

APPRAISAL OF THE PROCLAMATION OF STATE OF EMERGENCY IN NIGERIA: LEGAL AND CONSTITUTIONAL ISSUES

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Abstract

This article is an appraisal of the proclamation of state of emergency in Nigeria since independence in 1960. It observed that Nigeria had the first proclamation of state of emergency in the Western Region in 1962 and since the return to Presidential democracy in 1999 we have had proclamation of state of emergency in Plateau State in 2004; in Ekiti State in 2006; in Borno State, Yobe State and Adamawa State in 2013; and in Rivers State in 2025. It argued that the Federal Republic of Nigeria Constitution 1999 (as amended) clearly provides the conditions and procedures for the proclamation of state of emergency. It aims to bring to fore lacunae in the constitution in relation to the proclamation of state of emergency. The doctrinal research methodology was adopted to appraise the proclamation of state of emergency in Nigeria since Independence in 1960. It found that there is no contestation as to the power of the President to declare state of emergency in the Federation or any State thereon but there are laid down conditions and procedures to be followed in the exercise of such powers. It further found that there are no constitutional provisions that empower the President to suspend or remove democratic institutions in Nigeria and appointment of Administrator. It therefore, recommends that the President in the exercise of his constitutional power to declare state of emergency should adhere strictly to the constitutional provisions. The procedures should be clear on the status of the Governor, Deputy Governor and House of Assembly members when state of emergency is declared. Also, the National Assembly in granting of approval to the Government Gazette of the Government of the Federation (legislative oversight) should not deviate from the constitutional provisions and the Judiciary should have the courage to declare null and void any proclamation of state of emergency that is inconsistent with the provisions of the constitution.

Keywords: Proclamation, State of emergency, Legislative Oversight, Judicial Review

Introduction

This article carried out appraisal of the legal and constitutional implications for the proclamation of state of emergency in Nigeria since its independence in 1960. A state of emergency is a necessity when the need arises. It is a situation when a government gives itself special powers in order to control an unusual difficult or dangerous situation, especially when this involves limiting peoples' freedom.¹ It is the suspension of normal law and order procedures and introduction of strict controls of a population that usually involves the military, so that crisis, revolution etc. can be contained.² The import is to protect citizens and restore order or normalcy during crisis such as civil unrest, insurgency like Boko Haram, Banditry, natural disasters and epidemic. The Federal Republic of Nigeria Constitution 1999 (as amended) is the grand-norm. Section 305 of the constitution vests on the President and Governor the powers of proclamation of state of emergency. This power is

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¹ Longman, P. *Longman Dictionary of Contemporary English (New Edition)* Pearson Publishers Limited, Edingburg Gate, Harlow Essexm20 England Fourth Edition 2003.1307

² Chambers Harrap, *The Chambers 20th Century Dictionary (thirteenth edition)* 2014

not unfettered as it requires the approval of the National Assembly. The President must publish the proclamation in the Official Gazette of the Government of the Federation transmitted to the National Assembly for deliberations and approval or not. The proclamation of the state of emergency has consequences on democracy and governance, as the President would adopt unconstitutional procedures to restore law and order.

It is imperative to note that since the Nigerian Independence in 1960, the country has witnessed five (5) incidences of state of emergency. The first was on May 29, 1962, sequel to the political power struggle within the Action Group, the ruling party in Western Nigeria between the Premier, Chief Samuel Ladoja Akintola and Chief Obafemi Awolowo, the party leader which led to violent clashes and disorder in the House of Assembly.³ Since the fourth Republic in 1999, we have had state of emergency in Plateau State in 2004; in Ekiti State in 2006; in Borno State, Yobe State, in Adamawa State in 2013 and Rivers State in 2025. We shall discourse each of them in details later in this work.

There is no doubt that proclamation of state of emergency has dire consequences on the governance and democracy. The appraisal of the legal and constitutional issues of proclamation of state of emergency is the fulcrum of this study. It is imperative to state that this study was motivated by the recent proclamation of state of emergency in Rivers State, taking historical perspective of the proclamation of state of emergency in Nigeria since independence. The appraisal will bring to the fore the legal and constitutional implications, the lacunae in the laws and constitution as they relate to the proclamation of state of emergency and appropriate recommendations made.

2. Conceptual Clarification

Conceptual clarification is to ensure that readers or parties understand key terms and ideas; clarify nebulous or ambiguous terms in order to avoid misinterpretation. It facilitates deeper understanding and accurate communication.

2.1 Proclamation

Proclamation has been defined by Pearson Longman⁴ as “formal official public statement that is important or someone makes such a statement. Black’s Law dictionary defines Proclamation as “official announcement or declaration made by a person in authority, such as government official or court, to inform the public of a particular fact, situation, or requirement”.⁵

2.2 State of Emergency

State of emergency is a necessity when the need arises. Pearson Longman⁶ defines state of emergency as “when a government gives itself special powers in order to try to control an unusual difficult or dangerous situation, especially when this involves limiting people’s freedom”. Also the *Chambers 20th Century Dictionary* defines it as “The suspension of normal law and order procedures and the introduction of strict controls of the population that usually involves the

³ The Crisis in Western Nigeria, May 1962. CharGBT <https://www.dawodu.com/art> Accessed on 20, July 2025.

⁴ *Longman Dictionary of Contemporary English (New Edition)* Pearson Education Limited, Edingburgh Gate, Harlow, Essex 2003. 1307

⁵ B A, Garner, *Black’s Law Dictionary*, (10th Edition) 2014, Thomas West. P.2,106

⁶ *ibid.* 1620

military, so that a crisis, revolution, etc can be contained”.⁷ It is worthy of note that the Federal Republic of Nigeria Constitution 1999 (as amended) does not expressly define or provide the meaning of state of emergency but Section 45(3) provides: “In this section a “period of emergency” means any period during which there is in force a Proclamation of a state of emergency declared by the President or the Governor in exercise of the powers conferred on him under section 305 of this Constitution”

2.3 Legislative Oversight

The present Nigerian legislative structure is bicameral consisting of two chambers – the Senate known as the Upper chamber and the House of Representative known as the Lower chamber. Legislative oversight is the process which the legislature reviews, monitors and supervises the Executive arm of government, in order to hold public officials accountable ensuring that laws passed are effectively implemented. Also, that the actions of the executive are consistent and in tandem with the provisions of the laws and the constitution.

2.4 Judicial Review

It is the judicial process of examining the validity, decisions and actions of the executive, legislative and administrative branch of government to ensure that such decisions or actions align or are in tandem with other laws. It assesses the legality, reasonableness and procedural fairness of administrative decisions. Also, it is a check on the powers of the executive and legislative arms of government to avoid abuse and lawlessness.

3.0 Historical Perspectives of Proclamation of State of Emergency in Nigeria

The state of emergency was first declared on May 29, 1962 sequel to the political power struggle within the Action Group, the ruling party in Western Nigeria between the Premier Chief Samuel Ladoke Akintola and Chief Obafemi Awolowo, the party leader which led to violent clashes and disorder in the House of Assembly⁸. The motion for the declaration of state of emergency was sought by the Prime Minister, Sir Abubakar Tafawa Balewa and was approved by 209 votes to 36 in the House of Representative and 32 to 7 votes in the Senate with 2 absent. He asserted that breakdown of law and order was the rationale for the declaration. He appointed Senator Dr. Moses Adekoyejo Majekodunmi, the Federal Minister of Health and country’s leading gynaecologist as Administrator⁹. The Nigerian Independent Constitution 1960 and subsequent regional constitutions like the one for Western Nigeria did provide for the removal of elected officials including the Premier, but with specific conditions.¹⁰ The removal was not necessarily by “impeachment” but rather a process of removal by the Governor based on the Premier losing the support of the House of Assembly; the Governor to remove the Premier on a vote of no confidence by the House of Assembly¹¹.

⁷Chambers 21st Century Dictionary (Revised Edition) Edinburg Chambers, Publishers Ltd 1996, 1375

⁸ See “The Crisis in Western Nigeria, May 1962 ChatGPT www.dawodu.com/art accessed on 20th May 2025

⁹ ibid

¹⁰H H, Marshall, Interpretation of the Constitution of Western Nigeria: Privy Council Decision. *The International and Comparative Law Quarterly*, Vol.13 No.1(Jan 1964) pp.280-284. Published by: Cambridge University Press.

<<https://www.jstor.org/stable/756106>(Accessed> accessed on 28th May, 2025)

¹¹ ibid

3.1 Proclamation of State of Emergency in Plateau State

On May 18 2004 the President, Chief Olusegun Obasanjo in a nation-wide broadcast invoked one of the clauses in the Federal Republic of Nigeria Constitution 1999 (as amended) to declare a state of emergency in Plateau State. He suspended the Executive Governor, Chief Joshua Dariye and appointed Maj-Gen. Chris Alli as Administrator for a period of six months in the first instance.¹² He stated that the rationale was due to ethno-religious and communal clashes in Plateau State which escalated with reverberating effects in the neighbouring states of Bauchi, Gombe, Nasarawa, Benue and the Federal Capital Territory, Abuja resulted in reprisal attacks in the Hausa-dominated state of Kano, also the clashes in Yelwa, Shendam and Langtang areas of Plateau State resulted in massive killings, destruction of property and breakdown of law and order.¹³

On November 13, 2006, the Plateau State House of Assembly on allegation of corruption, including theft of public funds, Chief Joshua Dariye was impeached and his deputy, Chief Michael Botmang took over the reign of government. The proclamation published in the Official Gazette of the Government of the Federation dated the same day was transmitted to the National Assembly pursuant to Section 305 of the 1999 Constitution (as amended) for approval. The National Assembly overwhelmingly approved the presidential fiat, making only a minor amendment that required the emergency regulations to be submitted to the legislative body by the President for promulgation into law.¹⁴ There is no doubt that by the provision of section 305, the President has unfettered discretionary powers to declare state of emergency in any state of the federation. A constitutional and human right lawyer, late Professor Benjamin Obi Nwabueze in his reaction to the proclamation stated that “the above occurrences simply did not warrant the declaration of a state of emergency as envisaged under the constitution, and demanded immediate reversal of the proclamation.”¹⁵

3.2 Proclamation of State of Emergency in Ekiti State

On Tuesday, September 26, 2006, the 26-man Ekiti House of Assembly passed a motion to serve a notice of impeachment on the Ekiti State Governor, Mr. Peter Ayodele Fayose and his Deputy Mrs. Abiodon Christine Olujimi alleging gross misconduct against them.¹⁶ The Governor, Mr. Fayose approached the Court with *Ex-Parte* motion seeking court’s order restraining the Ekiti House of Assembly to do so. There was a “drama” – two Ekiti judges (Wale Kowe, Segun Akintayo declined to hear the motion in that order). Justice Femi Akeju finally heard the application and dismissed Fayoye’s application as being “alien in law.”¹⁷ The Ekiti House of Assembly instructed Chief Judge Kayoye Bamisile to form a seven-man panel to conduct the impeachment proceedings. Governor Fayoye wrote to Bamisile denying all the charges. The Chief Judge Kayode Bamisile was suspended by the House of Assembly for refusing to reconstitute the “rigged panel”

¹²M O A, Alabi, “*Emergency Powers in Nigeria: Legal and Constitutional Issues*” A Paper presented as a Faculty Lecture at Babcock University, Sagamu, Ogun State. The Constitution Vol.5 No.4, December 2005

¹³See *The Guardian newspaper of Thursday, August 19, 2004* – <https://www.guardiannewsngr.com/news/article09> > (accessed March 29, 2025)

¹⁴ibid.

¹⁵ See *Guardian of Saturday, May 29, 2004*. <<https://www.guardiannewsngr.com/news/article>>

¹⁶ M A, Aluko, “*The State of Emergency in Ekiti State and the Nebuckadnezzar Non-Option*” (2006) <<https://www.scirp.org>> Accessed on May 27, 2025)

¹⁷ ibid

and failure to appear before the House of Assembly¹⁸ and appointed Hon. Jide Aladejana as Acting Chief Judge.¹⁹

Consequently, there were conflicting appointments of Chief Judge of the Ekiti State that on the 16th October, 2006, the Attorney-General of the Federation, Chief Bayo Ojo, opined that the State House of Assembly had no constitutional power to suspend the Chief Judge of a State and to appoint an acting Chief Judge²⁰. On Monday, October 16, 2006, Governor, Mr. Peter Ayodele Fayose and his Deputy Mrs. Abiodun Christine Olujimi were impeached.

On Thursday, 19th October, President Olusegun Obasanjo suspended the Ekiti State House Assembly with immediate effect for six months and appointed Brigadier-General Tunji Olurin (Rtd) as Administrator for six months in the first instance on the premise that having a State House of Assembly under a state of emergency will be strange for the smooth and expeditious administration in the maintenance of peace, law and order, and security in the state. The Official Gazette of the Government of the Federation containing the proclamation of the state of emergency was forwarded to the National Assembly for approval in accordance with the provisions of the Constitution. Chief Fayose challenged his impeachment up to the Supreme Court. The Apex court in its wisdom ruled that the impeachment process was unconstitutional and ordered his reinstatement.

3.3 Proclamation of State of Emergency in Borno state, Yobe State and Adamawa State

On the 14th of May, 2013, the President, Dr. Goodluck Ebele Jonathan after deadly attacks by the Islamist militant groups, declared state of emergency in three states. The three states affected by the proclamation were Borno state, Yobe state and Adamawa state.²¹ In the nation-wide broadcast, the President ordered the deployment of more troops to the North-East. The rationale for the proclamation, he said “what we are facing is not just militancy or criminality, but a rebellion and insurgency by terrorist groups which pose a very serious threat to national unity and territorial integrity. He further ordered that in spite of the state of emergency, politician in the affected three states would remain in their posts.”²² He asserted that “already some northern part of Borno state have been taken over by groups whose allegiance are to different flags and ideology than Nigeria’s. This is pure threat to sovereignty of the nation”. He further stated that “the Chief of Defence Staff has been directed to immediately deploy more troops to these states for more effective internal security operations.” The Nigeria Governors’ Forum, which represented the leaders of the country’s 36 States warned Mr. Jonathan against imposing emergency rule.

Chief Femi Falana SAN, Professor Itse Osagay in an interview²³ Falana – “The declaration of the state of emergency was perfectly in order “section 305 of the gives the President the power to restore law and order where peace and order are being threatened”. Professor Itse Sagay – “What

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ *ibid*

²¹ B E, 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 <onihlawlibrary@gmail.com> accessed on 16th May, 2025

²² *ibid*

²³ Emergency Rule: Falana, Sagay, Ahamba <www.nationonlineng.net> of Sunday, 13th May, 2012. Accessed on 28th July 2025

the President has done is the right and proper thing to do. It is very well established that an armed group of terrorists has been operating with impunity the areas affected with total disregard for lives and property and operating without regard to our institutions”.

3.4 Proclamation of State of Emergency in Rivers State

On Tuesday, 18th day of March, 2025, the President, Senator, Bola Ahmed Tinubu, in a nation-wide broadcast declared state of emergency in Rivers State sequel to the political tension in the State. The proclamation was made under Section 305 of the Federal Republic of Nigeria Constitution 1999 (as amended). The President by the proclamation suspended the Governor, His Excellency Siminalayi Fubara, his Deputy Professor Ngozi Odu and all elected members of the Rivers State House of Assembly for six months²⁴. He appointed Vice-Admiral Ibokette Ibas (Rtd) as Administrator to oversee the affairs of the state for six months in the first instance. The Judicial Arm of the Rivers State was not affected by the suspension. The rationale for the proclamation was as follows: (a) The persistent political tension in the state; (b) the vandalization of two main oil pipelines which posed significant threat to national security and economic stability; (c) the demolition of the House of Assembly complex which the Governor failed to do something about (d) his personal intervention to mediate that was ignored by the parties (e) the Supreme Court judgment that found Governor Siminalayi Fubara guilty of breaching the constitution, acting like a despot rendering the State’s government ineffective²⁵.

The proclamation of state of emergency raised conflicting views and legal opinions as regards the propriety of the declaration, the procedure adopted in the declaration and the consequences of suspending elected officials and the appointment of Administrator. There has not been contention as to the constitutional power of the President to declare a state of emergency in Rivers State or in any other state of the Federation. Professor Wole Soyinka described the proclamation as “over-excessive response and exercise of discretion. He expected that the Governor and all those affected should have gone to court for constitutional interpretation and decision.”²⁶ The Nigerian Bar Association (NBA) urged the National Assembly to reject the state of emergency in Rivers State stressing that the ratification must align with constitutional threshold for public order breakdown. Also, that the suspension of the elected officials without adherence to the constitutional provisions for impeachment and removal procedures violates sections 188, 189 and 180 of the Federal Republic of Nigeria Constitution 1999 (as amended)²⁷

4.0 Constitutional Conditions for Proclamation of State of Emergency

While there is no contestation as to the powers of the President to declare a state of emergency, section 305 (3) provides the conditions necessary for the proclamation of state of emergency as follows:

- (a) the Federation is at war;
- (b) the Federation is in imminent danger of invasion or involvement in a state of war;

²⁴ Full Text: President Tinubu’s Broadcast Declaring State of Emergency in Rivers State on Tuesday, 18th March, 2025 www.vanguardngr.com. Accessed on 28th March, 2025

²⁵ *ibid*

²⁶ *ibid*

²⁷ Punch., “NBA Faults Rivers Emergency Rule, declare Fubara’s suspension unconstitutional” Available at <https://punchng.com/nba-faults-rivers-emergency-rule-declares-fubara-suspension-unconstitutional>. Accessed on 28th June, 2025

- (c) there is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security;
- (d) there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measure to avert such danger;
- (e) there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section or the community in the Federation;
- (f) there is any other public danger which clearly constitutes a threat to the existence of the Federation; or
- (g) the President receives a request to do so in accordance with the provisions of subsection (4) of this section.

(4) The Governor of a State may, with the sanction of a resolution supported by two-thirds majority of the House of Assembly, request the President to issue a Proclamation of a state of emergency in the State when there is in existence within the State any of the situations specified in subsection (3) ©, (d) and (e) of this section and such situation does not extend beyond the boundaries of the State.

(5) The President shall not issue a Proclamation of a state of emergency in any case to which the provisions of subsection (4) of this section apply unless the Governor of the State fails within a reasonable time to make a request to the President to issue such Proclamation.

(6) Duration and Revocation of state of emergency

A Proclamation issued by the President under this section shall cease to have effect;

- (a) if it is revoked by the President by instrument published in the Official Gazette of the Government of the Federation.
- (b) it affects the Federation or any part thereof and within two days when the National Assembly is in session, or within ten days when the National Assembly is not in session, after its publication, there is no resolution supported by two-thirds majority of all the members of each House of the National Assembly approving the Proclamation;
- (c) after a period of six months has elapsed since it has been in force: Provided that the National Assembly may, before the expiration of six months aforesaid, extend the period for the Proclamation of the state of emergency to remain in force from time to time for a further period of six months by resolution passed in like manner; or
- (d) at any time after the approval referred to in paragraph (b) or the extension referred to in paragraph (c) of this subsection, when each House of the National Assembly revokes the Proclamation by a simple majority of all the members of each House.

5.0 Constitutional Procedures for the Proclamation of State of Emergency

Section 305(1) of the Federal Republic of Nigeria Constitution 1999 (as amended) provide procedures for declaration of state of emergency thus: “Subject to the provisions of this Constitution, the President may by Instrument published in the Official Gazette of the Government of the Federation issue a Proclamation of a state of emergency in the Federation or any part thereof.”

Section 305(2) provides:

The President shall immediately after the publication, transmit Copies of the Official Gazette of the Government of the Federation containing the proclamation including the details of the emergency to the President of the Senate and the Speaker of the House of Representatives, each of whom shall forthwith convene or arrange for a meeting of the House to which he is President or Speaker as the case may be, to consider the situation and decide whether or not to pass a resolution approving the Proclamation.²⁸

6.0 The Removal of Governor and Deputy Governor from the Office

It is worthy of note that Sections 188 of the Federal Republic of Nigeria Constitution 1999 (as amended) expressly provides conditions and procedures for the removal of Governor or Deputy Governor from the office. It provides thus:

- (1) The Governor or Deputy Governor of a state may be removed from office in accordance with the provisions of this section.
- (2) Whenever a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly –
 - (a) is presented to the speaker of the House of Assembly of the state;
 - (b) stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified. The speaker of the House of Assembly shall, within seven days of the receipt of notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of Assembly and shall also cause any statement made in reply to the allegation by the holder of the office, to be served on each member of the House of Assembly.
- (3) Within fourteen days of the presentation of the notice to the speaker of the House of Assembly (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice), the House of Assembly shall resolve by motion, without any debate whether or not the allegation shall be investigated.
- (4) A motion of the House of Assembly that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-thirds majority of all the members of the House of Assembly.
- (5) Within seven days of the passing of a motion under the foregoing provisions of this section, the Chief Judge of the State shall at the request of the speaker of the House of Assembly, appoint Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party to investigate the allegation as provided in this section.
- (6) The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented before the panel by a legal practitioner of his own choice.
- (7) A Panel appointed under this section shall -
 - (a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by the House of Assembly; and
 - (b) within three months of its appointment, report its findings to the House of Assembly.

²⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended)

- (8) Where the Panel reports to the House of Assembly that the allegations have not been proved, no further proceedings shall be taken in respect of the matter.
- (9) Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, the house of Assembly shall consider the report, and if by a resolution of the House of Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.
- (10) No proceedings or determination of the Panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court.
- (11) In this section – “Gross misconduct” means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion in the House of Assembly to gross misconduct. Also, section 189 of the Federal Republic of Nigeria Constitution 1999 (as amended) provides:
 - (1) The Governor or Deputy Governor of a State shall cease to hold office if –
 - (a) by a resolution passed by two-thirds majority of all members of the executive council of the State, it is declared that the Governor or Deputy Governor is incapable of discharging the functions of his office; and
 - (b) the declaration in paragraph (a) of this subsection is verified, after such medical examination as may be necessary, by a medical panel established under subsection (4) of this section in its report to the speaker of the House of Assembly.
 - (2) Where the medical panel certifies in its report that in its opinion the Governor or Deputy Governor is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his office, a notice thereof signed by the Speaker of the House of Assembly shall be published in the Official Gazette of the Government of the State.
 - (3) The Governor or Deputy Governor shall cease to hold office as from the date of publication of the notice of the medical report pursuant to subsection (2) of this section.
 - (4) The medical panel to which this section relates shall be appointed by the Speaker of the House of Assembly of the State, and shall comprise five medical practitioners in Nigeria –
 - (a) one of whom shall be the personal physician of the holder of the office concerned; and
 - (b) four other medical practitioners who have, in the opinion of the Speaker of the House of Assembly, attained a high degree of eminence in the field of medicine relative to the nature of the examination to be conducted in accordance with the foregoing provisions of this section.
 - (5) In this section, the reference to “executive council of the State” is a reference to the body of Commissioners of the Government of the State, howsoever called, established by the Governor and charged with such responsibilities for the functions of Government as the Governor may direct.

6.1 The Constitutional Implication of Proclamation of state of emergency and Removal of Elected Governor, Deputy and Members of House of Assembly.

There is no doubt that proclamation of state of emergency has significant constitutional consequences on governance and democracy as it confers on the President powers to bypass normal

constitutional procedures to restore law and order but generates tension and apprehension about the removal of democratic institutions. The declaration must follow strictly the procedural guidelines to ensure that the democratic governance and fundamental human rights are not unduly violated²⁹.

There is no doubt that the President has unfettered constitutional power to declare a state of emergency, but does such power extend to removal or suspension of Governors, Deputy Governors and members of the House of Assembly? The obvious answer to the question is in the negative. A critical appraisal of the Federal Republic of Nigeria Constitution 1999 (as amended) reveals that there are no express provisions for such. The proclamation of state of emergency obviously has significant constitutional implications for federalism especially in the relationship between the Federal government and the State and the doctrine of separation of power.

It is also not in contestation that the initiative and discretion for the proclamation of the state of emergency resides with the President except with respect to section 305(4) where the Governor in consultation with the House of Assembly by a special resolution of the House of Assembly invites the President to so do.³⁰ One of the critical questions has been whether the courts would be prepared to fetter the discretion of the President and subject the proclamation to judicial review.

6.2 Legislative Oversight in the Proclamation of State of Emergency

The National Assembly otherwise known as the legislative arm of the government in a democratic setting, by the provisions of Section 11 (1) and (4) of the Constitution provides:

The National Assembly may make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and service as may be designed by the National Assembly as essential supplies and services.

(4) At any time when any House of Assembly of a State is unable to perform its functions by reason of the situation prevailing in that State, the National Assembly may make such laws for the peace, order and good government of that State with respect to matters on which a House of Assembly may make laws as may appear to the National Assembly to be necessary or expedient until such time as the House of Assembly is able to resume its functions; and any such laws enacted by the National Assembly pursuant to this section shall have effect as if they were laws enacted by the House of Assembly of the State;

Provided that nothing in this section shall be construed as conferring on the National Assembly power to remove the Governor or the Deputy Governor of the State from office.

The National Assembly is vested with the power of approval of proclamation by a two-third majority of both Chambers of the National Assembly and must be within a prescribed timeframe of two days if they are in session and ten days when not in session.³¹ It is worthy of note that there is no provision for voice vote as was in the case of the approval of the proclamation in Rivers State. The duration of the state of emergency is to last for six months but the National Assembly can

²⁹ D I, Joshua, "The Constitutional Basis for the Declaration of State of Emergency in Nigeria" *Margret Lawrence University Law Journal*, Vol. 1, No. 1, 2025. P.369

³⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended)

³¹ *ibid.* s. 305 (6)(d)

extend the duration for additional six months if it becomes inevitable by a two-third majority of both the Senate and the House of Representatives.³² For the National Assembly to extend the duration, the President must provide cogent and sufficient reasons for such. Also, the proclamation may be revoked by the President or by a simple majority of all the members of each House of the National Assembly.³³

6.3 Judicial Review

It is imperative to note that section 6(1) of the Constitution provides: “The judicial powers of the Federation shall be vested in the courts to which this section relates, being court established for the Federation.” This includes powers of judicial review. There is no doubt that the Proclamation of the state of emergency have raised legal and constitutional issues that will require the intervention of the third arm of government (judiciary) to determine the legal and constitutional validity of the proclamation, the propriety and the procedures adopted by the President in the suspension of the elected officials (the Governor, Deputy Governor and House of Assembly members) and the appointment of Administrator.

The discretionary power of the President in the proclamation of state of emergency may not be subject of judicial review by the courts, however, the procedures adopted in making such a proclamation may be reviewed by the court of law. The rationale, wisdom and germaneness of the intentions may not be of the moment but the procedures adopted will determine the legality and validity of the proclamation. In the case *Military Governor of Imo State v Chief Nwauwa*³⁴ the Supreme Court as per M. E. Ogundare JSC on the extent and scope of Judicial review of administrative act held – In relation to matters within the public body’s field of judgment, the court conducts its review from the body’s standpoint and must not intervene solely on the basis that it would itself have acted differently. The following principles are to be borne in mind by a reviewing court: -

- (a) judicial review is not an appeal;
- (b) the court must not substitute its judgment for that of the public body whose decision is being reviewed;
- (c) the correct focus is not upon the decision but the manner in which it was reached;
- (d) what matters is legality and not correctness of the decision;
- (e) the reviewing court is not concerned with the merit of a target activity;
- (f) In judicial review the court must not stray away into the realms of appellate jurisdiction for that would involve the court in a wrongful usurpation of power;
- (g) what the court is concerned with is the manner by which the decision being impugned was reached. It is its legality, not its wisdom that the court has to look into for the jurisdiction exercised by the court is not appellate jurisdiction but rather a supervisory one.

In the instant case the Court of Appel exceeded its jurisdiction in trying to substitute its own opinion or views for the views of the Panel.

³² *ibid* s. 306 (6) (c)

³³ *ibid*. s. (6)(d)

³⁴ (1997) 2 NWLR (Pt.490) @769

6.4 Procedural Implication

The prevalence of any of the conditions will empower the President to issue a proclamation of a state of emergency through the Official Gazette of the Government of the Federation and transmit to the National Assembly for deliberation and approval. The approval of the National Assembly is fundamental for the proclamation to take effect and there is a constitutionally specified timeframe for the approval. When it takes effect, the Federal government will take over the legislative functions.³⁵ In case of insecurity, deploy security forces and may restrain certain human freedom. It is imperative to note that the President has no constitutional powers to unilaterally suspend elected officials, like the Governors, Deputy Governors or the State Legislators during the state of emergency.

6.5 Constitutional Limitations

The President's powers to declare a state of emergency is subject to constitutional checks and balances by the National Assembly. The National Assembly's approval must be obtained for the proclamation to take effect. The National Assembly must approve the proclamation within two days if it is in session or within ten days if it is not in session.

6.6 Appointment of Administrator

It is an axiomatic fact that state of emergency which entails the suspension of elected Governors, Deputy Governors and members of the House of Assembly and appointment of Administrator is alien and aberration to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended).³⁶ Section 1(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus: "The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution." There are no constitutional provisions for the appointment of Administrator.

6.7 Implication on State Autonomy

It is pertinent to note that the proclamation of state of emergency especially since the fourth Republic has generated opprobrium as it has set a precedent that challenges the constitutional state autonomy.

7.0 Conclusion

This appraisal has examined the legal and constitutional implications of proclamation of state of emergency in Nigeria, focusing on the principle of separation of powers and federalism. The fundamental findings includes that the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the proclamation of the state of emergency under specified conditions and procedures with constitutional legislative oversight, for approval of Government Official Gazette specifying timeframe and extensions. The doctrine of separation of powers may be abused when the executive acts beyond the constitutional limits. The President unarguably, being a creation of the Constitution, cannot enlarge its constitutional powers. Also not being the creator of the office of the Governor, Deputy Governor and State House of Assembly, cannot validly, legitimately and legally suspend holders of such offices without strict compliance with the constitution provisions.

³⁵ *ibid.* s.11 (4)

³⁶ *ibid*

It is recommended that the Constitution should be amended to provide for what the President should do where there is eminent breakdown of laws and order, threat to economic sovereignty of the nation; and the Governor is overwhelmed but unwilling to act in accordance with Section 305 (4). In order to prevent abuse, that will impact governance and democracy, the legislative and judicial review mechanisms need to be strengthened. The constitutional guidelines for the conditions and procedures for the proclamation of state of emergency should be made very clear and strict, specifying what actions that should be taken to ensure that the powers are not misused for political ends. Where two-third majority votes in both chambers are required, voice vote must not be used. The courts should be empowered to ensure that executive actions are strictly in tandem with the provisions of the constitution. The procedures adopted should be consistent with the international human rights standards. The conditions and procedures should be made public and citizens should have access to court to challenge proclamation of state of emergency when the need arises to ensure transparency and build trust. Also ensure that the measures adopted is consistent with the International human rights standard