



SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT

14 July 2017

Mr. Abubakar Malami (SAN)
Attorney-General of the Federation and
Minister of Justice,
Federal Ministry of Justice,
Shehu Shagari Way,
Abuja

Dear Mr. Abubakar Malami (SAN),

Re: Request to challenge the legality of states' laws granting former governors and now serving senators and ministers double pay, life pensions and seek recovery of over N40bn of public funds

Socio-Economic Rights and Accountability Project (SERAP) is writing to request you to use your good offices as a defender of public interest, and exercise your powers under Section 174(1) of the Constitution of Nigeria 1999 (as amended), to urgently institute appropriate legal actions to challenge the legality of states' laws permitting former governors, who are now senators and ministers to enjoy governors' emoluments while drawing normal salaries and allowances in their new political offices; and to seek full recovery of public funds from those involved.

This request is entirely consistent with Nigeria's international anticorruption obligations under the UN Convention against Corruption, to which the country is a state party. We request that you take this step within 7 days of the receipt and/or publication of this letter, failing which SERAP will institute legal proceedings to compel the discharge of constitutional duty and full compliance with Nigeria's international obligations and commitments.

SERAP is a non-governmental organization dedicated to strengthening the socio-economic welfare of Nigerians by combatting corruption and promoting transparency and accountability. SERAP received the Wole Soyinka Anti-Corruption Defender Award in 2014. It has also been nominated for the UN Civil Society Award and Ford Foundation's Jubilee Transparency Award. SERAP serves as one of two Sub-Saharan African civil society representatives on the UNCAC Coalition, a global anti-corruption network of over 310 civil society organizations (CSOs) in over 100 countries.

SERAP is seriously concerned that several senators and ministers are receiving salaries and pensions running into billions of naira from states that are

currently unwilling or unable to pay their workers' salaries. Those who currently receive double emoluments and large severance benefits from their states include: Dr. Bukola Saraki (Kwara); Rabiu Musa Kwankwaso (Kano); Kabiru Gaya (Kano); Godswill Akpabio (Akwa Ibom); Theodore Orji (Abia); Abdullahi Adamu (Nasarawa); Sam Egwu (Ebonyi); Shaaba Lafiagi (Kwara); Joshua Dariye (Plateau), and Jonah Jang (Plateau). Others include: Ahmed Sani Yarima (Zamfara); Danjuma Goje (Gombe); Bukar Abba Ibrahim (Yobe); Adamu Aliero (Kebbi); George Akume (Benue); Ms Biodun Olujimi (Ekiti); Enyinaya Harcourt Abaribe (Abia); Rotimi Amaechi (Rivers), Kayode Fayemi (Ekiti); Chris Ngige (Anambra); and Babatunde Fashola (Lagos).

SERAP notes that under the Lagos Pension Law a former governor will enjoy the following benefits for life: Two houses, one in Lagos and another in Abuja estimated to cost between N500m and N700m. Others are six brand new cars replaceable every three years; furniture allowance of 300 percent of annual salary to be paid every two years, and a close to N2.5m as pension (about N30m pension annually); free medicals including for his immediate families; 10 percent house maintenance; 30 percent car maintenance; 10 percent entertainment; 20 percent utility; and several domestic staff.

In Rivers, state law provides 100 percent of annual basic salaries for ex-governor and deputy, one residential house for former governor anywhere of his choice in Nigeria; one residential house anywhere in Rivers for the deputy, three cars for the ex-governor every four years; two cars for the deputy every four years; 300 percent of annual basic salary every four years for furniture; 10 percent of annual basic salary for house maintenance.

In Akwa Ibom, state law provides for N200m annual pay to ex governors, deputies; pension for life at a rate equivalent to the salary of the incumbent governor/deputy governor respectively; a new official car and utility-vehicle every four years; one personal aide and provision of adequate security; a cook, chauffeurs and security guards for the governor at a sum not exceeding N5m per month and N2.5m for the deputy governor. Others are: free medical services for governor and spouse at an amount not exceeding N100m for the governor per annum and N50m for the deputy governor; a five-bedroom mansion in Abuja and Akwa Ibom and allowance of 300 percent of annual basic salary for the deputy governor; 300 percent of annual basic salary every four years and severance gratuity.

Similarly, the Kano State Pension Rights of Governor and Deputy Governor Law 2007 provides for 100 percent of annual basic salaries for former governor and deputy; furnished and equipped office; a 6-bedroom house; well-furnished 4-bedroom for deputy, plus an office; free medical treatment along with immediate families within and outside Nigeria where necessary; two drivers; and a provision for a 30- day vacation within and outside Nigeria.

In Gombe State, there is N300 million executive pension benefits for the ex-governors. In Kwara State, the 2010 law gives a former governor two cars and a security car replaceable every three years; a well-furnished 5-bedroom duplex; 300 per cent of his salary as furniture allowance; five personal staff; three State Security Services; free medical care for the governor and the deputy; 30 percent of salary for car maintenance; 20 per cent for utility; 10 percent for entertainment; 10 per cent for house maintenance.

In Zamfara State, former governors receive pension for life; two personal staff; two vehicles replaceable every four years; two drivers, free medical for the former governors and deputies and their immediate families in Nigeria or abroad; a 4-bedroom house in Zamfara and an office; free telephone and 30 days paid vacation outside Nigeria. In Sokoto State, former governors and deputy governors are to receive N200m and N180m respectively being monetization for other entitlements which include domestic aides, residence and vehicles that could be renewed after every four years.

We believe that the current Code of Conduct for Public Officials Act is outdated and entirely inconsistent and incompatible with the object and purpose of the UN Convention against Corruption, which requires Nigeria to adopt a comprehensive code of conduct for the performance of public functions and implicitly to prohibit double emoluments and large severance benefits for public officials such as former governors now receiving double emoluments as senators and ministers.

Under the convention, Nigeria is obligated to promote integrity in the management of public resources. Specifically, paragraph 1 of article 8 of the convention requires the government at all levels particularly the executive and legislative levels, to promote, inter alia, integrity, honesty and responsibility among their public officials.

SERAP notes the resolution of the UN General Assembly to the effect that, "Every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitutions or its laws as an excuse for failure to perform this duty." As such, your government is mandated to challenge the legality of double and large emoluments states' laws and bring them in line with Nigeria's international obligations including under the convention. This position is buttressed by article 27 of the Vienna Convention on the Laws of Treaties, which states that no state can justify the noncompliance with an international treaty with reference to internal law, including even the constitution.

SERAP argues that taking advantage of entrusted public offices and positions to enact laws to grant double emoluments and large severance benefits to serving public officials amounts to not only an abuse of office but also incorrect, dishonourable and improper performance of public functions, as per the provisions of paragraph 2 of article 8 of the convention.

The double emoluments and large severance benefits laws by houses of assembly of several of the 36 states also violate the conflicts of interest provisions of the convention. The fact that these laws are signed by former governors in the exercise of their functions as public officials and now benefiting from the entitlements under such laws while serving as senators and ministers raises serious conflict of interest issue under paragraph 5 of article 8 of the convention.

The UN Legislative Guide to the convention provides that where there are gaps between national laws (including constitutions) and international obligations, states must meet more onerous standards of integrity, honesty and responsibility among their public officials. SERAP is seriously concerned that conflicts of interest as well as perceptions of such conflicts undermine public confidence in the integrity and honesty of high-ranking public officials.

Similarly, the convention mandates Nigeria to provide guidance on how public officials should conduct themselves in relation to standards of integrity, honesty and responsibility, and responsible use of public resources. This implicitly forbids the enactment of illegal legislation that would grant emoluments for life to former governors and then allow them to receive salaries and other emoluments while serving as senators and ministers.

Under international law, it is forbidden for any public official to engage in self-dealing, and place him/herself in a position of conflicting interests and to hold incompatible functions or illicitly engage in providing to him/herself emoluments deemed unacceptable under international law. SERAP believes this is a clear case of the former governors apparently placing their private or personal interests over and above their entrusted public functions, and to unduly influence the level of benefits they receive.

By signing such emoluments laws which they knew or ought to know that they would be beneficiaries, these former governors have abused their entrusted public functions and positions, and thereby obtained an undue advantage, contrary to article 19 of the convention. SERAP believes that those holding elected or appointed public office should not perform incompatible functions or illicitly engage in incompatible activities.

The “severance benefits laws” are also inconsistent and incompatible with the requirement that public officials such as the former governors now in working as senators and ministers should serve the public interest and that the public service should promote individual responsibility and personal example. ‘Public function’ means activities in the public interest, not against it. The convention prohibits private self-interest or self-dealing, and considers this as detrimental to the public interest.

SERAP believes that public interest is not well served when government officials such as former governors supplement their emoluments in their current positions with emoluments drawn from their states’ meagre resources, and thereby prioritising their private or personal interests over and above the greatest happiness of the greatest number.

Public office is a public trust, and as such, citizens depend upon their governors, senators and ministers to act in the public interest, not for their own or another’s profit or enrichment. Double emoluments and large severance benefits for former governors now serving public officials constitute a blatant betrayal of public trust.

SERAP believes that those entrusted with public offices should not engage in official profiteering by pushing or facilitating laws that put their interests ahead of the interests of the common citizens. SERAP considers double emoluments for serving public officials unlawful, as the laws granting those benefits take governance away from the arena of public interest, and creates the impression that former governors acted contrary to the best interests of the general public by apparently abusing their entrusted positions to enhance their economic and social status after leaving office.

Yours sincerely,

Adetokunbo Mumuni

Executive Director