

LEGALITY OF SEVERANCE PACKAGES FOR GOVERNORS IN NIGERIA

A PAPER PRESENTED

BY

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**AT THE 54TH ANNUAL NIGERIAN ASSOCIATION OF LAW TEACHERS (NALT)
CONFERENCE**

DATE: 11TH -15TH JULY, 2023

VENUE: ABIA STATE UNIVERSITY, UMUAHIA CAMPUS

THEME: LAW & NATIONAL INTEGRATION

Abstract

This paper interrogates the legality and justness of pension laws, enacted by State Houses of Assembly, that provides retirement benefits for State Governors and Deputy Governors, in Nigeria. In furtherance, the paper examines the meaning of severance package; considers the legal framework for State Governors' pension; assesses the quantum of retirement benefits provided by these laws and compares the pension regime for public office holders in Nigeria with identified foreign jurisdictions. The paper finds, among other things, that the powers of State Houses of Assembly to enact Pension Laws for the retirement benefits of State Governors and their Deputies in Nigeria, which is derived from section 124(5) of the Constitution of the Federal Republic of Nigeria 1999, has largely been abused, which is against the intendment of the Constitution. The paper argues that the quantum of retirement benefits for State Governors are immodest and proposes a sustainable pension regime in Nigeria. The paper proposes the amendment to relevant provisions of the Constitution and relevant State Laws, to constrain state legislatures in the exercise of their powers to legislate on pension of state governors and their deputies.

Key Words: Constitution, Governors, Pension, Legislation, Legality

Introduction

This paper focuses on the legality or otherwise of the severance package of Nigeria's State Governors, and their Deputies, in the face of the current economic situation of the Country, dwindling revenue, rising debt profile of the States of Nigeria and the inability of the States to meet pension obligations to retired civil servants as required by the law.¹ This investigation has become necessary because of the concerns of many Nigerians and NGOs on the subject of State executive pension legislation, which has generated public interest litigation in the country. Thus the paper examines the legal status of a Governor, the severance packages of Governors in Nigeria and the controversies that such pension and other severance packages have generated. To address the issues raised, the paper is divided into seven parts, including the introduction. The second part discusses gives the background to the state law, the third part discusses the conceptual basis for severance packages, the fourth part analyses the legal framework that established the practice of paying pension to Governors and their deputies in Nigeria, the fifth part dwells on the legality of the Laws of the various States Houses of Assembly providing for severance packages for governors and their deputies *vis-à-vis* the provisions of the Constitution, and the constitutional role

¹ Pension Reform Act 2014, s. 1(c).

of the Revenue Mobilization, Allocation and Fiscal Commission, in order to establish the fact that these severance packages should not be encouraged and this lays the foundation for the sixth part. The sixth part compares what obtains in Nigeria with practices in other jurisdictions where governors also receive pensions. The essence of the comparison is to present the lessons learnt from other jurisdictions to show that the practice in Nigeria runs against public policy more-so when these political office holders were not able to fulfill their constitutional obligation of paying pensions and gratuities to retired civil servants in their respective states. The seventh and final part provides the recommendation and concludes the paper.

Meaning of Severance Package as it Relates to Governors in Nigeria and its Origin

Severance package is the pay and other advantages that an employee receives when their employment is ended by the management.² Blacks' Law Dictionary makes reference to severance pay as the money (apart from back wages or salary) that an employer pays to a dismissed employee: also termed separation pay.³ Relating these definitions to the severance package of Governors in Nigeria, it means the totality of gratuity, pensions and other benefits and payments provided by the various State Laws of Nigeria for retired State Governors. A good example of such Laws are Governors and Deputy Governors Pension Law 2014 of Akwa Ibom State, Lagos State Public Office Holder (Payment of Pensions) Law 2007⁴, Rivers State Pensions for (Governor and Deputy Governor) Law 2004, Governor and Deputy Governor (Payment of Pension) Law No 12 of Kwara State 2010, Oyo State Pension (Governor and Deputy Governor) Law 2004.

Pension scheme was introduced into Nigeria during the Colonial era to provide income and security to British citizens working in the country upon retirement.⁵ Nigeria's first ever legislative instrument on Pension matters was the Pension Ordinance of 1951, which had retrospective effect from 1st January, 1946.⁶ The Nigerian Pension Scheme has, since then, continued to grow in

² Cambridge Dictionary, < [SEVERANCE PACKAGE | English meaning - Cambridge Dictionary](#)> accessed 16 May 2023.

³ *Black's Law Dictionary*, 10th ed. Bryan A. Garner (St. Paul MN: Thomson Reuter, 2014), s.v. "severance package."

⁴ See the Public Office Holder (Payment of Pension) Law 2007 s. 1 and 2 <[PUBLIC OFFICE HOLDER \(PAYMENT OF PENSION\) LAW OF LAGOS STATE – Laws \(lawnigeria.com\)](#)> accessed 16 May 2023.

⁵ Sunday C. Nwite and Perpetua Chizoba Ehiogu, 'Highlight on the Differences between 2004 and 2014 Pension Reform Act in Nigeria' [2014] (1) (Viii) *International Journal of World Research*; 17-26, 18.

⁶ *Ibid.*

scope of coverage and dimension. The Pension Reform Act 2004 abolished previously existing Pension Acts, introduced the Contributory Pensions Scheme,⁷ and established a supervisory commission known as National Pensions Commission (PENCOM)⁸. This commission is responsible for Licensing, regulating and monitoring both Pension Fund Administrators (PFAs) and Pension Funds Custodians (PFCs)⁹.

The provisions were retained in the extant Pension Reform Act 2014 which repealed the Pension Reform Act 2004.¹⁰ As at September, 2013), twenty four (24) Pension Fund Administrators (PFAs) and four (4) Pension Fund Custodians (PFCs) have been licensed by PENCOM, and are in operations.¹¹ Presently, 21 Pension Fund Administrators (PFAs), 4 Pension Fund Custodians (PFCs) and 7 Closed Pension Fund Administrators (CPFAs) have been licensed by PENCOM.¹² The new scheme provides that both the employer and employee have to contribute specific percentage of the employee's emolument to a special fund reserved towards the final disengagement of the employee.¹³

The Pension Reform Act, 2014 does not make provisions for the pension and gratuity of Governors and their Deputies. Based on this, with respect to pension for State Governors and their Deputies in Nigeria, the State Houses of Assembly, with Lagos State at the forefront, have since 2007 commenced the enactment of state laws to provide for severance packages for Governors of the various States. Currently, about 24 States have passed the law to award pension to their former Governors.¹⁴

⁷ Pension Reform Act 2004 s. 1
<https://www.pencom.gov.ng/wp-content/uploads/2017/04/Nigeria_PensionReformAct2004.pdf> accessed 14 May 2023

⁸ Pension Reform Act 2004 s. 14

⁹ Pension Reform Act 2004 s. 20.

¹⁰ See the Pension Reform Act 2004 s. 3 (for the establishment of the Contributory Pension Scheme) s. 17 (for the establishment of the National Pension Commission) and s. 23 and 24 (for the powers and functions of the National Pension Commission) <[PRA_2014.pdf \(pencom.gov.ng\)](#)> accessed 14 May 2023.

¹¹ Nwite and Ehiogu (n 5), 19.

¹² National Pensio Commission <[About Us Full Post | National Pension Commission \(pencom.gov.ng\)](#)> accessed 14 May 2023.

¹³ Pension Reform Act 2004, s. 9(1). See Pension Reform Act 2014 s. 4.

¹⁴ Yusuf Akinpelu and Kabir Yusuf, 'As Ex-Governors, Deputies Get Outrageous Pension Packages, Retired Civil Servants Scramble For Crumbs' *Premium Times*, December 8, 2020. The states are Abia, Akwa Ibom, Bauchi, Anambra, Borno, Delta, Ebonyi, Edo, Gombe, Jigawa, Sokoto, Kano, Kebbi, Kogi, Kwara, Imo, Lagos, Niger, Ondo, Osun, Plateau, Ondo, Rivers, Yobe and Zamfara.

Criticisms against Governors' Severance Package in Nigeria

With the increase in economic hardship precipitated by the high cost of governance, there appears to be a rise in the spate of objections and criticisms leveled against the continued disproportionate remuneration of ex-political office holders such as ex-Governors and their Deputies in the guise of 'Severance Packages.' While some of the objections are based on legal grounds, that is, challenging the enabling laws providing for such payments, other criticisms interrogate the morality of severance packages for Governors. Both individuals and civil society groups have taken legal steps to challenge this anomalous remuneration.

For instance SERAP had, on 4 October, 2017, filed a suit at the Federal High Court in Ikoyi, *SERAP v. Attorney General of the Federation*,¹⁵ praying the court to compel the Attorney-General of the Federation and Minister of Justice, Abubakar Malami, SAN to use his position as a defender of public interest to institute legal actions to stop former governors from enjoying emoluments while drawing normal salaries and allowances in their positions as senators and ministers.¹⁶ Interestingly, the Federal High Court, Lagos held per Justice Oluremi Oguntoyinbo in a judgment delivered on 26th day of November 2019 that: 'The Respondent (Attorney General) is hereby directed 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 identify those involved and seek full recovery of public funds from the former governors'.¹⁷

More recently, Incorporated Trustees of Human Development Initiatives alongside 39 other organizations challenged the legal basis of severance package for State Governors (albeit unsuccessfully) in the National Industrial Court, Abuja in the case of *Incorporated Trustees of Human Development Initiatives & 39 Others v. Governor of Abia State & 73 Others*.¹⁸ According to Abifarin and Olatoke, it is only the federal government or National Assembly that can make law on pension in Nigeria, therefore the various states' laws on pension and gratuity to Ex-Governors

¹⁵ Unreported Suit No FHC/L/CS/1497/2017, Judgment by delivered Oguntoyibo J., on 26 November 2019 <[LIST AND SUMMARY OF RESOLVED CASES – Serap Nigeria \(serap-nigeria.org\)](https://www.serap-nigeria.org)> accessed 14 May 2023.

¹⁶ Press Release, 'Court Affirms SERAP's Right to Sue against Double Pay for Ex-Governors' *Premium Times*, January 21, 2018.

¹⁷ *SERAP v. Attorney General of the Federation (n 15)*

¹⁸ Unreported Suit No. NICN/ABJ/47/2019.

should be declared null and void.¹⁹ Also, the Court in a judgment delivered on 24 May 2021 in the case of *Dauda Jauro & Anor v. The Governor of Adamawa State & 2 Ors*,²⁰ per Justice Agim, JCA held that it was morally wrong and unfounded for the claimants to claim for payment of their severance gratuity or allowance because their tenure had come to end.

Gadzama posited that the act of State Houses of Assembly, approving whopping pension schemes, for life, for ex-political office holders, ‘is both unconstitutional and illegal. The pension scheme must be rescinded forthwith. The only legal hurdle to cross is that most of the states had already passed obnoxious laws to provide the requisite legal regimes, to give these laws legitimacy, but the same legislatures can abrogate it. The present economic atmosphere both locally and globally is not supportive of the sustenance of the sucking and killer pension scheme’.²¹ In the same vein, immediate past president of the Campaign for the Defence of Human Rights (CDHR), Ugwummadu pointed out that the disproportionate terminal entitlement for political office holders was wrong and that the lawsuit against it emphasizes the general sentiment that the makers of these laws have remained insensitive and impervious to the sustained campaigns against such Laws.²²

For Ugwummadu, ‘Sustaining such disproportionate and incongruous retirement payment regimes for long serving civil servants and political office holders who, at most, served their states for a maximum period of eight years, unwittingly widens the economic gap between the ruling class and the governed’.²³

These outcries call for an inquiry into the quantum of severance packages for State Governors. The Figures below are few of the numerous examples from the North, South, East and West of Nigeria that explain the quantum and extent of severance packages provided by State Pension Laws beginning with Lagos State which set the pace in this regard.

¹⁹ Olufemi Abifarin and J.O. Olatoke ‘Can a State House of Assembly Enact Pension Law in Nigeria?’ [2017](8)(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*; 112-118, 112.

²⁰ Unreported in Suit No. NICN /YL/18/2019
<[DAUDA JAURO & Anor -VS- THE GOVERNOR OF ADAMAWA STATE & 2 Ors National Industrial Court of Nigeria- Judgment Portal \(nicnadr.gov.ng\)](#)> accessed 14 May 2023.

²¹ Joseph Onyekwere, ‘Legal Battle Raises Hope on Ex-Governors, Others’ Jumbo Pension’ *the Guardian*, 30 June 2020.

²² *Ibid.*

²³ *Ibid.*

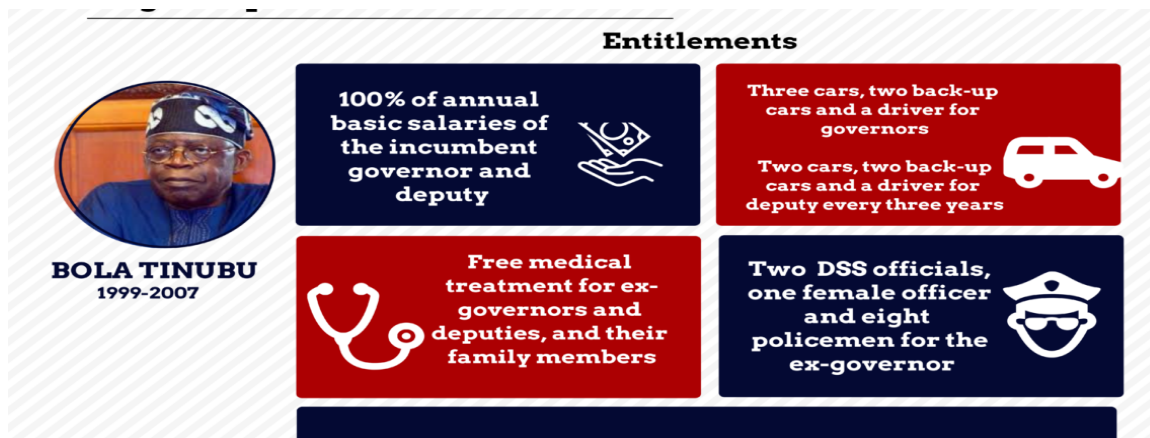


Figure 1. Lagos State Governor’s Pension Benefits.²⁴

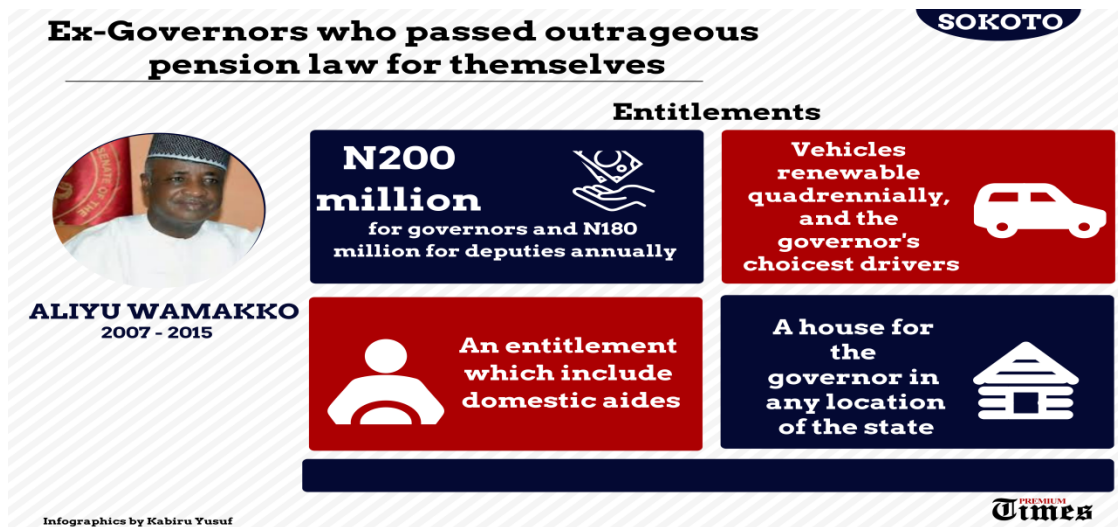


Figure 2. Sokoto State Governor’s Pension Benefits.²⁵

²⁴ Copied from Yusuf Akinpelu and Kabir Yusuf, ‘As Ex-Governors, Deputies Get Outrageous Pension Packages, Retired Civil Servants Scramble For Crumbs’ *Premium Times*, December 8, 2020. With Bola Tinubu having been sworn in as the President of Nigeria, he is entitled, at the expiration of his tenure, to be paid pension pursuant to the Constitution of the Federal Republic of Nigeria 1999 s. 84(5). This paper argues that upon his assumption of office as president, he ought not to receive any further pension under the Lagos State Pension Law, during and after his tenure as President, as doing so would be contrary to the provisions of the Code of Conduct Bureau and Tribunals Act s. 6(a), which prohibits a public officer from receiving or being paid emoluments of any public office at the same time as he receives or is paid the emoluments of any other public office.

²⁵ Ibid.

Sokoto has had three governors since 1999, including incumbent Aminu Tambuwal. Assuming the law was implemented from 2016, by the end of 2020, the state would have spent about N3 billion as pensions on its former leaders, more than its IGR as of June.²⁶



Figure 3. Abia State Governor’s Pension Benefits.²⁷

²⁶ Akinpelu and Yusuf (n 24). It is argued in this paper that, by receiving pensions under the Abia State Governors and Deputy Governor’s Pension Law, while at the same time serving as a Senator in the national Assembly and receiving the emoluments of a Senator, Orji Uzor Kalu is in violation of section the Code of Conduct bureau and Tribunal Act s. 6(a)

²⁷ Akinpelu and Yusuf (n 24)

Ex-Governors who passed the outrageous pension law for themselves

DELTA

Entitlements



JAMES IBORI
1999-2007

100% of annual basic salaries of the incumbent governor and deputy



One duplex worth N300 million anywhere in Nigeria



Free medical treatment for ex-governors and deputies and their family members

Two DSS officials, one female officer and eight policemen for the ex-governor



Infographics by Kabiru Yusuf

PREMIUM
Times

Figure 4. Delta State Governor's Pension Benefits.²⁸

Legal Framework for Governors' Severance Package in Nigeria and Its Validity

The severance packages, or pensions, for Governors and the Deputy Governors may not be said to be totally devoid of legal basis. The legal basis for same and the laws regulating pensions in Nigeria are listed below.

1. The Constitution of the Federal Republic of Nigeria 1999 (As Amended).
2. Revenue Mobilization Allocation and Fiscal Commission Act 1989 Cap R7 Laws of Federation 2004.
3. The Pension Reforms Act 2014.
4. Code of Conduct Bureau and Tribunal Act 1989, Cap C15 LFN 2002⁴

²⁸ Ibid. It is worth pointing out that being an ex-convict, like James Ibori the former Governor of Delta State, does not disqualify one from receiving pensions under these State Governors and Deputy Governors' Pensions Law.

5. Various States Pension Laws - Public Office Holders (Payment of Pension) Law of Lagos State 2007).

The Constitution of the Federal Republic of Nigeria 1999 (As Amended)

The Constitution of the Federal Republic of Nigeria 1999 (As Amended), in its section 173(1), recognizes and protects the citizens' rights to pension. It provides that the right of a person in the public service of the Federation to receive pension or gratuity shall be regulated by the law. Section 173(2) provides that any benefit to which a person is entitled in accordance with, or under such law referred to in sub-section 1, shall not be withheld or altered to his disadvantage except to such extent as is permissible under any law including the Code of Conduct. Section 173(3) and (4) provide for five years periodic review of pensions for those in public service of the Federal Government and that their pension is not liable to taxation. Section 210(1)(2)(3)and(4) of the same Constitution makes similar provisions which applies *mutatis mutandis* to the pension of persons in the State Public Service.

Since the said sections 173 and 210 of the Constitution provide that the pensions of those in public service shall be regulated by the law, the questions are: which category of workers are in the public service of the Federation and that of States in Nigeria? What bodies or body are/is empowered to make such pension laws?

Section 138, which is the interpretation section of the 1999 Constitution of the Federal Republic of Nigeria, specifically listed the categories of worker in the public service of the Federation and States of Nigeria to include civil servants under the service of the Federal and State Governments of Nigeria, without mentioning political office holders including Governors and the Deputy Governors. Going by the rules of interpretation of statutes (*expression unis est exclusion alterius*), the implication of this is that Governors, and the Deputies are excluded from the categories of workers whose pensions are covered by sections 173 and 210 of the 1999 Constitution.²⁹ This is in contrast with the provisions of item 32(d) of the Third Schedule to Part I, made pursuant to section 153 of the 1999 Constitution, which relates to the remuneration of political office holders and specifically mentioned Governors and Deputy Governors.

To ascertain the bodies or body empowered to make such pension laws referred to in sections 173 and 210 of the Constitution, it is pertinent to look at section 4 (2) of the 1999

²⁹ *A-G Bendel v. Aideyan* (1989) 4 N.W.L.R. (pt. 188) 646 at 672.

Constitution which empowers the National Assembly to make laws for the peace, order and good governance of the Federation or any part of it with respect to matters included in the Exclusive Legislative List set out in Part I of the Second Schedule to section 4 of the 1999 Constitution. Section 4(3) provides that the powers of the National Assembly to make laws for the peace, order and good governance of the Federation with respect to any matter included in the Exclusive legislative List shall, **save as otherwise provided in the Constitution, be to the exclusion of the House of Assembly of States** (emphasis added).

Section 4(4)(a) further confers power on the National Assembly to make laws with respect to the matters in the Concurrent Legislative List, set out in the first column of Part II of the Second Schedule to the Constitution, to the extent prescribed by the second column opposite thereto. Section 4(5) is to the effect that if any law enacted by the House of Assembly of a State is inconsistent with any law made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall, to the extent of its inconsistency be void. Section 4(6) and section 4 (7) vest powers on the Houses of Assembly of States to make laws in the Concurrent Legislative List for the peace, order and good governance of the State to the extent set out in the first column of Part II of the Second Schedule to the Constitution and to the extent prescribed in the second column opposite thereto.

Item 44 of the Second Schedule to Part I of the Exclusive Legislative List provides for pension, gratuity and other like benefits payable out of the Consolidated Revenue Fund or any other public fund of the Federation and the combined effect of section 4(6) and (7) and section 1(1) and (3) of the 1999 Constitution may appear to be that the State Houses of Assembly lack the powers to legislate on pensions and gratuity, or other like benefits payable out of the Consolidated Revenue Fund, or any other public fund of the federation.

However, from the proviso contained in section 4(3) of the Constitution, it appears that the restrictions placed on the House of Assembly of States, by section 4(3) of the Constitution, from making laws relating to pensions or gratuity as contained in item 44 of the Exclusive Legislative List or any other item thereof, is not absolute, but made subject to such provisions of the Constitution as section 124(5) of the Constitution. For the avoidance of doubts, Section 124(5) provides that:

Provisions may be made by a law of a House of Assembly for the grant of a pension or gratuity to or in respect of a person who had held office as Governor or Deputy Governor and was not removed from office as a result of impeachment; and any pension granted by virtue of any provision made in pursuant of this subsection of this section shall be a charge upon the Consolidated Revenue Fund of the State.

It should also be noted that on the issue of the remuneration and salaries of political office holders including Governors and Deputy Governors, section 124(1) (2) and (3) of the Constitution vests powers on the House of Assembly of States to prescribe the amount of money they should be paid which must not exceed the amount of money determined by the Revenue Mobilization, Allocation and Fiscal Commission (RMAEC). However, with respect to the powers of the States Houses of Assembly to grant pension or gratuity to Ex-Governors and their Deputies under section 124(5) of the Constitution, no such limitation or interference by the RMAFC is provided for. The above positions were canvassed and upheld by the Court in the case of *Incorporated Trustees of Human Development Initiatives & 39 Others v. Governor of Abia State & 73 Others*.³⁰ In this case, the Incorporated Trustees of human Development Initiative and 39 other human rights and non-governmental organizations brought an Originating Summons filed on the 7th day of March 2019 against the Governor of Abia State and 35 other Governors of other States of Nigeria as 1st to 36th Defendants, including the State Houses of Assembly of the 36 States of Nigerian as 37th to 72nd Defendants, and the Attorney-General of the Federation and Revenue Mobilization, Allocation and Fiscal Commission as the 73rd and 74th Defendants. The Originating Summons sought *inter alia* a declaration that the pension of a Governor and Deputy Governor of a State is a remuneration of a Public Office Holder in terms of section 32(d) of the 3rd Schedule to the 1999 Constitution and section 34 of Part I of the Second Schedule to the 1999 Constitution. They also sought for a declaration that the 37th to 72nd Defendants do not have the legislative competence to make laws with respect to remuneration including pension of 1st to 36th Defendants and that it is only the 74th Defendant that has the exclusive powers to stipulate the remuneration including pensions of Governors and their Deputies. They further sought a declaration that the Governor and Deputy Governor's Pension Law 2014 of Akwa Ibom State, and that of other 35 States of the Federation, contravene section 1(3) and 4(2) of the 1999 Constitution and are therefore *ultra vires*, and an order to recover remunerations and benefits paid in excess of what RMAFC Act stipulates.

³⁰ Unreported Suit No. NICN/ABJ/47/2019.

The Court held *inter alia* that:

- i. The power of the RMAFC under section 124(1) relates to “salaries and allowances”, not pensions. The word “remuneration”, used in paragraph 32(d) of Part I of the Third Schedule to the 1999 Constitution, does not include pensions;
- ii. While section 124(1) donates the power to prescribe remuneration and salaries of Governor and other public office holders subject to the amount as shall have been determined by the RMAFC, section 124(5) did not subject the power of the House of Assembly to that of the RMAFC in granting pension or gratuity for former Governors and their Deputies;
- iii. By section 124(5) of the 1999 Constitution, the pension or gratuity of former Governors and Deputy Governors does not need to be the same with the remuneration of a serving Governor or Deputy Governor as determined by the RMAFC;
- iv. The power of the RMAFC to determine remuneration under paragraph 32(d) of Part I of the Third Schedule to the 1999 Constitution relates to “political offices holders” i.e. those still in office, not those who have left office.³¹ This paper agrees with the above holding of the Court.
- v. Accordingly, all State pension laws made pursuant to section 124(5) of the 1999 Constitution are valid and constitutional. They cannot be read to be contrary to or in contravention of any subsisting legislation or the Constitution. If the draftsmen of the 1999 Constitution intended to give the RMAFC powers to stipulate pension or gratuity of former Governors and former Deputy Governors, they would have clearly stated so.

This paper agrees with the above Judgment of the National Industrial Court to the extent that the State Houses of Assembly have powers to validly make laws for the pension or gratuity of Governors and their deputies pursuant to section 124(5) of the 1999 Constitution, and that the said power vested on the House of Assembly of States is not subject to any interference of RMAFC.

³¹ Dugeri, ‘Legal Validity of State Pensions Laws for Political Office Holders in Nigeria: An Examination of the Case of *Incorporated Trustees of Human Development Initiatives & 39 Others v. Governor of Abia State & 73 Others*’. <<https://dx.doi.org/10.2139/ssrn.3545797>> accessed 16 May 2023

Revenue Mobilization, Allocation and Fiscal Commission Act 1989 Cap R7 Laws of Federation 2004

The Revenue Mobilization, Allocation and Fiscal Commission (RMAFC) was established by Revenue Mobilization, Allocation and Fiscal Commission Act 1989 pursuant to section 153 (1)(n) of the 1999 Constitution, as one of the Federal Executive bodies. By the combined effect of section 32 (d) of the Third Schedule of Part I relating to section 153 of the Constitution, and section 6 (1)(d) of Revenue Mobilization, Allocation and Fiscal Commission Act, the RMAFC is vested with the powers to determine the remuneration appropriate for political office holders including the President, Vice President, Governors, Deputy Governors, Ministers etc.

This paper agrees with the holding of the Court in the said case of *Incorporated Trustees of Human Development Initiatives & 39 Others v. Governor of Abia State & 73 Others*³², that remuneration of the category of workers covered by the above provisions refers to salaries and allowances of serving President, Vice President, Governors, Deputy Governors, Ministers etc., and not pension or gratuity provided for in sections 84(5) and 124(5) of the Constitution which deals with retired Presidents, Vice Presidents, Governors, Deputy Governors etc.

The Pension Reforms Act 2014

The Pension Reform Act, 2014 repealed the Pension Reform Act No. 2, 2004. It is the law that presently governs and regulates the administration of uniform contributory pension scheme for both the public and private sectors in Nigeria. Section 1(a) of the Act provides that the objectives of the Act are to establish a uniform set of rules, regulations and standards for the administration and payments of retirement benefits for the Public Service of the Federation; Federal Capital Territory; the Public Service of the State Governments; the Public Service of the Local Government Councils and the Private Sector. Section 2(1) states that the provisions of this Act shall apply to any employment in the Public Service of the Federation, the Public Service of the Federal Capital Territory, the Public Service of the States, the Public Service of the Local Government and the Private Sector.

Section 120 which is the interpretation section provides that Public Service is as defined in section 318 of the Constitution of the Federal Republic of Nigeria 1999. It is the position of this

³² *Incorporated Trustees of Human Development Initiatives* (n 30)

paper as earlier discussed, that by the provision of section 318 of the 1999 Constitution, Governors and their Deputies appear to be exempted from the categories of persons in the public service covered by the Pension Reform Act 2014, which was made pursuant to the powers vested in the National Assembly by section 4(1) to (3) and item 44 of the Exclusive Legislative List. This Law is therefore inapplicable to Governors and their Deputies.

Code of Conduct Bureau and Tribunal Act 1989, Cap C15 LFN 2004

Code of Conduct Bureau and Tribunal Act 1989, Cap C15 LFN 2004 is also relevant to the discussion in this paper. By virtue of the Second Schedule to section 7 of the Code of Conduct Act, the President and the Vice-President of the Federation and Governors and Deputy Governors of States and other public officers are bound by its provisions. Section 2 of the Act provides that the aims and objectives of the Bureau shall be to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability.

Section 6 (a) and (b) of the Act is very material and provides that a public officer shall not receive or be paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public office or, except where he is not employed on full-time basis, engage or participate in the management or running of any private business, profession or trade; but nothing in this paragraph shall prevent a public officer from engaging in farming or participating in the management or running of any farm.

From the above provisions of the Code of Conduct Bureau and Tribunal Act, especially sections 6 and 7 and the Second Schedule thereto, this paper is of the view that the Code of Conduct Bureau and Tribunal Act forms part of the regulatory frameworks for the emolument or gratuity of Governors and Deputy Governors. It must be noted that section 6 talks of ‘emoluments’ of public officers. An examination of the word ‘emoluments’ reveals a whole range of benefits from an employment which include payments, fee, salary, wages, revenue, income, profit, reward, compensation, perquisites etc. A further check on the meaning of perquisites include gratuity. It must be noted that section 6 talks of ‘emoluments’ of public officers.³³

³³ For the avoidance of doubt, Webster's New World Dictionary defines emolument as gains from employment or position; payment received for work; salary, wages, fees, etc. A payment or other benefit received as a result of employment or of the holding of a public office. Black's Law Dictionary defines emolument as any

The provisions of sections 6 and 7 of the Act also implies that a person who has worked and retired and is on government payroll, cannot validly take up the position or work of a Governor or Deputy Governor and be paid the salaries and benefits of the said position, while still receiving his pensions from the public fund. In the same vein, an Ex-Governor or Deputy Governor who is receiving pension cannot take up a full-time employment or appointment into public office where he is paid emolument from public fund as the case is with some Ex-Governors and their Deputies who are serving as Senators, Members of House of Representative or Ministers in Nigeria.

This is in tandem with the holding of the Federal High Court, Lagos in the case of *SERAP v. Attorney General of the Federation*³⁴. It is the view of this paper that a law providing for the payment of such pensions and benefit for Ex-Governors and their Deputies, ought to have been made subject to the provisions of this Act.

Public Office Holders (Payment of Pension Law 2007)

Ex-Governors and Deputy Governors Pension Law started with the Second Republic. It was first enacted in Rivers State in 2003 - Rivers State Ex-Governors Pension Law 2003, and subsequently amended in 2012 and Zamfara State Ex-Governors Pension Law 2004 which was amended in 2006. Lagos State in 2007 under the then Governor, Senator Bola Tinubu, signed into law the Public Office Holders (Payment of Pension) Law 2007, Laws of Lagos State to provide pension and other welfare benefits to former Governors and their Deputies beyond the package that any right thinking person could imagine. Thereafter, States such as Delta, Ekiti, Akwa Ibom and others started replicating the law in their states through fresh enactments or amendment of the existing Governor's Pension Laws.³⁵

Despite strong opposition from many human rights non-governmental groups and outcry from many concerned Nigerians, the Ex-Governors and their Deputies have continued to benefit from the humongous allowances.³⁶ An exception to this trend is Zamfara State where the State

advantage, profit, or gain received as a result of one's employment or one's holding office. See *Black's Law Dictionary*, 10th ed. Bryan A. Garner (St. Paul MN: Thomson Reuter, 2014), s.v. 'emolument'.

³⁴ *SERAP v. Attorney General of the Federation* (n 15)

³⁵ Delta State Governor and Deputy Governor Pension Rights and Other Benefits (Amendment) Law, 2019; Ekiti State Grant of Pensions Law, 2012; Akwa Ibom Governors and Deputy Governors Pension Law 2014.

³⁶ 'Dismantling a Rogue Pension Regime' *This Day*, 2020.

House of Assembly has repealed the pension law for former governors and other ex-public officers in Zamfara State, which provided for the upkeep of ex-governors to the tune of N700 million annually.³⁷

The said Public Office Holders (Payment of Pension) Law of Lagos State 2007, in its section 1(1)(2)(3) provides for the payment of pensions for life equal to the annual basic salary of the incumbent Governor and Deputy Governor as approved by RMAFC for both the Ex-Governor and the Deputy. Section 2 provides that the said pension shall include salary, allowances and fringe benefits as contained in the Schedule of the Law. The said Schedule provides that furniture allowance should be 300% of the annual salary of the incumbent Governor payable every three years, 10% of the same annual salary for house maintenance. It further provides for free medical care for the Ex-Governor and the Deputy and their immediate family, 25% of the Governor's annual salary for the personal assistant and car maintenance is 30% of annual salary.

Accommodation for the Ex-Governor includes one house at a choice location in Lagos and one in the FCT for a Governor who served two consecutive terms, one house in Lagos for the Ex-Deputy Governor. On the issue of transport, the Ex-Governor shall be entitled to three cars, one Pilot and two back-up cars to be replaced every three years while the Ex-Deputy will be provided with two cars, one Pilot and one back up replaceable every three years. The Ex-Governor is entitled to domestic staff – cook, steward, gardener and other domestic staff who shall be pensionable. Under security, the Ex-Governor is entitled to two State Security Service Details and one female officer, and one State Security Service officer for the Ex-Deputy Governor. The Ex-Governor is also entitled to eight Police Officers, four for the Lagos house and four for the Abuja house. This is not fundamentally different from the provisions of Ex-Governor's Pension Laws of other States. The question begging for answer is whether, in view of the humongous benefits contained in the said Pension Laws *vis-a-vis* the economic realities of Nigeria, the Ex-Governors severance packages can be said to be just?

³⁷ < [Dismantling a Rogue Pension Regime – THISDAYLIVE](#)> accessed 17 May 2023.
Akinwale Akintunde, 'Court Orders FG to Recover Pensions Collected by Ex-governors Serving as Ministers, Federal Lawmakers'
< [Court Orders FG to Recover Pensions Collected by Ex-governors Serving as Ministers, Federal Lawmakers – THISDAYLIVE](#)> accessed 27/05/2023.

The Position of Governors' Severance Package in Other Jurisdictions - United States of America and Kenya

Nigeria is not the only country of the world where Ex-Governors are paid pension. In the United States of America, from which Nigeria copied her presidential system of government, for instance, there are State Laws providing for pension for Governors and their Lieutenants in some of the States. Same applies to some of the African Countries.

United States of America

The pension of retired Governors and their Lieutenants in the 50 States of USA are determined by the Statute of the States and they vary from State to State.³⁸ Title 4, article 3, chapter 3, section 1(1) (a) to (e) of the 2022 Indiana Code on the Retirement Benefit of Governor provides, *inter alia*, that an individual who is elected to, and holds the office of governor for any length of time during one term of that office, is entitled to receive an annual retirement benefit but if not elected to the office, will not be entitled to pension except he holds the office for up to two years.

This law further provides that the Ex-Governor will not start receiving this pension until he attains the minimum age of 62years. The Ex-Governor will choose the date on which he will begin receiving the governor's retirement benefit whether at age 62 or 65. If he chooses age 62 to begin, he would be paid 30% of his annual salary as a Governor, on equal monthly installment, until he or she attains age 65 when he will start earning 40% of his annual salary as a governor. If he chooses to commence the earning at age 65, he would be paid 50% of his annual salary as a Governor. Title 4(3)(3)(1)(1)(d) of the law provides that a governor may not receive the retirement benefit as long as the governor holds an elective position with any federal, state, or local governmental unit. This Governors Pension Law is not radically different from the Governors Pension Laws of other American States.

In California, the Governors' pension is based on their years of service and the salary they earned while in office.³⁹ The pension of the Governor and his Lieutenant is set at 40% of their final

³⁸ Beagle, 'What does a governor make in retirement?'
<[What does a governor make in retirement? \(meetbeagle.com\)](https://www.meetbeagle.com/what-does-a-governor-make-in-retirement/)> accessed 27 may 2023.

³⁹ Ibid.

salary if they serve for one to eight years, or 60% of the final salary if they served for 24 years or more.⁴⁰ Besides, a Governor must have served at least 4 years and attained the age of 55 to retire.⁴¹ In the State of Texas, by the Employees Retirement System (ERS) which covers State employees, including the Governor, Governors are eligible for pension benefits when they attain age 65 with, at least, five years of service or any combination of age and years of service.⁴²

Kenya

Other African Countries also provide pension or gratuity for their retired sub-national executives and their deputies. With specific reference to Kenya, the County State Officers Pension Scheme Act, 2021 of Kenya⁴³ was enacted for the granting of pension and other retirement benefits to persons who hold the office of Governor, Deputy Governor, Speaker and Member of County Assembly from 8th August 2019 and connected purposes. By section 3(1) the object of this Scheme is to provide benefits for its members upon their retirement, or for their dependants or nominee upon the death of such members. Section 4 provides that a person who is a Governor, Deputy Governor, Speaker or Member of County Assembly on, or at any time after, the commencement of this Act shall be a member of the Scheme. Section 19 (1) provides that a retired Governor shall during his lifetime be entitled to:

- a. a lump sum payment at retirement calculated as a sum equal to one year's basic salary for each term;
- b. A monthly pension equal to 80% of the basic monthly salary of the entitled person's last monthly salary while in office.
- c. Any other benefit as stipulated in the respective Schedule. First Schedule to the Act provides for additional benefits for the retired Governor to include one driver, one four wheel drive car not exceeding 3000 cc, fuel allowance (10% of monthly salary), one personal secretary, one housekeeper, full medical cover for local and overseas treatment

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ County State Officers Pension Scheme Act, 2021 Kenya
<<https://siayaassembly.go.ke/download/114/bills/3732/county-state-officers-retirement-benefits-bill.pdf>> accessed 27 May 2023.

for Executive and spouse, maintenance expenses for the vehicles provided pursuant to this Act.

While section 19 (2) provides that a retired Deputy Governor shall during his lifetime be entitled to:

- a. a lump sum payment at retirement calculated as a sum equal to one year's basic salary for each term;
- b. A monthly pension equal to 60% of the basic monthly salary of the entitled person's last monthly salary while in office⁴⁴.

Second Schedule to the Act provides for additional benefits for the retired Deputy Governor to include one driver, one car not exceeding 3000 cc, one personal assistant, full medical cover for Deputy Governor and spouse.

It is the position of this paper that the severance package provided for the Ex-Governors and their Deputies in the above jurisdictions, especially the United States of America, appear very modest in comparison with what obtains under the Nigerian State Laws for the pension of Governors. From the expositions and analysis on the severance package of Ex-Governors and their Deputies in Nigeria, the criticisms and public outcry against it, the legal framework for same and the subsisting judgments of Courts on it, the following points are apparent.

1. That it is the intendment of the Draftsmen of the Constitution that the Governors and their Deputies will be paid pension or gratuity after leaving the office without impeachment or any other exception provided by the Constitution.⁴⁵
2. That the pension or gratuity (severance package) will be guided by the Law made by the House of Assembly of the States, and not by the National Assembly.⁴⁶
3. The determination of the quantum of pension to be paid to Ex-Governors and their Deputies and other benefits attached to them are at the discretion of Members of States House of Assembly without any interference from RMAFC.⁴⁷
4. The discretionary power of House of Assembly of States to make laws generally including laws to regulate the pension or gratuity of Ex-Governors and Ex-Deputies is not absolute, but subject to the provisions of section 4(7)(c) of the 1999 Constitution (As

⁴⁴ Ibid. s. 19

⁴⁵ Constitution of FRN 1999, s. 124(5).

⁴⁶ Section 124(5).

⁴⁷ Section 124(1)(2)(3)(5).

Amended) which provides that the discretionary power of a House of Assembly of State to make laws on any matter, outside the matters included in the Concurrent List with respect to which it is empowered to make laws, shall be for the peace, order and good government of the State.

5. The powers of the National Assembly and State Houses of Assembly to make laws are subject to the jurisdiction of the Courts. In other words, the lawmaking powers of the legislature are subject to judicial review.⁴⁸

Looking at the humongous severance package of Ex-Governors and their Deputies provided by the various States' Laws of Nigeria vis-à-vis the identified states in America and Kenya considered in this paper, while this paper agrees with the Court's judgment in *Incorporated Trustees of Human Development Initiatives & 39 Others v. Governor of Abia State & 73 Others* (Supra) that House of Assembly of States have powers to make laws for the pension or gratuity of Ex-Governors and their Deputies; it appears that the extant pension laws made by the various States of Nigeria cannot be said to have been made for the peace, order and good government of the States in line with the letters and the spirit of section 4(7) of the Constitution. This is because of the quantum of abnormal benefits attached to the said severance package.

This is evident in the volume of public outcry and condemnation of the said laws in the various States of the Federation leading to repeal of that of Zamfara State and the reduction of that of Lagos State. There appears to be a serious collusion between the members of House of Assembly of States and the Governors to enact the said pension laws that are apparently against the interests, welfare and sustainability of the States and their citizens. It is therefore the position of this paper that the extant pension laws of the various States of Nigeria were made in breach of section 4(7)(c) of the 1999 Constitution (As Amended) and by virtue of section 1(1) and (3), the said laws cannot be valid being in conflict with the provision of section 4(7)(c). The Courts should, when called upon to do so, via a suit filed on these grounds, declare the said laws *ultra vires* pursuant to their power under sections 4(8) and 6(a) and (d) of the Constitution.

⁴⁸ Section 4(8).

It is trite law that any person or body vested with powers of discretion must exercise same with caution – judicially and judiciously. If a legislative body abuses its power of discretion in the law making process, the Courts are empowered to void such exercise of discretion. Also, an unjust law is no law at all.⁴⁹ Finally, the State Pension Laws were not made subject to sections 6 of the Code of Conduct Bureau and Tribunal Act which prohibits a person from earning double payments from the public fund of the Federal or State Government of Nigeria as also contained in the Pension Laws of the Governors in USA.

Conclusion

This paper looked at the Laws providing for the severance package of Ex-Governors and their Deputies in Nigeria. It highlighted the public outcry and criticisms against the humongous pension package provided by these Laws. The paper also considered what obtains in other jurisdictions especially in the United States of America and Kenya. The position of the paper is that, while the States Houses of Assembly have powers under the Constitution to make pension laws for Ex-Governors and their Deputies, the extant Laws made by them are unsustainable in the light of the economic realities of the States. The said Laws cannot be said to be good laws.

It is therefore suggested that section 124(5) and (6) of the 1999 constitution should be amended to limit the wide powers vested on the House of Assembly to make laws for the pension or gratuity of Ex-Governors, to make same subject to the determination of the RMAFC as contained in section 124(1)(2)(3) relating to the salaries of serving Governors and their Deputies. It is also suggested that the various Houses of Assembly should repeal those Laws in line with the public outcry and replace them with more modest laws in tandem with what obtains in the States of United States of America and in line with the economic realities of the various States of Nigeria. The Courts should also at the slightest opportunity, declare those State Pension Laws *ultra vires* and null and void.

⁴⁹ Shalini Prem, ‘Conceptualising Justice and the Law: Is an Unjust Law not a Law?’ <[Conceptualising Justice And The Law: Is An Unjust Law Not A Law? | by The Opinion | The Opinion | Medium](#)> accessed 16 May 2023.