the existing legal framework and proactive pursuit of improvements.

8.1 Key Findings:

1. This paper has extensively delved into the Nigerian Constitution's provisions for addressing gubernatorial incapacitation, analyzing both its strengths and weaknesses. We have explored the arguments for and against its constitutionality, considering concerns about political manipulation and safeguarding individual rights.
2. Through comparative analysis with other jurisdictions, we have identified potential best practices and identified areas for reform within the Nigerian system. By drawing inspiration from established approaches like the 25th Amendment in the United States

¹² <https://www.brookings.edu/articles/the-25th-amendment/>

¹³ Section 144 Constitution of Kenya

¹⁴ Section 189 (4)a-b Constitution of the Federal Republic of Nigeria (1999) as amended.

and the nuanced temporary/permanent incapacitation mechanisms in Kenya, we can pave the way for a more robust and transparent system.

8.2 Recommendations

We have proposed actionable recommendations for strengthening the framework, including:

1. Enacting a clear definition of "incapacity" based on objective medical and psychological criteria.
2. Establishing a truly independent medical panel, free from political influence, to ensure objective assessments.
3. Expanding the scope of judicial review to include the substantive merits of medical reports and legislative decisions, enhancing accountability and preventing abuse.
4. Introducing provisions for temporary incapacitation, allowing for a more flexible and nuanced response to varying situations.

8.3 Conclusion:

Addressing gubernatorial incapacitation in Nigeria necessitates a proactive and forward-thinking approach. By adopting the recommendations outlined in this paper, we can strive towards a framework that guarantees both continuity of governance during crisis and the fundamental rights of the individuals entrusted with leadership positions. Ultimately, a robust and equitable system for handling gubernatorial incapacitation will not only strengthen Nigeria's democratic fabric but also serve as a model for other nations grappling with similar challenges.