



STATE OF EMERGENCY AND PRESIDENTIAL POWERS IN NIGERIA: ADOPTING THE INTERNATIONAL BEST PRACTICES

Agent Benjamin IHUA-MADUENYI¹

&

Glory Omonigho OZURU²

ABSTRACT

At times, a State of Emergency is necessary for effective functioning of government especially, in a presidential system like Nigeria. Though, it is not a democratic ideology but it is constitutional and lawful for use in times of great emergencies to save lives and property. However, the use of this tool in Nigeria has flagged various controversies especially, among legal and academic scholars, in recent times. This is particularly so where a State of Emergency undermines the rule of law in a democratic setting. This paper employs both primary and secondary sources like textbooks, statutes, case law, newspapers and internet sources to discuss the legality of the President Tinubu's action in announcing a State of Emergency in Rivers State on the 18th of March 2025, which saw the suspension from office of a democratically elected state Governor, and his executives. The paper concludes that though, the use of a State of Emergency is constitutional but it must meet all the requirements of a State of Emergency as provided by the Constitution of the Federal Republic of Nigeria and international law. It is recommended that the use of a State of Emergency is unnecessary in a democracy where the needs of the citizen is effectively provided for by government and that there are other democratic ideologies like dialogue and justice that could be used instead of a State of Emergency.

Keywords: State of Emergency, Executive Orders, Presidential Powers, Due Process, Separation of Power, International Law, Rule of Law

¹ LLM (King's College London, University of London), Chevening Scholar and Lecturer, Faculty of Law, University of Port Harcourt, Rivers State, Nigeria.

Email: agent.ihua-maduenyi@uniport.edu.ng

² B.A (Uniport) LL.B (RSU) BL (Abuja), LL.M (Unizik), PhD (Unizik), Senior Lecturer, Faculty of Law, University of Port Harcourt, Rivers State, Nigeria.

Email: glory.ozuru@uniport.edu.ng

INTRODUCTION

In a State of Emergency, the executive is forced to act outside the law, while the legislature is expected to protect them. Though, such protection does not make the actions of the executive legal, but it only means that the legislature has legalized an illegality.³ It places both in a situation not controlled by law;⁴ and outside constitutionality and legitimacy.⁵ Dicey observed that a State of Emergency justifies illegality in order to restore law and order in a society. This can be taken care of if the legislation delegates the executive, in advance, to handle an emergency. In an emergency situation, freedom is considerably limited; and democracy, electoral processes and the rule of law assurances are altered. State of Emergency has been a recurring tool in Nigeria's democracy since the President Muhammadu Buhari regime. History has recorded at least seven Executive Orders covering various topics within the space of ten years.⁶ Six of these were issued within the eight years of President Buhari's rule. Some were signed by his deputy Vice President Yemi Osibanjo in an acting capacity.⁷ Recently, President Tinubu declared a State of Emergency in Rivers state through an address he made to the nation on the March 18 2025. According to the President, the declaration was necessitated by the prevailing political tension in the state⁸ and the successive vandalism of some oil installations in Rivers state.⁹ This has necessitated some questions from many Nigerians as to the legality or otherwise of the President's use of the tool of a State of Emergency to suspend a seating Governor and members of the State House of Assembly of a state.

This paper seeks to x-ray the meaning, benefits, dangers, international approved standard on a State of Emergency as a legislative and administrative tool of governance, its legal implication on Nigeria's democracy and the rule of law. To achieve these feat, the paper is divided into six sections. Section one is this introduction; section two gives a conceptual clarification of the term 'State of Emergency'; section three deals on State of Emergency in Nigeria; section IV discusses the legal provisions for a State of Emergency in Nigeria; section five dwells on the legal impact of emergency restrictions on legislative and democratic processes; and section six provides conclusion and certain recommendations for a way forward.

³ Per Dicey mentioned in David Dyzenhaus, *The State of Emergency in legal theory* (Cambridge University Press 2009) 21 Edited by Victor V. Ramraj, Michael Hor and Kent Roach, *Global Anti-Terrorism Law and Policy* (Cambridge University Press, 2005) pp 65-89.

⁴ Ibid.

⁵ Ibid.

⁶ These include anti-corruption, corporate registration, taxation, project management, etc. available at <https://howng.com/here-is-the-list-of-executive-orders-newly-issued-by-the-buhari-administration/> accessed 10 April, 2025.

⁷ Sam Amadi, 'Executive Orders and Presidential Power in Nigeria: Comparative Lessons from the United States of America,' (2019) *National Institute for Legislative and Democratic Studies* 12.

⁸ A series of events, including a Supreme Court judgement and failure of the disputants to resolve their differences.

⁹ Mazi Afam Osiagwe, 'No, the President cannot Suspend' *Thisday Lawyer* (Nigeria, 25 March 2025).

THE LEGAL CONCEPT OF 'STATE OF EMERGENCY'

A State of Emergency is an extraordinary legal administration intended for extraordinary circumstances, such as internal disturbances, natural disasters and war. It is an executive pronouncement made in reaction to an inexplicable circumstance, which poses a fundamental risk to the nation.¹⁰ It is a condition that empowers a government to impose policies that it would ordinarily not legally be allowed to, for the well-being and security of its citizens, and for the protection of lives and property.¹¹ It enables the executive to act in ways that it ordinarily would not under a permissible framework.¹² This is to enable the state react swiftly and efficiently to an impending danger. It is true that both international and national legal systems all over the world recognize State of Emergency in their respective laws, the precise power they validate contrast significantly.¹³

A State of Emergency may take diverse forms. It may be attached to the constitution or in a separate law or just publicly announced. A country may at times assume procedures amounting to a State of Emergency. On the other hand, democracy, rule of law, and human rights are hindered in parts or whole in a State of Emergency.¹⁴ History has shown that every form of State of Emergency suffers substantial risks of misapplication. Such a pronouncement may interrupt the normal functions of government, it may also cause the citizens to adjust in their normal activities, and it may empower government interventions to device alternative strategies to interrupt public freedoms and human rights.¹⁵ The need for a State of Emergency may come from circumstances as varied as an armed act to counter the state by internal or external forces, a natural disaster, a pandemic, civil unrest, an economic crisis, a general strike, and so on. A State of Emergency is not an unusual occurrence, especially in autocratic administration where such a state may be tolerated as long as the administration lasts.¹⁶ Some circumstances at times may warrant the declaration of military decree, permitting the military a superior power to act.

State of Emergency operates under two machineries- a legal framework and an operative framework. The legal framework entails the legislative or constitutional pedestals upon which the State of Emergency is based; while the operative framework comprises of the strategic and organizational structure upon which to deal with a State of Emergency.¹⁷ These two mechanisms, though separate, but companionable. For a State of Emergency to be acceptable, it must stand on a firm legal framework and an operational structure. It must be intoned to international law.

¹⁰ Geneva Centre for the Democratic Control of Armed Forces, 'State of Emergency,' *Backgrounder Security Sector Governance and Reform*, October 2005.

¹¹ Wikipedia, 'State of Emergency,' available at <https://en.m.wikipedia.org> accessed 12 September, 2025.

¹² Michael Meyer-Resende and Hannah-Jil Prillwitz, 'States of Emergency and the Rule of Law' (2020) *Reconstitution Exchange and Analysis on Democracy and the Rule of Law in Europe* 5.

¹³ Ibid.

¹⁴ This is a *de facto* State of Emergency.

¹⁵ Ibid.

¹⁶ Ibid, n 8.

¹⁷ Ibid.

A State of Emergency must be democratically accountable, and must have respect for human rights and the rule of law.

The application of a State of Emergency always leads to restraints on normal economic, social and political activities and human rights due to the unusual situations that must have given rise to the crisis state of affairs. Although, some restrictions may be justified but the danger is that leaders can seize such occasion of a State of Emergency to hoist unjustified restraints on human rights and civil authority, counteract political enemies, delay elections, or further their selfish resolutions that could be more challenging to pursue, under normal conditions.¹⁸ Some countries have had to maintain a State of Emergency for many years or decades, even after the unusual situation that led to its declaration had died out.¹⁹ For example, a State of Emergency in El Salvador initially marked for one month was constantly renewed for one year.²⁰ Thus, it is not unusual of a State of Emergency to birth a constitutional authoritarianism. Another case was the Venezuela's President Nicholas Maduro who dispensed a State of Emergency that gave him additional powers to confront the country's present economic emergency, plus, the right to device tougher security measures.²¹

A State of Emergency gives more powers to the government. It can be used to prevent mass gatherings and demonstrations; enforce curfews; lock down public places; enable the police to conduct searches without warrants; allow security agents to tap phones and computers; among other things. For instance, the Turkish President and cabinet, during the emergency rule authorized laws without involving parliament. They suspended some rights including the European Convention on Human Rights, while France prolonged its State of Emergency following the Nice attack that claimed 84 lives.²² A State of Emergency may be imposed on a section of a country or on the whole country, like the sixty days State of Emergency imposed on some parts of Ecuador in 2016;²³ the US President George Bush fixed a State of Emergency in Louisiana and Mississippi in 2005;²⁴ Japan placed its power plant in Fukushima under a State of Emergency in 1986 after a tidal wave brought its three nuclear reactors to a halt in 1986.²⁵ A data published by the Centre for Civil and Political Rights (CCPR), confirmed a total of 79 countries declared a State of

¹⁸ Ibid, p. 2.

¹⁹ Countries that have had state of emergencies extended include Turkey, France, Venezuela, Ecuador, USA, Japan, India, etc. France has been in an emergency rule since the Paris attacks in November, 2015. President Recep Tayyip Erdogan proclaimed a State of Emergency following Turkey's failed coup, and many others.

²⁰ Marta Hurtado, United Nations Human Rights Office of the High Commission, *El Salvador State of Emergency* Geneva 28 March, 2023.

²¹ Rosamond Hutt, 'what is a "State of Emergency"' *World Economic Forum*, 21 July, 2016.

²² Ibid.

²³ ReliefWeb, 'WFP Ecuador Situation Report #9' 21 July 2016.

²⁴ EveryCRS Report 'Federal Stafford Act Disaster Assistance,' available at <https://www.everycrsreport.com> accessed 9/10/2025.

²⁵ BBC, 'Fukushima disaster: What happened at the nuclear plant?' available at <https://www.bbc.com>, august 2023, accessed 9/10/2025.

Emergency with various degrees of emergencies during the Covid-19 pandemic.²⁶ These include Australia, Finland, France, Malaysia, Philippines, Indonesia, Thailand, etc. Declaring a State of Emergency in times of crisis is good but it must be done in compliance with international acceptable standards.²⁷ A State of Emergency is an important provision in most countries' constitution and such a vital legislature often recommends the circumstances where such a provision may be invoked in governance, the processes to be followed, and specific limits on such alternative powers, and the rights that may be invoked or put on hold.

For a State of Emergency to be valid and legal, it must be momentary; it must be an exceptional situation; the crisis must be of a remarkable threat and danger to the public; the State of Emergency must be publicly announced to inform citizens to avoid a *de facto* State of Emergency;²⁸ there should be adequate communication made to other states and treaty monitoring bodies;²⁹ measures taken must be proportional to the gravity of the situation of emergency; human rights during a State of Emergency must be in line with the limits provided by the relevant international and local laws; such a State of Emergency must not suspend the rule of law nor derogate from the principle of legality, which must be observed at all times; and lastly, it must not derogate from fundamental human rights.

A State of Emergency must have regard for human rights, especially the right to life; right against torture; freedom from slavery; freedom from post *facto* legislation and other legal assurances; right to respect before the law; and freedom of thought, conscience and religion.³⁰ According to the UN Human Rights Committee, besides the non-derogatory rights mentioned above, other humanitarian provisions must stay inviolable even in a State of Emergency. These include the humane treatment due persons dispossessed of their liberty and hostage taking; unacknowledged incarceration must be prohibited; the rights of minority groups must be protected; propaganda advocating war, racism, religious or national hatred must be prohibited; and the integrity of the judiciary must be protected.³¹ The Constitution or statute grants some extraordinary powers to government in a State of Emergency. These include the restraint of the freedom of the press, proscription of public meetings; internal deployment of the military; removal of people from their residences and business posts; searches of private places without a search warrant; indiscriminate arrests without charges; seizure and or destruction of private property; regulating the operation of private initiatives; regulating export and imports; interfering with fiscal

²⁶ National, 'Covid-19; 79 countries have declared State of Emergency- CCPR' available at <international.astroawani.com > accessed 28/08/2025.

²⁷ Ibid, n14.

²⁸ A *de facto* State of Emergency is a situation where government limits human rights without publicly announcing a State of Emergency.

²⁹ For example, where a state party is to derogate from treaty obligations under the say ICCPR or ECHR, It must notify the Secretary-General of the UN or the Council of Europe of its derogation, measures taken and reasons for taking such measures and the expiration of the derogation.

³⁰ Geneva Centre for the Democratic Control of Armed Forces, 'State of Emergency,' *Backgrounder Security Sector Governance and Reform*, October 2005.

³¹ Ibid, n3.

transactions; and special legislature to discipline non-compliance with emergency rules.³² In a State of Emergency, government must remain accountable to civilians on the national and state levels. The military must continue to assist the civilians in a subordinate role.³³ To guide against the abuse of emergency powers, certain mechanisms must be put in place. There must be parliamentary ratification of the decision of the executive to declare a State of Emergency. This is done through a competent vote. Since parliament is a check on the executive, the executive must justify their resolution to opt for a State of Emergency and must specify measures to handle the situation.

For a State of Emergency to be authentic, it must be in line with the rule of law.³⁴ To avoid abuse of power, the rule of law requires a separation of power among the different arms of government. This is what Baron tried to explain when he said that for the freedom of the masses to be certain, power must not dwell in one organ of government nor in one person.³⁵ The concentration of power on one organ or one person is tyranny, which inspires the abuse of power.³⁶ Separation of power is the bedrock of the rule of law. The Constitution of the Federal Republic of Nigeria (CFRN) provides for the separation of power among the Executive, legislative, and the judiciary.³⁷

The Constitution confers legislative powers of the country on the National Assembly, which comprises of the Senate (the upper House) and the House of Representatives (lower House); it confers the execution of administrative powers on the president of the Federal Republic of Nigeria; and judicial powers on the courts. All supporting one another with checks and balances for efficient governance.³⁸ For example, the legislature, though, empowered to make laws, functions with the approval of the executive.³⁹ This was established by the apex court in *AG Bendel vs. AG Federation & Ors*,⁴⁰ where the court invalidated and rendered unconstitutional the passage of an Appropriation Act, which did not get the votes of a two-third majority of the legislative Houses.

A State of Emergency transfers extra powers on the President. The President using such powers is exercising a statutory role approved by the Constitution.⁴¹ In the case of *Abia State and Ors vs. AG Federation*, the apex court acknowledged that the President can reliably amend the law to bring it to the language of the Constitution.⁴²

³² Ibid.

³³ Ibid.

³⁴ Sam Amadi, n5 p 75.

³⁵ Baron de Montesquieu, *The Spirit of the Law* Book XI, Chapter 6 (1748).

³⁶ Ben Nwabueze, *The Presidential Constitution of Nigeria* (Palgrave Macmillan, 1981) 32.

³⁷ Constitution of the Federal republic of Nigeria (CFRN) 1999, ss 4, 5 and 6, respectively.

³⁸ Abiola Ojo, 'Separation of Power in a Presidential Government' (1981) *Public Law Journal*, 105.

³⁹ Kerwin Cornelius and Furlong Scott, *Rulemaking: How Government Agencies Write Law and Make Policy* (CQ Press, 2011).

⁴⁰ (1983) ANLR 208.

⁴¹ CFRN, ss 315 and 317.

⁴² (1993) NWLR (Pt. 309) 58.

The Supreme Court in the extant case upheld the powers of the executive to amend laws in order to carry out tasks provided by the Constitution. The constitution made provisions for a State of Emergency in critical situations for the good of the country. This cannot be said to be an abuse of the doctrine of separation of powers but is meant to prevent the violation of the Constitution.⁴³ Also, in *Ajakaye vs. Idehai*,⁴⁴ *Awoyemi vs. Adekoya*,⁴⁵ and similar other cases,⁴⁶ the Supreme Court authenticated the power of the executive to alter existing laws to conform to the Constitution.⁴⁷

Though, law making is principally the duty of the legislature, but section 315 of the Constitution empowers the executive in the person of the President and the Governor of a state to modify existing laws to conform to the provisions of the Constitution. Such modification is valid if the law modified was in respect of any matter which the National Assembly or House of Assembly are empowered by the Constitution to make.⁴⁸ The Constitution empowers the courts or appropriate tribunal to invalidate such modifications that do not conform to the provisions of the Constitution.⁴⁹ It may appear that section 315 counters the doctrine of separation of powers, but that section did not empower the executive to make laws *per se* as this may be strange in a constitutional democracy.⁵⁰

Nevertheless, the legislature may carry out their roles in times of emergency. It is wrong if they do not carry out their major statutory functions of lawmaking, overseeing of the executive and representing the people.⁵¹ The law makers represent the will of the masses by providing a central relationship amongst the people and the government. They serve as the primary medium for expressing public fears.⁵² In a democratic setting, the legislature deliberates to take decisions but in a dictatorship arena, they exhibit some monocratic traits.⁵³

Rights can bloom in a peaceful, safe and harmonious environment but not in a confused condition. A State of Emergency becomes necessary where there is chaos in any part of the country, which negatively impact on the fundamental freedoms of

⁴³ Ibid, per Kayode Eso, JSC.

⁴⁴ (1994) 8 NWLR (Pt. 364) 504.

⁴⁵ (2003) 18 NWLR (Pt. 852) 307.

⁴⁶ *Alhaji vs. Umanka* (2011) 4 NWLR (Pt. 1236) p 148.

⁴⁷ CFRN, s 315. A State of Emergency is constitutional and can be invoked to save lives and property. This cannot be said to be an abuse of powers nor does it undermine the powers of the legislative.

⁴⁸ CFRN, s 315 (1) (a) and (b).

⁴⁹ Ibid, s 315 (2).

⁵⁰ A. Ojo, 'Constitutionality of Delegated Legislation' (1970) (4) *Nigeria Law Journal*, 99.

⁵¹ Murphy Jonathan, 'Parliaments and Crisis: Challenges and Innovations' (2020) *INTER PARES Parliamentary Primer No. 1. International IDEA*.

⁵² Power, Greg and Rebecca A. Shoot. 2012, 'The Nature of Parliamentary Representation,' (2012) *Global Parliamentary Report. Inter-Parliamentary Union and United National Development Programme*, 2012.

⁵³ Repucci, S. and S. Slipowitz. 2020. 'Democracy Under Lockdown. The Impact of Covid-19 on the Global Struggle for Freedom.' *Freedom House* (2020) available at <<https://freedomhouse.org/report/special-report/2020/democracy-under-lockdown>>, accessed 20th April 2025.

the people. It brings about some derogation for the purpose of achieving public peace and safety of life and property, aside the non-derogation prohibition of section 45 of the Constitution. Such derogation may appear as a temporary suspension of some rights. Derogation is not automatic but subject to both local and international law to enable government handle any situation of exceptional and momentary nature.⁵⁴ Such derogation is temporary and must comply with both local and international provisions, which come with substantial legal and political costs.⁵⁵ Derogations are cogent reactions to national political uncertainties. It allows the government get some legal breathing space to challenge emergencies while, at the same time, make the people to believe that the suspension of their rights is lawful and expedient for the general good of the state.

THE EVOLUTION OF STATE OF EMERGENCY IN NIGERIA

The first recorded declaration of State of Emergency in Nigeria was in 1962 during the regime of Prime Minister Sir Abubakar Tafawa Balewa. A State of Emergency was announced in the Western region pursuant to section 65 of the non-operational 1960 Constitution of Nigeria. The reason given was that the federal government wanted to guarantee peace and calm in the region.⁵⁶ The Prime Minister cited grave security situation in the Western region; and subsequent declarations of a State of Emergency in the country have taken this pattern as all have been attributed to calamitous security concerns, including the recent declaration by President Ahmed Tinubu in March 18, 2025 for Rivers state. The 1962 declaration of State of Emergency was followed by a State of Emergency by President Olusegun Obasanjo in 2004. President Obasanjo suspended and later removed some state government officials. In both cases, two regional and state government functionaries were suspended and removed from office, respectively. President Goodluck Jonathan departed from this precedence in 2013 when he announced a State of Emergency on Adamawa, Bauchi, Bayelsa, Benue, Borno, Gombe, Kano, Nasarawa, Plateau, and Yobe states as a result of the state of insecurity in these states then.

There were vicious killings, terrorism and visible destruction of lives and property in these states. It was so much that some sects tried to establish control and power over some parts of the country, the Nigerian flag was destroyed and some other symbols of power of the country were replaced with eccentric flags suggesting the presence of another sovereignty.⁵⁷ Unlike his predecessors, President Goodluck Jonathan allowed the affected states' officials to remain in office. So far, in the history of state of emergencies in Nigeria, the reasons given have always been that of public order and public safety, and security unrests and none resulting from a natural

⁵⁴ N. Jayawickrama, *the Judicial Approach of Human Rights: National, Regional and International Jurisprudence*, (Cambridge University press) 2002.

⁵⁵ K. Roach, 'Ordinary Laws of Emergencies and Democratic Derogations from Rights,' in Victor V. Ramraj (ed), *Emergencies and the Limits of Legality* (Cambridge University Press 2008) 368-394.

⁵⁶ www.waedo.org/nigerdelta/fed.govt/federalism/emergencyrule/westernregionbalewa accessed 1/6/2025.

⁵⁷ President Goodluck Jonathan's broadcast of 14th May, 2013 is available at www.channelstv.com/home/2013/05/14 accessed 1/6/2025.

disaster.⁵⁸ Recently, following a nationwide broadcast on March 18, 2025, President Bola Ahmed Tinubu announced a State of Emergency in Rivers state, south of Nigeria. Along with his broadcast came the suspension for six months of Governor Siminalayi Fubara, his deputy Prof. Ngozi Ordu, and members of the Rivers State House of Assembly. Both the Senate and House of Representatives validated the action of the President.

The Senate President Godswill Akpabio later announced that the legislative Houses would form an *ad hoc* Committee to look into the administration of Rivers state during the period of emergency, and another Committee to mediate the political crisis in the state.⁵⁹ This is a rare way to addressing rising political and security issues in a state, which was occasioned by rising tension between the suspended state governor and other political factions. This, no doubt, created lots of tension and an intense legal debate in the country as to the powers of the president to declare a State of Emergency in the Constitution of Nigeria and the legality or otherwise of suspending or removing a democratically elected state officials from office.⁶⁰ Though, the 1999 Constitution provides for such emergency powers, but, many Nigerians wonder whether the president acted within the ambits of the provisions of the Constitution or whether his action is likely to threaten Nigeria's federal structure and the supremacy of democracy. These will be better understood from the legal provisions on state of emergencies by international law, of which Nigeria operates as a state party; and the Constitution of the Federal Republic of Nigeria.

ASSESSING THE LEGALITY OF A STATE OF EMERGENCY

State of Emergency is not bad in itself but it has often been misused by tyrants to suspend democracy, rule of law and human rights. It sends the signal that the normal working of the state can no longer be sustained.⁶¹ This can trigger fear and uncertainty in the people and it is always prone to abuse by the government to exploit the masses, concentrate power on themselves and undermine constitutional provisions. For a State of Emergency to be justified in a democratic context, it must comply with certain standards set by international and regional treaties:⁶² All major international and regional human rights norms recognize the fact that exceptional circumstances may require exceptional responses. Such international treaties include the International Covenant on Civil and Political Rights (ICCPR);⁶³

⁵⁸ Bright Erazé Oniha, 'Legality of the Presidential Declaration of a State of Emergency in some States in Nigeria and its Implication on State Government Functionaries,' *Edo state Judiciary*, p 4.

⁵⁹ Whitney Igariwey, 'National Assembly Endorses President Tinubu's Declaration of State of Emergency in Rivers State,' *House of Representative News* (20 March 2025).

⁶⁰ Chinaza Eneh, 'State of Emergency in Rivers State: Presidential Overreach or Legal Necessity?' *The Trusted Advisers* (19 March 2025).

⁶¹ Laurent Pech, Hauser, Zirk-Sadowski, Wojciechowski, 'The Rule of Law and the Role of Fundamental Rights' (2010) *Components of the Rule of Law in the European Union: A Prime* p 5.

⁶² Michael Meyer-Resende, and Hannah-Jil Prillwitz, 'State of Emergency and the Rule of Law: A Primer' *Democracy Reporting International re-constitution programme* 3.

⁶³ ICCPR, art 4.

International Covenant on Economic, Social and Cultural Rights (ICESCR);⁶⁴ the European Convention on Human Rights (ECHR);⁶⁵ and the American Convention on Human Rights.⁶⁶

The ICCPR⁶⁷ authorizes state parties to derogate briefly from some of their ICCPR commitments in times of public crisis and emergency situations. States can depart from the standard human rights protections such as independence and security of the citizens; freedom of movement; and freedom of assembly, in order to efficiently defend the security of all.⁶⁸ The Human Rights Committee (HRC) approves the General Comment 29,⁶⁹ which provides the considerations for state rights in times of emergency. It empowers the state party in times of emergency, which threatens the life of the nation to take steps to deviate from their obligations under the Covenant as the situation warrants. It provides to the effect that state parties may invoke their right to derogate from the Covenant in emergency situations like a natural disaster, public violence, industrial mishap, etc. The state party must be able to confirm that such a situation constitutes a threat to the life of the country.⁷⁰ However, the ICCPR provides seven provisions from which there must be no derogation.⁷¹ It provides the right to life, which must be protected by law;⁷² it provides against torture or cruel, inhumane or degrading treatment or punishment;⁷³ it stands against slavery, servitude and slave trade in all forms;⁷⁴ it forbids the prosecution of an offender on an offence committed which was not an offence at the time it was committed;⁷⁵ and everyone has equal rights before the law. Article 21 assures that no person will be deprived of his life or freedom except in line with the procedure laid down by law.⁷⁶

For a State of Emergency to be legal, the President has to issue an official announcement to that effect; and the legislature must approve the announcement within two days if in session or ten days if on recess.⁷⁷

The ECHR defines State of Emergency in *Lawless vs. Ireland*,⁷⁸ as an exceptional crisis situation which affects the society and constitutes a great threat to the wellbeing of the people. Such an emergency must be imminent and real; it must be such that involves the entire nation, or which threatens the wellbeing of the public, the danger

⁶⁴ Ibid.

⁶⁵ ECHR, art 15.

⁶⁶ ACHR, art 27.

⁶⁷ ICCPR, art 4.

⁶⁸ 'Introduction- Human Rights in Emergencies,' available at <https://www.cambridge.org> accessed 16 April 2025.

⁶⁹ ICCPR, art 4.

⁷⁰ Ibid.

⁷¹ ICCPR, art 21.

⁷² ICCPR, art 6(1).

⁷³ ICCPR, art 7.

⁷⁴ ICCPR, art 15.

⁷⁵ ICCPR, art 16.

⁷⁶ Ibid.

⁷⁷ 'State of Emergency in Rivers: 'Suspension or otherwise,' available at <https://blog.nigerianbar.org.ng> accessed 16 April 2025.

⁷⁸ ECHR, No. 3, 1 Jul 1961.

must be exceptional; it must be a public emergency that threatens the life and wellbeing of the country; requires some proclamations or notifications to the public; requires national and international supervision; strictly depends on the exigencies of the situation; and must not be inconsistent with other state obligations under international law.

It is not every disturbance qualifies as an emergency which threatens the life of the country. It must be an extraordinary situation or a predicament which affects the entire population and constitutes an excessive treat to the structured life of the public.⁷⁹ Also, the toolkits and commitments by some international organizations like the Council of Europe and the Organization for Security and Co-operation in Europe gave apposite principles on democratic governance and responsibility in emergency situations. These include the *principle of legality*, which denotes that any measure taken must be constitutional or statutory or from the jurisprudence of constitutional courts on human rights derogations enshrined and approved by the legislature or in an extraordinary decree of the executive, subject to confirmation by the legislature.⁸⁰

The *principle of proportionality* denotes that in times of emergency, any measure taken must be strictly as the situation warrants, meaning that any measure taken must be aimed at averting the danger and must be an effective method to achieving the desired objective.⁸¹ The principle of *limitation of time*, indicates that a State of Emergency must be within the limit of time and geographical location of the threat and not more. If a specific time is given, like in the case of a curfew, it means that the people are free outside that time frame and the duration of the State of Emergency must not be unnecessarily too prolonged but fit for the situation. The effect of the emergency situation must also be regularly reviewed and extensions must be defensible. For instance, it may be reasonable to postpone elections, but such a postponement must not exceed the existing emergency as that would be a violation of the rights of the people to vote in a periodic election.

The principle of *non-derogation of rights* specifies that rights cannot be derogated from, no matter the emergency, though, this may vary from treaty to treaty. Such rights include the right to life, right against torture, right against slavery and servitude, and the right against any form of *ex post facto* or retrospective punishment, cannot be derogated from.⁸² The *principle of compatibility with other international obligations*, requires that even in states of emergency, state parties must be bound by their international obligations. For example, international law expects states to observe all humanitarian rules of armed conflict and the fundamental principle of fair trial at all times, even under emergency situations. Therefore, a State of Emergency does not suspend other international obligations of the state, including all economic, social and cultural rights, which may be affected by the situation of emergency. There

⁷⁹ Peter Chidera Aneke, 'the Exercise of Emergency Powers in Nigeria: The Position of ACHPR and conformity with the Minimum International Standards,' *MUNFOLL/J* (1) 2021, p 109.

⁸⁰ Michael Meyer-Resende, and Hannah-Jil Prillwitz, n 60 p 4.

⁸¹ Ibid.

⁸² Ibid.

is the *principle of non-discrimination*, which states that even in times of emergencies, there should be no discrimination on grounds of race, ethnic group, sex, religion, language, or social origin. Thus, in a State of Emergency, public officials must be mindful not to discriminate against any one individual or groups. The principle of the rule of law and right to an effective remedy, expects the courts, though, affected by the emergency situation, to continue to provide an effective remedy for all human rights abuses and must guarantee the right to access to justice in exigent matters. Lastly, the *principle of legislative oversight*, requires the legislature to continue to play its role by modifying or annulling the resolutions of the executive.⁸³ For instance, during the Covid-19 pandemic, states opted for virtual deliberations and voting for members of the legislative.

The General Comment of the Committee on Human Rights, prescribes some guidelines for derogation.⁸⁴ It supports derogation to the extent that it must be an exceptional circumstance of great public danger, which threatens the very existence of the country;⁸⁵ a war or similar public danger, which threatens the life of the country;⁸⁶ or a war or similar crisis condition, which threatens the independence or security of the state.⁸⁷ It is agreed that a situation of war or armed conflict whether national or international as distinct under international humanitarian law creates a valid basis for derogation.

International humanitarian law is part of the derogation clause since it is always activated by situations that threatens the existence of the country and interferes with the normal progression of human rights in the strict sense.⁸⁸ Therefore, an ordinary upheaval that does not threaten the existence of the country cannot justify the implementation of the derogation clause.⁸⁹ Since the state is the one to implement this clause, it must explain the inevitability of undertaking such responsibility. This must not be carried out in a dictatorial manner but in a manner justified by the Committee on Human Rights or by the courts.⁹⁰ The General Comment 29 provides examples of instances where the invocation of the derogation clause is not justified.⁹¹ The fact is that, the non-existence of an extraordinary condition may be legally contested.

Even if the state decides to suspend its obligations under the Charter in the face of an imminent danger, this does not invalidate the rights in the Covenant because there are still certain rights which cannot be derogated from; this inviolability ensures legal

⁸³ Ibid.

⁸⁴ Committee on Human Rights, 24 July 2001, General Comment 29 on States of Emergency, art. 4 (CCPR/C/21/Rev 1/Add 11)

⁸⁵ CCPR, art 4.

⁸⁶ European Convention, art 15.

⁸⁷ CADH, art 27.

⁸⁸ Laurent Sermet, 'The absence of a derogation clause from the African Charter on Human and People's Rights: a critical discussion,' (2007) *AHRLJ* 7(1)142-161.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ General Comment 29 para 1.

performance. This, plus other non-derogable rights are not *fait accompli*.⁹² The proportionality must be commiserate to the derogation.⁹³ The CCPR does not encourage derogation in its entirety.⁹⁴ The suspension of rights on any form of discrimination on the grounds of colour, race, sex, language, and social or religious barriers is disallowed. The state party must announce its reason for derogation and must give a similar notice after the duration of the derogation.⁹⁵ From the tune of the CCPR, for the state to derogate, it must give notice of the derogation; state the clauses it is derogating from; give reasons for the derogation; and give a related notice at the end of the exercise.⁹⁶ As Sermet rightly observed, for human rights to be derogated, it must meet four conditions.⁹⁷ The derogation must be very necessary; proportional to the impeding danger; inviolable and must be temporal. This means that only extraordinary situation can substantiate a State of Emergency. The derogation procedures must be to ensure public order in exceptional situations while respecting civil rights; and all rights must be restored once the emergency situation ceases.

Contrary to the provisions of the ICCPR and international treaties on State of Emergency, the African Charter on Human and People's Rights (ACHPR) does not enclose any derogation clause nor does it recognize emergency situations for state parties.⁹⁸ The implication of this is that any limitation of the fundamental freedom recognized in the Charter can never be justified by a State of Emergency. In both the cases of *Article 19 vs. Eritrea*⁹⁹ and *Commission Nationale des Droits de l'Homme et des Libertés vs. Chad*,¹⁰⁰ the African Commission considered the suspension of Charter rights in a war that threatened its very existence and a communication wherein the defendants invoked a civil war within its territory, respectively and held that state parties cannot derogate from human rights in period of emergency. State parties are not allowed to invoke emergency situations like war within or outside their territory or any other State of Emergency to excuse the abuse of any right protected under the Charter. The Commission raised all rights within the Charter to be equal to a regional *jus cogens*.¹⁰¹ In the case of *Jawara vs. The Gambia*, where the Bill of Rights in their Constitution was suspended by a successful *coup d'état*, the Commission after examining the implication of suspending such constitutional rights, which are also covered by the Charter held that such suspension amounts to a gross violation of the provisions of the Charter.¹⁰² As Jibril rightly observed, the non-

⁹² *Fait accompli* means a thing that has already happened or been decided before those affected hear about it, leaving them with no option but to accept it. It literally means 'an accomplished fact' or 'an irreversible accomplishment.'

⁹³ Lautent Sermet, n 86 p. 150.

⁹⁴ General Comment 29 para 4.

⁹⁵ CCPR, art 4(3).

⁹⁶ *Ibid.*

⁹⁷ Lautent Sermet, n 91, p. 150.

⁹⁸ Peter Chidera Aneke, n 77.

⁹⁹ (2007) ACHPR Communication No 275/2003, AHRLR 73 (May 2007).

¹⁰⁰ (1995) ACHPR Communication No 74/92, AHRLR 12 (October 1995).

¹⁰¹ Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press 2007) 252.

¹⁰² ACHPR, art 1 and 2.

derogation clause of the Charter is deliberate to promote a progressive advancement of human rights in the Continent.¹⁰³

Meanwhile, some legal Scholars have criticized the non-derogation provision of the African Charter as a deficiency, which must be corrected to make it more unequivocal in the protection of human rights.¹⁰⁴ However, this position does not apply in Nigeria since the Constitution conflicts with the provisions of the ACHPR.¹⁰⁵ The constitutional provisions on derogation conflicts with the ACHPR, which is generally silent on the issue of derogation of rights during public emergency, unlike other major human rights norms, which permits state parties to suspend certain rights. According to the African Commission, a State of Emergency cannot justify the restriction or violation of rights.¹⁰⁶ Others believe that the non-derogation of the Charter is not by error but a deliberate and positive step towards the protection of the fundamental human rights of all human beings at all times and that this must not be seen as a flaw. This view of the Charter however, is incompatible with the ICCPR as well as most African constitutions on the subject.¹⁰⁷ Thus, the African Charter maintains same stance of upholding fundamental human rights both in a regular situation and in crisis situation. Yet, other thinkers believe that the absence of a derogation clause in the Charter is a quiet and yet pronounced way of encouraging states to exercise their discretionary powers over the matter.¹⁰⁸

The only legitimate reason for derogation is as provided by the Charter in article 27(2), where it provides that “the rights of the Charter shall be exercised with due regard to the rights of others, collective security, morality and common interest.”¹⁰⁹ In other words, a restriction must not erode a right or cause the right to be deceptive and such limitation must be proportionate and absolutely necessary for the long term benefits of the majority. The African Commission established the fact that where any form of limitation is necessary, it must be minimal, and must not emasculate the fundamental human rights provisions of international law.¹¹⁰

The Constitution of the Federal Republic of Nigeria 1999 (CFRN) does not specifically define the phrase ‘State of Emergency.’ This can however be inferred from a combination of sections in the Constitution; for example, section 45(3) provides to the effect that a State of Emergency is any period declared by the President in the cause of his carrying out his constitutional duties under section 305 of the Constitution. Section 305 on the other hand provides the procedure for declaring a State of Emergency; the conditions to occasion such a pronouncement; when it terminates or stops to have effect; and the role of the Legislators and state

¹⁰³ Abdi Jibril, ‘Law Democracy and Development,’ In Peter Chidera Aneke n 77.

¹⁰⁴ Ibid.

¹⁰⁵ Section of incompatibility with other laws/supremacy of the Constitution.

¹⁰⁶ Abdi Jibril, n 101.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ ACHPR, art 27(2).

¹¹⁰ Laurent Sermet, n 95.

officers.¹¹¹ Perhaps, section 45(2) is close to offering a definition of a State of Emergency. It provides that 'a State of Emergency' is any period where some fundamental human rights as guaranteed by the Constitution, may be partially or wholly derogated from.¹¹² Section 305 provides in coherent terms circumstances that may warrant the announcement of a State of Emergency; such as, a period of war involving the federation; where the country is in looming danger of an invasion or war; where there is an actual breakdown of public order and public safety in the country or any part of it as to require some extraordinary measures to restore peace and safety of life and property where there is an actual danger of an actual breakdown of public order and public safety in the country or any part of the country which may require some unusual measures to avert; where there is an imminent danger or disaster affecting the country or any part thereof; where there is a public danger which establishes a risk to the survival of the nation; or where the President is requested to make such a declaration in line with the provisions of section 305(4).

The Constitution specifies the formula for the declaration of a State of Emergency in the country.¹¹³ First, the Presidency must publish it in a National Gazette that it wishes to issue a State of Emergency in any part of the country where it feels there may be an extraordinary situation.¹¹⁴ Then, the President is to forward that official proclamation in a national gazette to the legislative Houses;¹¹⁵ who are to meet respectively to study the situation and either agree or disagree to the proclamation.¹¹⁶ Any proclamation by the President shall stop to have effect if revoked by the President himself through a publication in the national Gazette; if there is no approval by 2/3 majority of members of each legislative house within two days if the house is in session or ten days if the house is not in session; after six months of the approval; or when the National Assembly revokes the Proclamation by a two-third majority.¹¹⁷ The constitution vests the power to extend the period of emergency every six months on the National Assembly.¹¹⁸ It lays down the circumstances under which the President may announce a State of Emergency.¹¹⁹ These include a period of war facing the country; a time of imminent danger of an invasion; a breakdown of law and order; a clear danger of a breakdown of law and order; imminent danger of disaster or natural disaster; some public danger which threatens the very existence of the nation; or by the Governor of a state through the approval of two-third majority of the members of House of Assembly of the State entreating the President to declare a State of Emergency.¹²⁰

¹¹¹ CFRN, s 305.

¹¹² CFRN, pt IV.

¹¹³ CFRN, s 305.

¹¹⁴ CFRN, s 305(1).

¹¹⁵ Comprising of the Senate and the House of Representatives.

¹¹⁶ CFRN, s 305(2); also, n 98.

¹¹⁷ Ibid s 305.

¹¹⁸ Ibid s 305 (6) (c).

¹¹⁹ Ibid s 305 (3).

¹²⁰ Ibid.

The Governor of a state may request the President to declare a State of Emergency in his state where any of the conditions in section 305(3) (c), (d) and (e) abounds and such a state does not go beyond his state boundaries. It is also clear that a mere television broadcast is not a valid declaration of a State of Emergency in the true sense of section 305(1), (2) and (4). For there to be a valid pronouncement of a State of Emergency, first, the President must cause the declaration to be published in the federal government official gazette; and secondly, copies of this gazette giving details of the emergency situation, is to be transmitted to the National Assembly for approval.

The legislative body is to deliberate on it and make a decision as to whether or not to approve same. Only then can there be a valid or lawful proclamation of a State of Emergency. Thus, a television broadcast alone does not legally constitute a valid declaration of a State of Emergency. At best, a broadcast may be a mere intention to initiate the process of a declaration of a State of Emergency and not a legal statement. Without the approval of the legislative body, such a proclamation is emergent as the President lacks the sole capacity to proclaim a State of Emergency under the Constitution. The State of Emergency under the administration of President Goodluck Jonathan followed this procedure. The Constitution of the Federal Republic of Nigeria, 1999, State of Emergency (Certain States of the Federation) Proclamation 2013 was published in the official gazette No. 27, Vol. 100 on May 20, 2013, the House of Assembly approved same on May 22, 2013.¹²¹

In Nigeria, a state Governor or a local Government Chairman has no power to declare a State of Emergency. But the Governor, with the approval of the House of Assembly may request the President to make such a declaration.¹²² Human rights blossom better in a pleasant, nonviolent and harmless setting and not a frenzied condition.¹²³ It is crisis situation that brings about a State of Emergency in the country or a session of the country. Consequently, in a State of Emergency, certain fundamental rights of the people can be deviated from or dampened down for the sake of public well-being. The Constitution clearly states that nothing shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defense of public safety, public order, public morality, public health or for the protection of rights and fundamental freedom of the masses. Not even an Act of the National Assembly shall invalidate this and not even a State of Emergency shall provide any derogation except where such is justified for the purpose of arresting a situation of emergency; provided there will be no derogation from the provisions of section 33, except where death is due to acts of war or from the provisions of section 36(8).¹²⁴ For a state party to exercise any form of derogation from international conventions, it must satisfy the fact that such a derogation is very necessary in the circumstance and that such measures are inconsistent with other obligations under international law. Thus, derogation is not

¹²¹ Wale Odunsi, 'Senate, House of Reps. Ratifies Jonathan's State of Emergency Declaration' available at <www.dailypost.com.ng>. Accessed on 1/6/2025.

¹²² CFRN, s 305 (3) (g).

¹²³ Peter Chidera Aneke, n 77.

¹²⁴ CFRN, s 45(2).

automatic but subject to judicial review both locally and internationally.¹²⁵ For the wellbeing of the state, a State of Emergency is often declared under prevailing laws to allow the government take recourse to processes of an extraordinary and momentary nature.¹²⁶ Such derogation is temporary considering the legal and political costs locally and internationally.¹²⁷ According to Aneke, derogations empower government to buy time in the face of threats or crisis, while, making the citizens believe that such derogations are lawful.¹²⁸ Thus, section 45 allows some derogation only in limited circumstances, which is in a law reasonably justified in a democratic society, which includes for the interest of defense, public order, public safety, public health, public morality or for the protection of the rights and freedom of society. Thus, section 45 of the Constitution provides a limitation or derogation on sections 37 to 41 of the Constitution.¹²⁹ The consequence of section 45 (1) is that there will be no derogation from sections 37 to 41 unless there is a law made to that effect, which must be *reasonably justified in a democratic society in the interest of justice, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of the citizens*.¹³⁰

The problem is what may be *reasonably justified in the interest of justice, public order, public morality or public health*. Some legal Scholars have aired their opinion on this phrase. Some Scholars are of the view that the onus of proving what may be reasonably justice lies on the makers of the law to prove that such a law was made in the interest of the public;¹³¹ others emphasized that the burden of prove lies on whoever asserts that such derogation is reasonably justified in the interest of justice, public order, public morality or public health or for the purpose of protecting the rights and freedoms of the majority.¹³² Also, whoever that asserts that the law is not justified in a democratic society must prove his assertion because it is presumed that the laws made by the legislature is valid and authentic for the good governance of the country.¹³³ However, Aneke gave three useful guides to determining whether a law is reasonably justifiable or not. Such law must not be of a grave risk to a larger part of society; the risk must demand grave urgency; and it must not be based on the sole opinion of the executive.¹³⁴ These three criteria meets the opinion of the court in the case of *Superintendent Central Prison Fatehgrah v. Ram Manohar Lohia*,¹³⁵ where the Supreme Court of India held to the effect that a reasonably justifiable law must

¹²⁵ Peter Chidera Aneke, n 121.

¹²⁶ N. Jayawickrama, *The Judicial Approach of Human Rights: National, Regional and International Jurisprudence*, (Cambridge University Press 2002).

¹²⁷ K. Roach, 'Ordinary Laws of Emergencies and Democratic Derogations from Rights' (2008), published on line (Cambridge University Press 2009).

¹²⁸ Peter Chidera Aneke, n 121, p 106.

¹²⁹ S 37 (right to private and family life); s 38 (right to freedom of thought, conscience and religion); s 39 (right to freedom of expression and the press); s 40 (right to freedom of movement), respectively.

¹³⁰ CFRN, s 45(1).

¹³¹ Osita Ogbu, *Human Rights Law and Practice in Nigeria: An Introduction* (Enugu: CIDJAP Press 1999).

¹³² B.O. Nwabueze, *A Constitutional History of Nigeria* (London: C Hurst and Co. Ltd 1982).

¹³³ CFRN, s 4.

¹³⁴ Peter Chidera Aneke, n 126 p 107.

¹³⁵ (1960) 2 SCR 821.

not be too remote to public interest or to public order. Also, the court gave a similar conclusion in *Olawoyin vs. AG Northern Nigeria*,¹³⁶ where it stressed that any restriction on the fundamental human rights of the people may be justified if it is in the interest of the public; proportionate to the objective it wishes to accomplish. In *Chike Obi v. DPP*,¹³⁷ it was held that it is the duty of the court to determine whether or not a law is reasonably justifiable.

The Constitution¹³⁸ provides derogation from fundamental human rights under sections 33 to 41 under specific conditions like national security, public order, and the protection of others' rights. While section 45(1) outlines the general grounds for restriction, section 5 (2) addresses derogations during a State of Emergency, permitting measures that would otherwise be unconstitutional, provided they are 'reasonably justified' for the emergency situation. The right to life can only be derogated in times of war but not in times of State of Emergency. The Constitution¹³⁹ went on to define an emergency as a period of force or a State of Emergency declared by the President in the exercise of his powers under section 305 of the Constitution. The rights under sections 33 to 44¹⁴⁰ are not to be derogated from not even in a period of State of Emergency. From a combined understanding of section 11 (4) and (5) of the CFRN, it is evident that in a State of Emergency, the legislative powers of a state is not suspended but continues to be the sole duty of the State House of Assembly or the National Assembly where the state legislators are unable to sit.

THE LEGALITY AND IMPACTS OF EMERGENCY RESTRICTIONS ON LEGISLATIVE AND DEMOCRATIC PROCESSES

All state of emergencies in the history of Nigeria except that by President Goodluck Jonathan had always involved the removal from office of the Governor, deputy governor and membership of the State House of Assembly. This was the trend in the recently declared State of Emergency by President Bola Tinubu on March 18, 2025 in Rivers state wherein, the state Governor Similayiye Fubara, his deputy and members of the Rivers state House of Assembly were suspended. In their place was appointed Administrators led by Vice Admiral Ibik-Ete Ibas (Rtd), to oversee the state throughout the period of emergency. A declaration of a State of Emergency does not necessarily need to displace state government officials. The 1999 Constitution provides all the powers exercisable in a State of Emergency.¹⁴¹ From the expression of section 11, a State of Emergency is to be a cooperative endeavor between the federal and state governments involving federal organs, state governors, the federal

¹³⁶ (1961) All NLR 269.

¹³⁷ (1961) 1 All NLR, 186.

¹³⁸ CFRN, s 45. This section provides restrictions and derogations of fundamental rights, such as those in sections 37 to 41. These can be limited by law if it is 'reasonably justifiable in a democratic society for reasons of public safety, order, morality or health, or protect the rights of others'.

¹³⁹ CFRN, s 45 (3).

¹⁴⁰ Right to life; right to the dignity of the human person; right to personal liberty; right to fair hearing; right to freedom from discrimination; and right to acquire and own immovable property.

¹⁴¹ CFRN, s 11.

and state legislative Houses and the judiciary all functioning in their full capacity towards maintaining or bringing back normalcy.¹⁴²

A careful look at section 305 shows that the intention of that section of the Constitution in a declaration of a State of Emergency must be done in agreement with the provisions of the Constitution. Also, section 188 carefully laid down the procedure for removing state government officials.¹⁴³ The Constitution never provided for the removal of these officials or the appointment of an administrator in a State of Emergency. This makes the suspension of the Rivers state government officials comprising of the governor, deputy governor and legislators unlawful and unconstitutional.

One of the grounds for the declaration of a State of Emergency by the president is based on a call by a state governor requesting the president to do so.¹⁴⁴ Meaning that it is the intention of the Constitution Drafting Committee that state officials be actively involved in a State of Emergency and not removed or suspended. No state governor will want to encourage the president to call for a State of Emergency if that will mean his suspension or outright removal nor will any member of the House of Assembly approve a request likely to lead to his suspension or removal.¹⁴⁵ Besides, the state officials have only a limited control over the police and armed forces. Though, state government officials are members of the Nigeria Police Council under the Third Schedule of the Constitution,¹⁴⁶ they also have the powers to guide the Commissioner of Police in their duty of preserving public order and security in the state.¹⁴⁷ This was established by the apex court in the case of *A.G, Anambra State vs. A.G. Federation & 35 Ors.*¹⁴⁸ The Commissioner of police is also expected to discuss matters of great importance to reserve public order and security of a state.¹⁴⁹ More so, states are empowered by the Constitution to promulgate laws for the maintenance of law and order of their states.¹⁵⁰

The implication of this is that the federal government is in full control of security of life and property being in full control of the police and the armed forces.¹⁵¹ The state government will only operate within the limit of their constitutional powers and cannot be suspended or removed for failure to maintain law and order. It is also, unconstitutional for the National Assembly to remove or grant approval to the president to suspend or remove constitutionally elected state officials from office in

¹⁴² Itse Sagay, 'Nigeria: The Unfinished Federal Project,' being a paper delivered at the 8th Justice Idigbe Memorial Lecture (University of Benin 2008) 50.

¹⁴³ CFRN, s 188 provides for the removal of the governor; s 92 (a-c) provides for the removal of the deputy governor and Speaker of the State House of Assembly; and s 105, 109 and 110 for the removal of members of the State House of Assembly.

¹⁴⁴ Ibid, s 305 (4).

¹⁴⁵ Bright Erazza Oniha, n 56.

¹⁴⁶ CFRN, s 27.

¹⁴⁷ S. 215(4), CFRN, s 215(4) and Police Act, Cap P19, s 10.

¹⁴⁸ (2005) 9 NWLR (Pt. 93), 572.

¹⁴⁹ Public Order Act, Cap 42 LFN 2004, s 4(3).

¹⁵⁰ CFRN, s 11.

¹⁵¹ F.R.A. Williams, 'Obasanjo Acted Illegally' *Sunday Vanguard* 23 May 23 2004 p 5.

the guise of a State of Emergency.¹⁵² The Privy Council in the case of *Adegbenro vs. Akinola*,¹⁵³ was clear on this when it held that the House of Assembly had no right to approve the removal of the Premier by the Governor in the exercise of the Governor's duty under section 33(10) of the Constitution of Western Nigeria. According to Sagay, the removal of a democratically elected seating state officers from office in the guise of a State of Emergency other than the procedure laid down by the Constitution for the removal of these officials is an affront on democracy, the rule of law and true federalism.¹⁵⁴

Although, it is constitutional for the president to declare a State of Emergency in any part of the country where there is a breakdown of law and order; or possible emergencies, but such power is subject to the approval of Parliament and not inclusive of the suspension or removal out of office of the executive or legislature of the state. In the case of *Kabo Air Ltd vs. Oladipo*,¹⁵⁵ the court explained that the phrase 'subject to the provisions in this Constitution' means that other provisions of the Constitution shall be considered to qualify the extant provision in the face of any conflict between both requirements of the Constitution. Meaning that recourse would be given to other provisions for the removal from office of a sitting state government official. From the sections of the Constitution and cases mentioned above, it is clear that though, it is the constitutional expectations for a president to declare a State of Emergency in applicable circumstances, however, it is unconstitutional for the president to suspend a democratically elected state officials nor appoint a sole administrator to replace them.¹⁵⁶ That other presidents had thud that line of action in the past, does not make it legal or a healthy precedent for the country. Every executive action in a true democracy must be predicated on law.¹⁵⁷ In the case of *A.G Federation vs. A.G. Yobe & Ors*,¹⁵⁸ the apex court held that a State of Emergency does not spontaneously liquefy a state government. Thus, the suspension or removal of state officials whether in a State of Emergency or not except by constitutional means is a constitutional breach.

CONCLUSION AND RECOMMENDATIONS

Democracy denotes information flow, dialogue, debates and constructive engagements between government and the citizens. A State of Emergency is not one of the ideologies of democracy.¹⁵⁹ Though, it can be a tool for the protection of lives and property in a situation of civil unrest or in times of arms conflict but these are not sufficient reasons to declare a State of Emergency as other approaches could be employed to check such situations.¹⁶⁰ In a civilized society, the best approach to

¹⁵² CFRN, s 11(4).

¹⁵³ (1963) 3 WLR. 63.

¹⁵⁴ Itse Sagay, n 140.

¹⁵⁵ (1999) 10 NWLR Pt 623, 517 at 533.

¹⁵⁶ C.U. Agbo, 'Abuse of Exercise of Emergency Powers under Civil Rule in Nigeria: An Overview' (2019) *NAUJILJ* 10 (2).

¹⁵⁷ Okafor and O. Amucheazi, *The Concept of Federation in Nigeria* (Enugu: SNAPP Press Ltd 2008).

¹⁵⁸ (2014) LPELR-23221 (SC).

¹⁵⁹ Aneke, Peter Chidera, n 132.

¹⁶⁰ Ibid.

managing a civil unrest is through the free flow of information, discussions, dialogues and deliberations. Government has the duty to provide the basic needs of its citizens and as Ajogwu rightly observed, crisis is reduced to the lowest minimum once the major needs of the citizens are provided by government.¹⁶¹ For the right of the citizens to be restricted at any point in time, certain factors such as the nature of the right; the impact of the restriction; the magnitude of the restriction; and alternate means to achieving that purpose, must be considered.¹⁶² In *R. v. Chaulk*, for instance, the Canadian courts held that for the constitutional rights of the people to be restricted in a democratic state, the emergency situation must be sufficiently significant, rational, and not arbitrary, must impair the restricted rights only minimally, and the restriction must be proportionate to the objective.¹⁶³ Such a restriction primarily, must aim at striking a balance between the protection of fundamental rights and the interests of the country.¹⁶⁴ Section 45 of the Constitution places some reasonable restrictions on the use of emergency powers by the state. In exercising such powers, the state must balance the fundamental human rights of the citizens with national interests. Both must complement the other not stepping down one for the other.¹⁶⁵

The use of executive powers or the declaration of a State of Emergency, amounts to a determined infringement of the executive branch against the other branches of government which may encourage further conflicts.¹⁶⁶ Thus, the use of executive orders runs against the concept of separation of powers as encapsulated in the 1999 Constitution of Nigeria, which clearly demarcates power among the three arms of government, ensuring that one arm should serve as a watch dog to the other arms and vice versa. This impact of a State of Emergency on democracy and separation of powers has raised many concerns both in Nigeria and at the international scene as many see it as an assault on the constitutional powers of the executive against the legislative and the rule of law.¹⁶⁷ However, one cannot deny the fact that a State of Emergency is a political expediency, which can be used to check incessant political instabilities in Nigeria. Thus, the non-derogation of the African Charter on the non-suspension of certain rights in times of crisis, though, in favour of the protection of fundamental human rights at all times, could stimulate more dangerous crisis situations.

¹⁶¹ Fabian Ajogwu, in a Paper delivered on the Maiden Edition of the Annual Colloquium of the Law Office of Adegbyega Awomolo & Associates held in honour of Chief Adegboyega S. Awomolo SAN on September 23, 2014.

¹⁶² Ibid.

¹⁶³ (1990) 3 SCR 1303.

¹⁶⁴ CFRN, s 45, which provides no derogation to sections 33, 35, 36, 37, 38, 39, 40 and 41, except for the protection of national needs in times of crisis, while placing reasonable limits on emergency powers.

¹⁶⁵ Aneke, PC, n 157.

¹⁶⁶ Jack Kenny, 'Executive Orders are "Monuments" to One-Man Rule,' *Editorial, N.H. SUNDAY*, (16 January 2000).

¹⁶⁷ Oluwapelumi, Odunayo Osadola and Phebe Oluwatoni Ojo, 'Use of Executive Orders in Nigeria by the Executive Branch of Government in Time of Emergency,' (2020) 2(3) *British International of Humanities and Social Sciences Journal* p 678.

Furthermore, the suspension of the executives and legislatures of Rivers state was grossly unconstitutional and amounts to a constitutional breach. Though, the President is constitutionally empowered to declare a State of Emergency, he is not empowered to suspend the executives and legislatures of the state. This is in line with the Supreme Court decision in *A.G. Fed v. A.G. Yobe & Ors*, where it held that a State of Emergency does not automatically dissolve a government.¹⁶⁸ More so, the legislative powers of a state is meant to continue even in a State of Emergency. Where the House of Assembly cannot meet to deliberate on issues, the National Assembly must meet.¹⁶⁹ It is never in the contemplation of the constitution for the President to suspend a democratically elected Governor, members of his cabinet and the House of Assembly nor is he empowered to appoint a sole administrator to govern in their stead. While the declaration of a State of Emergency is within the constitutional powers of the President, such power does not include the suspension or removal of democratically elected executives. Thus, President Tinubu acted *ultra vires* the law, in the case of Rivers state. An elected Governor or Deputy Governor can only be removed as provided by law.¹⁷⁰ For the President to remove a democratically elected executive under a State of Emergency, is an unconstitutional infringement on democratic governance, and the autonomy of state governments.

According to the provisions of the constitution, the President reserves the constitutional powers to declare a State of Emergency but this right does not assume an automatic validity. Such power requires a legislative ratification within a definite time frame for it to remain effective. Unless the National Assembly approves such a proclamation of a State of Emergency, it remains constitutionally incipient and ineffectual. It behooves the National Assembly to reject any unconstitutional attempt to approve the removal of the state executives, as the approval of a State of Emergency must be based on strict constitutional grounds, not on political expediency.¹⁷¹ In both *Adegbenro v. A.G. Fed*¹⁷² and *Williams v. Majekodunmi*,¹⁷³ the apex court validated the emergency Powers Act of 1961 to justify the dissolution of democratic structures and also the suspension of fundamental human rights in the Western Region. But, in the instant case of Rivers state, there is no equivalent of the Emergency Powers Act, 1961 under the current constitutional dispensation. In the same vein, the Supreme Court held in *A.G. Fed v. A.G. Abia state & Ors*,¹⁷⁴ that the removal of elected Chairmen and Councilors and the appointment of Sole Administrators or a Caretaker Committee by the State Governor to oversee the Local Government Councils is unconstitutional. It also follows that such an act by the President to suspend an elected Governor and members of the House of Assembly

¹⁶⁸ (2022) LLJR-SC 1.

¹⁶⁹ CFRN, s 11(4 and 5).

¹⁷⁰ CFRN, s 188 and 189.

¹⁷¹ Afam Osigwe; Femi Falana; Adesegun Talabi; P.D. Pius; Tonye Clinton Jaja in separate interviews granted by THISDAY LAWYER on the legal implications and import of the State of Emergency, and whether the President was legally and constitutionally justified to remove a sitting Governor, his Deputy and other State Officials.

¹⁷² (1962) 1 NLR 338.

¹⁷³ (1962) 1 NLR 328.

¹⁷⁴ (2024) LPELR- 62576 (SC).

by the President and the appointment of a retired military officer as a Sole Administration to govern the state is unlawful and unconstitutional.

We hereby recommended that government must act within the precincts of the law in exercising its emergency powers. All relevant authorities must act in accordance with the law and in the best interest of the nation. Democracy must be protected at all times and at all costs, if the constitution must continue to be the supreme legal authority of the country even in crisis situations. In as much as a State of Emergency is constitutional and has helped in times past in Nigeria, especially, during the corona virus pandemic and in the North to check the killings at the height of the *boko haram* insurgency, its negative effects on democracy cannot be overlooked. This is especially, when orders are made to become law or made without the due process of the law.¹⁷⁵ It should therefore be minimized to its barest minimum, while encouraging other civilized and democratic options.

For the purpose of accountability and transparency, the President in exercising his powers, should adhere to the international standards for a State of Emergency and should respect the rule of law. These do not rule out the use of other effective solutions that could better enhance legislative powers and reflect true and uninterrupted democracy instead of instituting a State of Emergency. Dialogues and constructive engagements between government and its citizens is a universal feature of a democratic society. An ideal society is one which encourages equality and justice. It is a society where the voice of citizens are respected and finally, once the needs of the citizens are adequately met, crisis becomes very minimal. Politicians should focus on the needs of the governed as a surer and lasting solution to encourage peace and orderliness rather than using a State of Emergency as means to achieving peace and order.

© 2025 *African Journal of Law & Criminology (AJLC)*

TopJournals, England, United Kingdom

<http://www.topjournals.co.uk>

¹⁷⁵ Sam Amadi, 'Executive Order and Presidential Power in the Nigerian Constitutional Democracy' *The Guardian Newspaper* (17 October 2018); also, C. Ukpong, 'Buhari Speaks on Arrest of Judges, Says Corruption, Not Judiciary under Attack,' *Premier Time Headlines* (2016).