

ANALYSIS OF THE CONSTITUTIONALITY OF EXECUTIVE ORDERS RVSG-23 OF 2020 AND RVSG-24 OF 2020 ISSUED BY THE GOVERNOR OF RIVERS STATE, NIGERIA*

Abstract

Executive orders are fast becoming convenient tools for the management of the operations of the executive branch of government in Nigeria. Despite their frequent use, executive orders have remained controversial in Nigeria. Against this background, the paper analysed two executive orders issued by the Governor of Rivers State – Executive Orders RVSG-23 of 2020 and RVSG-24 of 2020 to determine their constitutional validity. The doctrinal legal research methodology was used and the sources of data were primary and secondary sources of information. The paper found that the Constitution of the Federal Republic of Nigeria 1999 (as amended) [CFRN] grants to the governors in Nigeria the power to issue executive orders in the discharge of their constitutional duties of implementing the CFRN and laws. However, the paper observed that Executive Orders RVSG-23 of 2020 and RVSG-24 of 2020 were issued without constitutional and statutory authorisation and many provisions of the executive orders were found to be inconsistent with the CFRN and Rivers State laws which the executive orders claimed to implement. Among other recommendations, the paper advocated for effective legislative oversight over governors' executive order issuing powers through passing of appropriate legislation and engaging the power of the purse, as well as seeking judicial review of executive actions in deserving cases.

Keywords: Constitutionality, Executive Order, Executive Branch, Governor of Rivers State, Nigeria

1. Introduction

Although Nigeria operated a presidential system in which executive orders are frequently employed in the implementation of laws and government policies, the concept 'executive order' was relatively unknown in Nigeria. This is despite the prevalence in the use of executive order as instrument of discharging the constitutional mandate of the executive arm of government in developed democracies and presidential systems, such as the United States of America.¹ It would appear that executive order has been in use in Lagos State prior to its popularisation by the President Muhammadu Buhari administration in 2017. A search on the Lagos State executive orders shows the existence of executive orders issued by Governor Babatunde Fashola in 2012² and 2015³, although the precise year in which the first executive order was issued in Lagos State is not known. President Muhammadu Buhari popularised the use of executive orders as tools of government policy implementation in Nigeria. From the year 2020, executive order became a tool utilised by the State governors, especially in the wake of the novel Corona Virus (Covid-19) pandemic, to curtail its spread, protect public health and enforces the prohibitions of movement and gathering of large crowd of people, with far-reaching implications on the rule of law and the rights and freedoms of citizens. As at today, there seems to be no State governor in Nigeria that has not issued one form of executive order or the other.

Since 2020, the Governors of Rivers State have issued and continue to use executive orders as instruments of government policy implementation. About 30 executive orders have so far been issued by the governors of Rivers State between 2020 and 2024. Some of these executive orders have generated controversies regarding the constitutional power of a governor to issue such instruments and what should be the proper scope of an executive order in view of the constitutional allocation of law-making power to the legislature (House of Assembly). The purpose of this paper is to analyse two of the many executive orders issued by Governor Nyesom Wike of Rivers State in 2020. The executive orders that will form the basis of this research are Executive Order Prohibiting Street Trading, Illegal Markets and Motor Parks along and around the Rebisi Flyover, Port Harcourt (RVSG-23-2020) and the Executive Order Prohibiting the Dumping of Waste in Front of Buildings and Premises Around Old Government Reservation Area, New Government Reservation Area, and Amadi Flats Port Harcourt (RVSG-24-2020).⁴ The essence of this paper is to analyse the constitutionality or otherwise of both executive orders.

*By **H. O. ONYI-OGELLE, PhD**, Professor of Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State. Email: onyi-oghele@unizik.edu.ng; and

Felix Dimkpa BIIRAGBARA, LLB, LLM, BL, PhD Candidate, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State; Lecturer, Department of Public Law, University of Port Harcourt Email: felix.biiiragbara@uniport.edu.ng, Tel: 08184963585

¹ E O Okebukola and A A Kana, 'Executive Orders in Nigeria as Valid Legislative Instruments and Administrative Tools' (2012) *NAUJILJ*, 59-68; C V Odoeme, 'Executive Orders in Constitutional Democracies: A Critique', 2 <https://www.researchgate.net/publication/356789114_EXECUTIVE_ORDERS_IN_CONSTITUTIONAL_DEMOCRACIES_A_CRITIQUE/link/61ad3b3eca2d401f27cafb46/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19> accessed 23 September 2025; J A Adeyeye, 'Executive Orders in Nigeria and United States of America: Constitutionality and Comparative Analysis' (2023) (3) *Cavendish University Law Journal*, 1-27, 5

²For instance, Executive Order on the Establishment of Real Estate Transaction Department, No. EO/BRF/009 of 2012 was issued by Governor Babatunde Raji Fashola on 22 June 2012 <https://lasrera.lagosstate.gov.ng/resources/EXECUTIVE_ORDER.pdf> accessed 23 September 2025

³For instance, Executive Order on Reduction in the Cost of Land Transaction in Lagos State, No. ECO BRF 001 of 2015 was issued by Governor Babatunde Raji Fashola on 5 January 2015 <<https://northcourtrealestate.com/download/Lagos%20Property%20Charges%20Reduction%20Order%202015.pdf>> accessed 15 September 2025

⁴RVSG-24 of 2020 [RVSG-24-2020]

2. Definition of Executive Order

There have been debates among scholars and commentators about the actual nature of executive orders. This is further exacerbated by fact that the definition of executive order is not offered in the CFRN or in any other statute in Nigeria.⁵ It has also been contended that even in the United States from where executive order originates, neither the Constitution or any congressional statute has offered any guidance as to what the concept entails.⁶ However, the Black's Law Dictionary defines executive order as, '[A]n order issued by or on behalf of the President ... intended to direct or instruct the actions of executive agencies or government officials, or to set policies for the executive branch to follow'.⁷ For the purpose of this paper, 'executive order' will be used to denote a written directive issued by a head of the executive branch of government at any level of governance intended to guide or instruct persons or bodies within the relevant executive branch on the modalities and measures to be adopted in the implementation of government policies.

3. Constitutional Basis for Executive Order Issuing Authority in Rivers State

From where does a governor of a State in Nigeria derive the power to issue executive orders? Answering this question is crucial in view of the fact that there is no express textual reference to the concept 'executive order' in the Constitution of the Federal Republic of Nigeria.⁸ An examination of this question will require a brief examination of the historical development of executive orders and other presidential instruments in the US. The US shares similar constitutional textual description of presidential executive powers with Nigeria. The presidential executive order in the US is said to derive from the presidential power granted by the US Constitution.⁹ The US Constitution stipulates that the, 'executive power shall be vested in a President of the United States of America'.¹⁰ The Constitution provides that the President, 'shall take Care that the Laws be faithfully executed...'.¹¹ Thus, the instrument 'executive order' seems to have derived its etymology from the duty imposed by the US Constitution on the President to faithfully 'execute' the laws of the country.¹² The 'Take Care Clause' of the US Constitution which saddles the president with the duty to see to it that the laws of the US are faithfully executed, is similar to the language of Section 5(1)(b) and 5(2)(b) of the CFRN which empowers the president and the governor of a State in Nigeria to execute and maintain the CFRN and laws enacted by the relevant legislature. Thus, the issuance of executive orders by governors is given impetus by the language of Section 5 of the CFRN which stipulates that:

Subject to the provisions of this Constitution, the executive powers of a State:

- (a) Shall be vested in the Governor of the state and may subject as aforesaid and to the provision of any law made by a House of Assembly, be exercised by him directly or through the Deputy Governor and Commissioners of the Government of that state or officers in the public service of the state;¹³ and
- (b) Shall extend to the execution and maintenance of this constitution, all laws made by the House of Assembly of a state and to all matters with respect to which the House of Assembly has, for the time being, power to make laws.¹⁴

Consequently, the legal basis for the issuance of executive order as a tool of government policy implementation in Nigeria is Section 5 of the CFRN. There has been a recognition of the power to issue executive order in Nigeria in at least two cases decided by the Federal High Court and the Supreme Court. The first case in which the court was called upon to pronounce on the constitutional validity of an executive order in Nigeria appears to be the case of *Ugochinyere v President of the Federal Republic of Nigeria*.¹⁵ In that case, the Federal High Court, Abuja Division, per Ojukwu, J., held that Section 5(1)(b) of the CFRN empowers the president to issue executive orders relating to routine administrative matters and internal operations of federal agencies, policies and programmes and as long as it does not encroach into the legislative and judicial powers.¹⁶

4. Discussion of Executive Orders RVSG 23 of 2020 and RVSG 24 of 2020

Having examined the constitutional basis for the gubernatorial power to issue executive orders in Nigeria, this section will discuss Executive Orders RVSG-23 of 2020 and RVSG-24 of 2020 briefly.

⁵E O Okebukola and A A Kana, 'Executive Orders in Nigeria as Valid Legislative Instruments and Administrative Tools' (2012) *NAUJILJ*, 59-68; C V Odoeme, 'Executive Orders in Constitutional Democracies: A Critique', 2 <https://www.researchgate.net/publication/356789114_EXECUTIVE_ORDERS_IN_CONSTITUTIONAL_DEMOCRACIES_A_CRITIQUE/link/61ad3b3eca2d401f27cafb46/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19> accessed 23 September 2025; J A Adeyeye, 'Executive Orders in Nigeria and United States of America: Constitutionality and Comparative Analysis' (2023) (3) *Cavendish University Law Journal*, 1-27, 5

⁶A A Graber, 'Executive Orders: An Introduction' (2021) *Congressional Research Service*, 1-21, 1 <<https://crsreports.congress.gov/product/pdf/R/R46738>> accessed 21 September 2025

⁷B A Garner (ed), *Black's Law Dictionary* (11th edn, St. Paul, The USA: Thomson Reuters 2019) 715

⁸1999 (as Amended) Cap C23, Laws of the Federation of Nigeria 2004 [CFRN]

⁹The Constitution of the United States 1787 [US Constitution]

¹⁰*Ibid*, art II, s 1

¹¹*Ibid*, art II, s 3

¹²J C Duncan, 'A Critical Consideration of Executive Orders: Glimmerings of Autopoiesis in the Executive Role' (2010) (35) *Vermont Law Review*, 333-411, 335

¹³CFRN, s 5(2)(a)

¹⁴*Ibid*, s 5(2)(b)

¹⁵[Unreported] Suit No: PHC/ABJ/CS/740/2018 (Judgment of the Federal High Court of Nigeria, Abuja Judicial Division, delivered on Thursday, 11 October 2018 by Honourable Justice Ijeoma L. Ojukwu)

¹⁶*Ibid*, 28

Executive Order Prohibiting Street Trading, Illegal Markets and Motor Parks along and Around the Rebisi Flyover, Port Harcourt, 2020

The Executive Order Prohibiting Street Trading, Illegal Markets and Motor Parks along and around the Rebisi Flyover, Port Harcourt (RSVG-23-2020)¹⁷ indicates that it is issued pursuant to Sections 1, 3 and 9 of the Rivers State Street Trading, Illegal Markets and Motor Parks (Prohibition) Law.¹⁸ The effective date of RSVG-23-2020 is stated to be 9 November 2020 and it is to remain in force until further notice. The substantive provisions of RSVG-23-2020 are stipulated in Paragraphs 2, 3, 4, 5 and 6. RSVG-23-2020 prohibits all forms of street trading, operation of motor parks, markets, roadside vulcanizing and mechanic works on, under or along the Rebisi flyover in Port Harcourt or within 100 metres from the foot of the flyover.¹⁹ RSVG-23-2020 similarly prohibits hawking or public display of goods outside or in front of any building along or within 100 metres from the foot of the flyover.²⁰ It provides that no landlord or caretaker of any building or premises shall permit, approve or encourage the display of goods outside or in front of any such building, or premises along or within 100 metres from the foot of the flyover.²¹ The Rivers State Government shall acquire compulsorily on ground of overriding public purpose the building or premises of any landlord or caretaker who violates the provision of Paragraph 4 of RSVG-23-2020.²² Due to the similarity between RSVG-23-2020 and the next Rivers State executive order to be discussed below, the analysis of the provisions of both executive orders will be undertaken together in the subsequent section of this paper, to avoid repetitions of the commentaries.

Executive Order Prohibiting the Dumping of Waste in Front of Buildings and Premises Around Old Government Reservation Area, New Government Reservation Area, and Amadi Flats Port Harcourt, 2020

The Executive Order Prohibiting the Dumping of Waste in Front of Buildings and Premises Around Old Government Reservation Area, New Government Reservation Area, and Amadi Flats Port Harcourt (RSVG-24-2020)²³ claims that it is issued pursuant to Section 4 of the Dumping of Waste in Public Places (Prohibition) Law.²⁴ RSVG-24-2020 indicates that its effective date is 11 November 2020 and it is to remain in force until further notice.²⁵ RSVG-24-2020 prohibits the use of the front of any building or premises or the verge of any public road abutting such building or premises in Old Government Reservation Area (GRA), New GRA and Amadi Flats Port Harcourt for dumping unbagged wastes.²⁶ Accordingly, any landlord, occupier or caretaker who permits the use of his building or premises in any manner prohibited in RSVG-24-2020 shall be liable to forfeit such building or premises to the Government of Rivers State.²⁷ In other words, the Rivers State Government shall compulsorily acquire the defaulting landlord's, occupier's or caretaker's building or premises.

5. Analysis of the Constitutionality of Executive Orders RSVG 23 of 2020 and RSVG 24 of 2020

Determining the constitutionality or otherwise of a piece of executive order requires the establishment of clear parameters through which the analysis will be conducted. The parameters for measuring the constitutionality or otherwise of an executive order were laid down by the Federal High Court in *Ugochinyere v President of the Federal Republic of Nigeria*,²⁸ where Ojukwu, J., stated the law as follows:

...the President can issue an Executive Order under section 5 of the Constitution in so far as the Order relate [sic] to routine administrative matters and internal operations of Federal Agencies, policies and programs [sic], and so long as it does not encroach into the powers of the Legislature or the Judiciary as delineated under the Constitution of the Federal Republic of Nigeria 1999.²⁹

From the above judicial pronouncement, three parameters have been established for the validity of an executive order which are:

- (i) The executive order must relate to routine administrative matters and internal operations of federal agencies, policies and programmes.³⁰ This can also be extended to gubernatorial executive orders. Thus, in the case of gubernatorial executive order, the executive order must relate to routine administrative matters and internal operations of State agencies, policies and programmes.
- (ii) The executive order must not encroach into the powers of the legislature as delineated under the CFRN;³¹ and
- (iii) The executive order must not encroach into the judicial powers as delineated under the CFRN.³²

¹⁷RSVG-23 of 2020 [RSVG-23-2020]

¹⁸No. 14 of 2019

¹⁹*Ibid*, para 2

²⁰*Ibid*, para 3

²¹*Ibid*, para 4

²²RSVG-23-2020, para 5

²³RSVG-24 of 2020 [RSVG-24-2020]

²⁴No. 5 of 2020

²⁵*Ibid*, Para 1

²⁶*Ibid*, Para 2

²⁷*Ibid*, Para 3

²⁸(n 15) 28

²⁹*Ugochinyere v President of the Federal Republic of Nigeria* (n 15) 28

³⁰*Ibid*, 28

³¹*Ibid*

³²*Ibid*

Similarly, in *Attorney-General of Abia State v Attorney-General of the Federation*,³³ the Supreme Court of Nigeria reached the same conclusion as regards the validity of the Presidential Executive Order for the Implementation of Financial Autonomy for the State Legislature and State Judiciary and for Other Related Matters³⁴ when it held that:

S.5(1) of the CFRN is very clear as to its intention and range. It is to be noted that it is made subject to other over riding provisions of the CFRN. The provision is to empower the President to make Executive Orders to guide the various agencies of the FGN Federal Government to execute its policies particularly where legislation is unclear or nonexistent on the point. Before specific laws are put in place, it is merely a handmaid to the President in ensuring by publication of policy directions, the agenda of the Presidency on matters with respect to which the National Assembly can make laws. There is no doubt that appropriation and disbursement of funds for the State Judiciary are not matters with respect to which the National Assembly can make laws. Undoubtedly, it is *ultra vires* of Mr. President to alter or modify section 121 of the Constitution in any form whatsoever. Order 1(a) appears to me to either be a repetition or modification of section 121(3) of the Constitution. In conclusion, the contents of the Presidential Executive Order particularly sections 2-7 are *ultra vires* the powers of the President of the President. It is null and void and of no effect.³⁵

From the dicta of the Supreme Court of Nigeria as expressed in both the leading and concurring judgments of the Court, there seems to be an acceptance that an executive order is not bad in itself, and that Section 5(2)(b) of the CFRN authorises a governor to issue executive orders. However, as circumscribed by the opinion of the Supreme Court, an executive order issued pursuant to Section 5(2)(b) of the CFRN will be valid and possess the force of law where it is issued within the authority conferred on the governor and where it did not violate the law. From both the leading and concurring judgments of the Court, the validity of an executive order can be determined by using the following analytics:

- (i) The executive order must not be contrary to the principles of federalism enshrined in the CFRN;³⁶
- (ii) The executive order must not violate the principle of separation of powers that undergirds the CFRN;³⁷
- (iii) Executive orders are mainly to guide the various agencies of the federal or State government to execute the policies of the executive branch, particularly where legislation is unclear or non-existent on the point;³⁸
- (iv) Before specific laws are made on a subject or matter, an executive order is merely a handmaid to a president or governor in ensuring by publication of policy directions, the agenda of the presidency or a governor on matters with respect to which the NASS or House of Assembly, as the case may be, can make laws;³⁹
- (v) When a president or governor, either by an act of aggrandisement or otherwise, exercises power not vested in him by the CFRN or statute, or in excess of the powers vested in him by the CFRN or statute, he acts *ultra vires*.⁴⁰

It should be noted that the approach adopted by the Nigerian courts appears to be similar to the tests laid down by the US Supreme Court for the determination of the validity of an executive order as an instrument of government policy implementation. These tests were laid down in *Youngstown Sheet & Tube Co. v Sawyer*.⁴¹ The dicta of the Federal High Court in *Ugochinyere v President of the Federal Republic of Nigeria*⁴² as well as the Supreme Court in *Attorney-General of Abia State v Attorney-General of the Federation*⁴³ will now be applied to the Rivers State executive orders RVSG-23-2020 and RVSG-24-2020 to determine their constitutionality or otherwise.

A critical examination of the two executive orders – RVSG-23-2020 and RVSG-24-2020, shows a common trend. Firstly, the titles of both executive orders did not suggest that they are executive orders, which as has been defined, are directives issued by the head of the executive arm to the officers and agencies under the executive branch to enforce the terms of a law. Thus, if RVSG-23-2020 and RVSG-24-2020 were issued as executive orders, their titles ought to have been couched as such. For instance, RVSG-23-2020 ought to have been couched thus: ‘Executive Order on the Implementation of the Prohibition of Street Trading, Illegal Markets and Motor Parks along and around the Rebisi Flyover, Port Harcourt’. In the same fashion, RVSG-24-2020 ought to have been couched as if it is implementing a law and not to show that the executive order is itself the law, thus: ‘Executive Order on the Implementation of the Prohibition on Dumping of Waste in Front of Building and Premises around Old Government Reservation Area, New Government Reservation Area and Amadi Flats Port Harcourt’. The opening part of the titles of RVSG-23-2020 and RVSG-24-2020 which reads, ‘Executive Order Prohibiting...’ shows that rather than the two instruments being executive orders issued to implement the prohibitions made under existing laws, these executive orders are themselves the laws to be implemented. Despite this observation, it is submitted that the inappropriateness of the title of an executive order will not affect its validity as the law tends to look more to the substance of a law or statutory provision or intent rather than the form in which a thing is expressed. Thus, its inelegantly drafted titles notwithstanding, the court will examine the provisions to see if a particular executive order lays down rules or implements legislatively laid down rules.

³³(2022) 16 NWLR (Pt 1856) 205

³⁴No. 010 of 2020 [EO10]

³⁵*Attorney-General of Abia State v Attorney-General of the Federation* (n 33) 433-434

³⁶*Ibid*

³⁷*Ibid*, 433-434

³⁸*Ibid*

³⁹*Ibid*

⁴⁰*Attorney-General of Abia State v Attorney-General of the Federation* (n 33) 433-434

⁴¹343 US 579 (1952)

⁴²(n 15) 28

⁴³(n 33)

An examination of Paragraphs 2,3,4 and 5 of RVSG-23-2020 and Paragraphs 2 and 3 of RVSG-24-2020 demonstrates amply that the two executive orders are rule-making executive orders, as there is nothing in their provisions to suggest that they aim to implement any existing laws. The executive orders did not give any directive to any official or agency under the State executive branch. They did not specify or streamline the guidelines to be observed in the implementation of any particular law. The executive orders fail every purpose for which executive orders are constitutionally deployed. Rather, both executive orders regulated the lives and transactions of citizens which is the prerogative of the legislature. Executive orders deal with the activities within the executive branch and even if the implementation of the law by the executive branch will involve interactions with the citizens, the executive power bestowed on a president or governor does not include the power to make laws directly affecting citizens.

Secondly, the penalty prescribed in both executive orders as sanctions for violations are penalties that affect the proprietary rights of citizens and the right to fair hearing guaranteed by the CFRN. The right to acquire and to own immovable property, such as buildings, is a fundamental right guaranteed to every citizen of Nigeria.⁴⁴ Section 44(1) of the CFRN provides that no interest in an immovable property shall be compulsorily acquired in any part of Nigeria except in a manner and for the purposes prescribed by law, which among other provisions, requires the prompt payment of compensation for the acquired property;⁴⁵ and the right of access to the court for the determination of a citizen's interest in the property and the amount of compensation to which he is entitled.⁴⁶ It needs to be stressed that the right to acquisition and ownership of immovable property under Section 43 and the right to compensation in the case of compulsory acquisition of a citizen's immovable property under Section 44(1) of the CFRN, are both made subject to Section 44(2) of the CFRN which creates thirteen exceptions to the application of Sections 43 and 44(1) of the CFRN. Where any of these exceptions applies, the immovable property of a citizen can be compulsorily acquired without compensation. There are at least two of the exceptions which would appear to furnish justification for the provisions of Paragraph 5 of RVSG-23-2020 and Paragraph 3 of RVSG-24-2020. Both Paragraphs 5 and 3 of the executive orders give the State Government power to acquire the building or premises of a landowner or occupier or caretaker who directly or tacitly permits his property or premises to be used in contravention of the executive orders. The first applicable exception stipulates that nothing in Section 44(1) of the CFRN shall be construed as affecting any general law, 'for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence.'⁴⁷ In *Clement v Federal Road Safety Commission*,⁴⁸ the Court of Appeal held that Section 44(2)(b) of the CFRN clearly permits the taking of possession of a citizen's property compulsorily for the purpose of imposition of penalty or forfeiture for the breach of any law, whether under civil process or after a conviction for an offence. The second applicable exception is to the effect that nothing in Section 44(1) of the CFRN shall affect any general law, 'providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals'.⁴⁹ The sum total sum of the exceptions under Section 44(2)(b) and (f) of the CFRN is that a law can be enacted to authorise the State or government to compulsorily acquire a citizen's property for contravention of a law, and the forfeiture can be imposed under a civil process or after conviction for an offence; and that the legislature can enact a law that empowers the State authorities to compulsorily acquire a property that is injurious to the health of human beings, plants, animals. Section 44(2) provides that such law, if enacted by the relevant legislature, shall be valid and cannot be overridden by Sections 43 and 44(1) of the CFRN.

Thirdly, the Governor of Rivers State claim that he derives the authority to issue RVSG-23-2020 and RVSG-24-2020 from relevant provisions of existing laws of the Rivers State House of Assembly. LawIn the case of RSVG-23-2020, the authority claimed for its issuance stems from the Rivers State Street Trading, Illegal Markets and Motor Parks (Prohibition) Law; while it is claimed that RSVG-24-2020 is issued pursuant to the Dumping of Waste in Public Places (Prohibition) Law. It is therefore apposite to examine RVSG-23-2020 and RVSG-24-2020 through the periscope of the two Laws in order to determine whether the Governor exceeded or stayed within his powers in the issuance of the executive orders.

A review of the Rivers State Street Trading, Illegal Markets and Motor Parks (Prohibition) Law⁵⁰ reveals that the Law did not provide for forfeiture of a building used in the commission of the offences created under the Law. Various penalties are stipulated for contravention of the acts prohibited in the Law. For instance, the penalty for illegal street trading is a 24-hour discontinuation notice in writing issued by an authorised person to the offender to discontinue the act of illegal street trading.⁵¹ Upon default of the discontinuation notice, the offender shall upon conviction be liable to a fine of ₦10, 000.00 or community service in accordance with the provisions of the Rivers State ACJL, in the case of a first offender;⁵² and in the case of a second or subsequent offender, the penalty upon conviction is imprisonment term of not more than one year.⁵³ Regarding the illegal operation of mechanic workshops in a prohibited area, there is no requirement in the Law for the prior service of a contravention notice. The offender is liable upon conviction to a fine of ₦50,000.00 or community service pursuant to the ACJL, in the case

⁴⁴CFRN, s 43

⁴⁵*Ibid*, 44(1)(a)

⁴⁶*Ibid*, 44(1)(b)

⁴⁷CFRN, s 44(2)(b)

⁴⁸(2017) LPELR-51011(CA)

⁴⁹CFRN, s 44(2)(f)

⁵⁰No. 14 of 2019 [Illegal Street Prohibition Trading Law]

⁵¹*Ibid*, s 3(2)

⁵²*Ibid*, s 3(3)(a)

⁵³*Ibid*, s 3(3)(b)

of a first offender;⁵⁴ and imprisonment for a term not exceeding two years, in the case of a second and subsequent offender.⁵⁵ The penalties for illegally operating a roadside vulcanizing shop are the same as those for illegal operation of roadside mechanic shops. Thus, the penalty in the case of a first-time offender is a fine of ₦50,000.00 or community service in accordance with the ACJL;⁵⁶ and an imprisonment term of not more than two years for a second and subsequent offender.⁵⁷ In respect to the offence of illegal operation of motor parks, the Law requires the prior service of a 48-hour contravention notice upon the offender as a prelude to the initiation of criminal prosecution.⁵⁸ Upon conviction, a first-time offender is liable to a fine of ₦200,000.00 or an imprisonment term of two years or both such fine and imprisonment term;⁵⁹ and in the case of a second and subsequent offender, the penalty is a fine of ₦300,000.00 or an imprisonment term of three years or both such fine and imprisonment.⁶⁰ The Law also creates the offence of illegal operation of market, and an offender is entitled to be served a prior 14-day contravention notice.⁶¹ Upon failure to comply with the contravention notice, the offender, where he is a first offender shall be liable, upon conviction, to fine of ₦200,000.00 or imprisonment for a term not exceeding two years or both fine and imprisonment.⁶² For the offence of shop extension beyond the approved perimeters, the punishment is a fine of ₦50,000.00 or community service in accordance with the ACJL, in the case of a first offender;⁶³ and imprisonment of not more than one year, in the case of a second and subsequent offender.⁶⁴ Apart from the specific offences examined above, the Law went further to create what it called 'general offences' which aim to punish obstruction of enforcement officers constituted under the Law;⁶⁵ punish aiding, abetting, or inciting the obstruction or harassment of officers of the law;⁶⁶ and enforcement of the Law by unauthorised persons.⁶⁷ The penalty in all cases is a fine of ₦100,000.00 in the case of a first offender;⁶⁸ and imprisonment term of not more than two years, in the case of a second and subsequent offender.⁶⁹

On its part, the Rivers State Dumping of Waste in Public Places (Prohibition) Law⁷⁰ provides the penalty for violation of the Law. It stipulates that, '[A] person who contravenes this section commits an offence and is liable on conviction to imprisonment for a term of 6 months without an option of fine'.⁷¹ A critical analysis of the provisions of both Laws – the Illegal Street Trading Prohibition Law and the Waste Dumping Law, shows that the penalties prescribed therein are fines and imprisonment terms and community service. There is no punishment or penalty of forfeiture of a building or premises used in contravening the provisions of any of the Laws to the Rivers State Government. In other words, the Rivers State House of Assembly did not create the penalty of forfeiture or compulsory acquisition of a building or premises used in contravention of the Laws to the Rivers State Government. A person who contravenes any of the Laws can upon conviction be fined in various monetary sums ranging from ₦10,000.00 to ₦300,000.00, or to community service in applicable cases or to imprisonment terms ranging from one year to three years, or to both imprisonment term and fine where applicable only.

Thus, RVSG-23 and RVSG-24 which by which the Governor purported to enact provisions that exceed or are absent in the Laws enacted by the Rivers State House of Assembly are clearly within the firm domain of the third categorisation of the Jacksonian analytics. The body constitutionally empowered to make laws and create offences has exhaustively stipulated penalties that should be imposed upon a contravention of the Laws, it was no longer open to the Governor in the purported exercise of his executive powers to add to or enact additional provisions by amending the Laws enacted by the Legislature to introduce the penalty of forfeiture of building or premises used in contravention of the Laws to the Government of Rivers State. The Nigerian Supreme Court in *Attorney-General of Abia State v Attorney-General of the Federation*⁷² frowned at as similar situation where the President by dint of the Presidential Executive Order for Implementation of the Financial Autonomy of the State Legislature and State Judiciary; and for Related Matters, 2020⁷³ (EO10) prescribed a penalty for contravention of the constitutional provision on legislative and judicial financial autonomy by State Governments when the CFRN did not prescribe any penalty therefor. In that case, the President under EO10 directed the Accountant-General of the Federation to deduct at source from the amount standing to the credit of a defaulting State Government in the Federation Account such amount as is sufficient to meet the sum appropriated to the State legislature and the State judiciary in any particular year as arising from the State judiciary in any particular year as arising from the State budget and to pay such sum directly to the heads of the affected bodies. The Supreme Court held that the executive order violated the federalism principles of the CFRN in that the President

⁵⁴*Ibid*, s 4(2)(a)

⁵⁵*Ibid*, s 4(2)(b)

⁵⁶*Ibid*, s 5(2)(a)

⁵⁷*Ibid*, s 5(2)(b)

⁵⁸Illegal Street Prohibition Trading Law, s 6(3)

⁵⁹*Ibid*, s 6(4) (a)

⁶⁰*Ibid*, s 6(4) (b)

⁶¹*Ibid*, s 7(2)

⁶²*Ibid*, s 7(3)(a)

⁶³*Ibid*, s 7(3)(b)

⁶⁴*Ibid*, s 9(2)(a)

⁶⁵*Ibid*, s 9(2)(b)

⁶⁶ *Ibid*, s 12(1)(a)

⁶⁷*Ibid*, s 12(1)(b)

⁶⁸*Ibid*, s 12(2)

⁶⁹*Ibid*, s 12(1)(b)(i) and (2)(a)

⁷⁰*Ibid*, s 12(1)(b)(ii) and (2)(b)

⁷¹No. 5 of 2020 [Waste Dumping Law]

⁷²(n 33) 433-434

⁷³[EO10]

purported to implement the provisions of the CFRN that deal with State matters which only the Governor could implement;⁷⁴ that the Presidential executive order contravened the principle of separation of powers which has clearly under the CFRN ceded legislative powers to the legislature and that the executive order amounted to executive-legislating since by it the President enacted provisions not contemplated by the CFRN;⁷⁵ and further that the penalty provision of the executive order were clearly ultra vires the powers of the President as the head of the federal executive branch.⁷⁶

6. Conclusion and Recommendations

This paper has demonstrated that a governor of a State in Nigeria has the constitutional power to issue executive orders, even if the power is not expressly granted by the text of the CFRN. Applying the tests laid down by the Federal High Court in *Ugochinyere v President of the Federal Republic of Nigeria*⁷⁷ as well as the Supreme Court in *Attorney-General of Abia State v Attorney-General of the Federation*⁷⁸ to RVSG-23 of 2020 and RVSG-24 of 2020, this paper found that both executive orders were issued without constitutional and statutory authorisation. Firstly, it is observed that the titles of both executive orders did not suggest that they are executive orders, which as has been defined, are directives issued by the head of the executive arm to the officers and agencies under the executive branch to enforce the terms of a law. Similarly, there is nothing in their provisions to suggest that they aim to implement any existing laws. Secondly, it is observed that the executive orders did not give any directive to any official or agency under the State executive branch. The executive orders fail every purpose for which executive orders are constitutionally deployed. Rather, the Governor through the instrumentality of both executive orders purports to make laws and thereby regulate the lives and transactions of citizens which is the prerogative of the legislature. Thirdly, the penalties prescribed in both executive orders as sanctions for violations are penalties that affect the proprietary rights of citizens and the right to fair hearing guaranteed by the CFRN. Fourthly, the executive orders went completely overboard, outside the penalties stipulated in the Illegal Street Prohibition Trading Law and the Waste Dumping Law which the Governor by means of the executive orders claims to implement, and rolled out fresh penalties for the violation of the executive orders. While both laws prescribe penalties of fine and imprisonment, the executive orders authorised the forceful demolition, acquisition, confiscation and forfeiture of movable and immovable property without following due process and without affording the persons to be affected by the Governor's action a fair hearing. Thus, the Governor as head of the executive branch of government in Rivers State usurped the constitutional role of the Rivers State House of Assembly by amending the Illegal Street Prohibition Trading Law and the Waste Dumping Law without legislative input, under the guise of issuing executive orders. This paper recommends a closer control of the governor's executive order issuing power by the Rivers State House of Assembly. In this regard, it is suggested that the Rivers State House of Assembly should, without delay, commence the process of revocation of the executive orders by passing appropriate legislation that revokes the offending provisions of the executive orders. The Rivers State House of Assembly can also apply the power of the purse to deny the governor funds required for the implementation of the offending executive orders. This paper also recommends that appropriate persons or institutions with *locus standi*, especially those targeted by the executive orders, should approach the court for a determination of the validity or otherwise of the executive orders and to enlist the support of the court to strike down the offending provisions of the executive orders.

⁷⁴(n 33) 433-434

⁷⁵ (n 33) 433-434

⁷⁶ *Ibid*

⁷⁷(n 15) 28

⁷⁸(n 33)