

Partnership for Media and Democracy (PAMED)

*c/o Media Rights Agenda (MRA)
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24 April 2020

The Chairman
Code of Conduct Bureau
5th Floor, Federal Secretariat Complex, Annex III
Shehu Shagari Way
Maitama, Abuja
E-mail: info@codeofconductbureau.com

Dear Sir,

Complaint Pursuant to Paragraph 3(e) of Part One to the Third Schedule to the 1999 Constitution, as amended, Against His Excellency, Mr. David Umahi, Governor of Ebonyi State, for Breaches of the Code of Conduct for Public Officers Contained in Part One to the Fifth Schedule of the said 1999 Constitution and Other Provisions of the Constitution

About the Complainants

The complainants herein are:

1. Media Rights Agenda (MRA) of 21 Budland Street, off Isheri Road, Ikeja, Lagos, E-mail: mra@mediarightsagenda.org
2. International Press Centre (IPC) of 11, Dideolu Court, Dideolu Estate, Ogba, Ikeja, Lagos, E-mail: ipc@ipcng.org

The complainants are non-governmental organizations registered in Nigeria with the Corporate Affairs Commission (CAC) under the Companies and Allied Matters Act and frequently carry out collaborative activities under the aegis of the Partnership for Media and Democracy (PAMED). The mandate of the complainants include promoting and defending the right to freedom of expression in Nigeria, including media freedom, both online and offline. The complainants are also member organizations of the African Freedom of Expression Exchange (AFEX), a continental network of media freedom and freedom of expression organizations, across Africa with its Secretariat in Accra, Ghana. In addition, the complainants are also member organizations of the International Freedom of Expression Exchange (IFEX), a global network of freedom of expression organizations with members from all the regions of the world and its headquarters based in Toronto, Canada.

About the Respondent

The Respondent herein is Mr. David Nweze Umahi, the Governor of Ebonyi State, whose address is the Ebonyi State Government House, Abakaliki, Ebonyi State.

The Complaint

The complainants herein hereby wish to lodge this complaint against Mr. David Nweze Umahi, the Governor of Ebonyi State, for misconduct arising from the breach of his Oath of Office as Governor of a State, his Oath of Allegiance, and several other provisions of the 1999 Constitution as well as the Code of Conduct for Public Officers contained in Part One of the Fifth Schedule to the Constitution.

Specifically, the complainants wish to bring to the attention of the Code of Conduct Bureau and to request an immediate investigation thereto, the following complaints against Mr. David Nweze Umahi, details and further particulars of which are provided hereunder:

1. Abuse of Office
2. Acting contrary to and in breach of the Oath of Allegiance, contained in the Seventh Schedule to the 1999 Constitution, as amended.
3. Acting contrary to and in breach of the Oath of Office of Governor of a State, contained in the Seventh Schedule to the 1999 Constitution, as amended.
4. Acting contrary to and in contravention of the provisions of the 1999 Constitution, as amended, particularly Sections 13, 22, 35(1), 35(3), and 39(1).
5. Acting arbitrarily and in a manner prejudicial to the rights of other persons, to wit media practitioners engaged in the lawful pursuit of their professional duties as journalists.

The complainants contend that by reason of the breaches of the Code of Conduct for Public Officers and other violations of the provisions of the Constitution of the Federal Republic of Nigeria, as outlined in this complaint, Mr. David Umahi is unfit to continue to hold the office of Governor of a State. The complainants accordingly request that Mr. David Umahi be removed from office as Governor of Ebonyi State and disqualified from holding any public office in Nigeria for the next 10 years, in accordance with the provisions of Paragraph 18(2)(a) and (b) of the Code of Conduct for Public Officers.

Details and Particulars of the Complaints

The complainants are complaining about the totality of the following incidents narrated hereunder, among others:

That on April 18, 2020, Mr. Chijioke Agwu, a reporter with the “Daily Sun” newspaper, who attended a press conference at the Government House, Abakaliki, Ebonyi was illegally arrested without cause by the Chief Security Officer to the Ebonyi State Governor, acting on the instructions of the said Governor, Mr. David Umahi. The arrest was as a result of the Governor’s displeasure over a feature story written by Mr. Agwu on a reported Lassa fever outbreak in the State and published by “Daily Sun” newspaper on April 18, 2020. The arrest was in violation of the provisions of Section 35 of the 1999 Constitution, as amended. After publicly humiliating and embarrassing the said Mr. Chijioke Agwu, the said Mr. David Umahi, ordered the release of the journalist without charging him with any offence known to the Laws of Nigeria and without arraigning him before any duly constituted court of law, in violation of the Constitution of the Federal Republic of Nigeria, as amended, as his Oath of Office.

That again, on April 22, 2020, Mr. David Umahi, conducted a live broadcast on the Ebonyi State radio and television stations during which he purported to ban for life two media practitioners accredited by their respective media organizations to cover all activities in the State, namely Mr. Chijoke Agwu, a correspondent of the “Daily Sun” newspaper, who had days earlier been unlawfully arrested on the orders of the Governor and released without charge; and Mr. Peter Okutu, a correspondent of the “Vanguard”

newspaper, from entering the Ebonyi State Government House or any other Government facility in the Ebonyi State and from covering state functions. He also threatened other journalists in Ebonyi State with dire consequences should they publish any negative story about the state.

In extremely inciting remarks, Mr. David Umahi said the safety of journalists in the State could no longer be guaranteed, claiming that the people of the State were angry with the journalists and might begin to unleash mayhem on them, a clear invitation for the journalists to be attacked and harmed as the Government would not exercise his constitutional duty to protect them or ensure their safety as it is obliged to do under Section 14(2)(b) of the Constitution.

Mr. David Umahi also made several other inciting and prejudicial remarks such as “If you think you have the pen, we have the koboko (horsewhip). Let’s leave the Court alone. Ebonyi people are very angry with the press and let me warn that I won’t be able to control them or know when they unleash mayhem on you, if you continue to write to create panic in the State” and “If you are an Ebonyi man or live in Ebonyi and you don’t feel our pains, it is a shame on you. Maybe, the press people claim they are untouchable.... Now, the die is cast. May God save us, in the course of time” (An audio recording of the broadcast by Mr. David Umahi, containing his statements and comments referred to herein is attached herewith).

The complainants submit that the actions and conduct of Mr. David Umahi constitute an abuse of office in that he improperly and illegally used his position and power as Governor of a State in an abusive way to oppress and violate the rights of citizens of the Federal Republic of Nigeria, and to put their lives at risk.

We contend that the journalists referred to above in this complaint, were engaged in a constitutionally protected duty and in the lawful pursuit of a profession protected under international human rights law.

We further contend that Mr. David Umahi had no authority under the Constitution or any other Law presently in force in Nigeria, whether as Governor of a State or in any other capacity, to act in the manner he did or to take the actions which he took, and in particular, to impose a life ban on journalists or on any other citizen, who have not been charged with or convicted of any offence known to Law.

We accordingly submit that the said Mr. David Umahi acted in breach of the provisions of the Constitution of the Federal Republic of Nigeria and violated Nigeria’s international treaty obligations, particularly Article 66(2)(c) of the Revised ECOWAS Treaty, wherein as a Member State of the Economic Community of West African States, Nigeria agrees to co-operate with other Member States in the area of information and undertakes to “ensure respect for the rights of journalists.”

For the proposition that Mr. David Umahi’s illegal and unconstitutional conduct is attributable to the Nigerian State and negative impacts the image of Nigeria while also placing Nigeria in an untenable situation, the complainants wish to refer to Article 4 (“Conduct of Organs of a State”), on the responsibility of States for internationally wrongful acts, adopted by the International Law Commission on August 9, 2001, which provides that:

- "1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State,***

2. ***An organ includes any person or entity which has that status in accordance with the international law of the State."***

The complainants further wish to refer to the binding judgment of the African Court of Human and People's Rights in the case of *Lohe Issa Konate v Burkina Faso*, delivered on December 5, 2014, wherein the Court held that:

"Since the conduct of the Burkinabe courts, fall squarely on the Respondent State (Burkina Faso), the Court is of the view that the latter failed in its obligation to comply with the provisions of article 9 of the Charter (the African Charter on Human and People's Rights), article 19 of the Covenant (the International Covenant on Civil and Political Rights) and article 66 (2)(c) of the revised ECOWAS Treaty with regard to the Applicant (Journalist Lohe Issa Konate)."

We accordingly submit that by his illegal and unconstitutional actions, Mr. David Umahi has brought Nigeria to ridicule before the international community and is responsible for Nigeria's violation of several international instruments, including the Revised ECOWAS Treaty, the African Charter on Human and People's Rights, the International Covenant on Civil and Political Rights, amongst others as well as various resolutions of the United Nations General Assembly on the safety of journalists and the issue of impunity.

The complainants assert that the actions and conduct of Mr. David Umahi constitute a breach of his Oath of Allegiance, which he took on becoming Governor of Ebonyi State, particularly his pledge to "preserve, protect and defend the Constitution of the Federal Republic of Nigeria."

The complainants also contend that the actions and conduct of Mr. David Umahi constitute a contravention of his Oath of Office as Governor of a State in that it violated his pledge to "preserve the Fundamental Objectives and Directive Principles of State Policy contained in the Constitution of the Federal Republic of Nigeria", the said Fundamental Objectives and Directive Principles of State Policy which include:

- The provisions of Section 13 thereof, which states that:

"It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution."

- The provisions of Section 22 thereof which states that:

"The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people."

The complainants further assert that Mr. David Umahi also violated his Oath of Office as a Governor in that his actions and conduct violated his pledge to "preserve, protect and defend the Constitution of the Federal Republic of Nigeria", the said Constitution which include:

The provisions of Section 35(1), which stipulate that:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law...”-

The provisions of Section 35(3) which state that:

“Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.”

The provisions of Section 39(1) to the effect that:

“Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.”

The complainants further state that Mr. David Umahi also violated his Oath of Office as Governor of a State, particularly his pledge to “do right to all manner of people, according to law, without fear or favour, affection or ill-will.”

Conclusion

The complainants state that by conducting himself in the manner adumbrated above, Mr. David Umahi acted arbitrarily and in a manner prejudicial to the rights of other persons, to wit media practitioners engaged in the lawful pursuit of their professional duties as journalists, and that his actions were unlawful, and contrary to Law, including the provisions of Paragraphs 9 and 13 of the Code of Conduct for Public Officers contained in the 1999 Constitution, as amended, to the effect that:

“A public officer shall not do or direct to be done, in abuse of his office, any arbitrary act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any government policy.”

Signed by:



Edetaen Ojo
Executive Director, Media Rights Agenda (MRA)



Lanre Arogundade
Director, International Press Centre (IPC)