EXAMINING THE DECLARATION OF STATE OF EMERGENCY PROVISIONS IN THE 1999 NIGERIAN CONSTITUTION FOR DEMOCRATIC GOVERNANCE*

Abstract
The declaration of a state of emergency is a significant constitutional act that temporarily alters governance structures to restore order in times of crisis. In Nigeria, this power is enshrined particularly in Section 305 of the 1999 Constitution allowing the President to intervene when there is a breakdown of public order or security. The recent political and security crisis in Rivers State has sparked debates on the legality, necessity, and implications of the emergency declaration made pursuant to the above section. This article examines the constitutional framework for declaring a state of emergency, historical precedents in Nigeria, and the purported circumstances in Rivers State that has warranted such action. It further explores the potential political consequences, including the balance between executive authority and democratic governance. It identifies that there may be periods of national emergency which threaten the very existence of a state that may warrant extraordinary measures but assert, that this does not translate to the dismantling of democratic structures in order to effectively deal with such situation. It finds further that as a strategic tool, the emergency provision within the constitution is faced with challenges which includes: ambiguous scope, inadequate legislative oversight, executive overreach, lack of judicial review, lack of state-level emergency power and little or no state power over public order and operational use of security apparatus. The research concludes that while the declaration of a state of emergency is a constitutional tool, it must be exercised with caution to prevent abuse and ensure the protection of democratic practices and institutions.

Keywords: State of Emergency, Declarations, 1999 Constitution, Democracy, Nigeria

1. Introduction

It is generally recognized[1] that there may be periods of national emergency which threaten the very existence of a state that may warrant extraordinary measures entailing the temporary adjustment to governmental dynamics in order to effectively deal with the situation. The challenge has usually been how to provide for dealing with such exceptional situations without leaving too much discretion to a repressive government to use this as an excuse to propagate its agendas. Admittedly, without sufficient constitutional safeguards, and with the rising phenomenon of dominant ruling parties in Africa, there is always a likelihood that parliaments will easily adopt emergency laws that can be used by governments as a pretext for entrenching themselves in power and suppressing opposition. The power of the President to declare a state of emergency has been one of the most critical provisions in Nigeria's constitutional framework for maintaining national security and public order. This power, provided particularly under Section 305 of the 1999 Constitution, allows the President to intervene in the governance structures in a state and take extraordinary measures to restore security, peace and order. However, the exercise of this power has always been contentious, raising legal, political, and democratic concerns. Rivers State has recently become a focal point of political tension and security instability with allegations of political violence, breakdowns in law enforcement, and threats to governance and critical economic facilities. This has led the federal government to invoke emergency powers to address the crisis. Within the dialectic crucibles, while supporters argue that such a measure is necessary to restore stability, critics warn that it could be politically motivated and undermine democratic principles. This article critically examines the constitutional and political implications of emergency powers under the constitution. It explores historical instances of emergency declarations in Nigeria, evaluates the current crisis in Rivers, and assesses whether the legal conditions for such a declaration have been met. The research also considers the potential consequences for governance, federal-state relations and democratic stability. This research aims to provide a balanced and nuanced perspective on the necessity, legality, and impact of emergency powers in Nigeria's democratic framework.

2. What is a State of Emergency?

A state of emergency has been defined as '*the suspension of normal law and order procedures and the introduction of strict controls of the population that usually involves the military, so that a crisis, revolution, etc can be contained'*.[2] Under the United Kingdom law,[3] a state of emergency was defined as *'an event or situation that threatens serious damage to human welfare, the environment, or security of the state.'* In Nigeria, neither Section 305 nor 318 of the 1999 constitution expressly spells out the meaning of the expression. Section 305 only quite extensively provides for the procedure for declaration of a state of emergency, the conditions that will engender such a declaration, when it will cease to have effect, and the role of the National Assembly,

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[1] *A.G. Lagos State v. A.G. Federation* (2005) 2 NWLR (Pt. 1000) 1, the Supreme Court clarified that emergency powers must be exercised within constitutional limits; South African Constitution (1996) Section 37(1): 'A state of emergency mat be declared only when the life of a nation is threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency.'; *Mohamed v. President of the Republic of South Africa* (2001) (3) SA 893 (CC), the Constitutional Court emphasized that human rights should not be unduly restricted during emergencies; ICCPR (1966) Article 4(1) allows emergency declarations but prohibits derogation from fundamental rights like the right to life and freedom from torture; *Lawless v. Ireland* (No.3) (1961) ECHR 332/57 the European Court of Human Rights upheld emergency powers but required strict proportionality in their application. See also the UK Contingencies Act, 2004.
[2] *Chambers 21st Century Dictionary (Revised Edition)* Edinburg Chambers, Publishers Ltd 1996, 1375.
[3] UK Civil Contingencies Act 2004.

the governors of the states and its legislative houses in the process. While section 318 which is meant to serve as a liminal glossary of semantic disentanglement within the constitution is found wanting as a definitional guide.

However, it is gratifying to note that elsewhere in section 45(3) of the constitution, a compass and bearing was offered in guide to deciphering the semantic complexity and web. Noticeably, section 45(3) uses the phrase *a period* instead of *a state* of emergency and defines a 'period of emergency' as: *any period during which there is in force a proclamation of a state of emergency declared by the president in exercise of the powers conferred on him under section 305 of this Constitution.* Granted, quite unhelpful, beggarly and circular, but in the earnest quest to churn out a working definition within the context of the Constitution and this research, one may call in aid the provisions of the spirits of s.45 (1) (2) (3) and 305 of the 1999 Constitution (as amended). A close reading of this sections reveals that the term 'state of emergency' which for all purpose, is co-referential to a 'period of emergency' may be define *as such a period (time in space) where certain fundamental rights guaranteed under Chapter IV of the Constitution may be derogated from or where the life of the nation or part of it is actually or imminently threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency which is made known through a proclamation by the President and supported by means of a resolution by the National Assembly.*

3. Drawing from Past Experiences

Nigeria has experienced several declarations of states of emergency since its independence in 1960. These declarations have been invoked to address political crisis, ethno-religious conflicts and security challenges. The first of such a declaration of a state of emergency was in 1962 in the then Western region of Nigeria. This was done pursuant to section 65 of the defunct 1960 Constitution. Reminiscently, in 1962[4], internal conflicts within the Action Group (AG) political party led to a severe political crisis in the western region. The disagreement between Chief Awolowo and Chief Samuel Ladoke Akintola resulted in violent clashes and legislative chaos. In response, Prime Minister Tafawa Belewa declared a state of emergency, appointing Dr. Moses Majekodunmi as administrator to restore order. Whilst moving the motion on the floor of federal parliament declaring the state of emergency, the Prime Minister, was quick to emphasize that the federal government had been motivated; *'Solely by the desire to ensure that peace, order and tranquility are maintained throughout parts of the federation.* The adoption of the aforesaid resolution is of course sequel to a nationwide broadcast made by the Prime Minister on May 25, 1962 wherein he stated the apparently grave security situation in the Western region. Moving forward to 2004[5], escalating ethno-religious violence between Muslims and Christians in Plateau State led to over 2,000 deaths starting from 2001. To curb the unrest, President Olusegun Obasanjo declared a state of emergency in May 2004, suspending Governor Joshua Dariye and the State House of Assembly. Major General Chris Alli (retired) was appointed as the administrator during this period. The next major milestone came in 2006, a political crisis emerged in Ekiti State when Governor Ayo Fayose was controversially impeached, leading to widespread unrest and a governance breakdown. President Obasanjo imposed emergency rule in October 2006, appointing Brigadier General Adetunji Olurin (retired) as the administrator to stabilize the situation[6]. History took a turn, when in response to the escalating Boko Haram insurgency, President Goodluck Jonathan declared a state of emergency on May 14, 2013[7], in the northeastern states of Borno, Yobe, and Adamawa. This measure aimed to enhance military operations against the insurgents. Notably, the state governors were not suspended during this period. Finally, history culminated when on March 18, 2025, President Bola Tinubu declared a state of emergency in Rivers State amid a political crisis and incidents of pipeline vandalism. Governor Siminalayi Fubara and state lawmakers were suspended for six months due to tensions between the governor and legislators, and recent pipeline vandalism, including a fire on the Trans Niger Pipeline. Retired Vice Admiral Ibokette Ibas was appointed as the military administrator, marking the first emergency rule declared in over a decade. These instances highlight the Nigerian government's use of emergency declarations to address significant political and security challenges across different regions and periods[8].

4. Constitutional Frameworks for a State of Emergency in Nigeria

The President of Nigeria derives his authority to declare a state of emergency from section 305 of the 1999 constitution. This provision outlines specific circumstances under which such may occur. Considering the imperative of this section, permit me to re-hatch it in *extenso.* Section 305 provides:

> i) 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.
>
> 2) 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 Representative, each of whom shall forthwith convene or arrange for a meeting of the House of 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.

Section 305(3) succinctly and in lucid terms provides for conditions that must exist before a proclamation of state of emergency shall be made by the President. These conditions as spelt out are, when:

> (a) The federation is at war,

[4] < http://www.vanguardngr.com/2017/07/balewa-declared-state-emergency-west-1962/>accessed on 24/4/2025
[5] <http://www.premiumtimesng.com/news/134340-brief-history-of-state-of-emergency-in-nigeria.html?tztc=1>accessedon 24/4/25
[6] Ibid
[7] Ibid
[8] Ibid

(b) The federation is in imminent danger of invasion or involvement in a state of war,
(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 measures 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 of 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.

Also germane to the issue of procedure is the provision of section 305(4) of the Constitution. This section provides for a situation where the Governor of a state may, with the sanction of a resolution supported by two-third majority of the House of Assembly, request the President to issue a proclamation of a state of emergency in the state where there is in existence any of the situations specified in subsection (3) (c), (d) and (e) of section 305 and such a situation does not extend beyond the boundaries of the state. Additionally, section 305(5) provides that the president shall not issue a proclamation of a state of emergency in any case to which the provision of subsection (4) of this section apply unless the Governor of the State fails within reasonable time to make the a request to the President to issue such a proclamation.

Also relevant is section 11 of the 1999 constitution, which is reproduced below:

(1) The National Assembly may make laws for the Federation or any part therefore 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.
(2) Nothing in this section shall preclude a House of Assembly from making laws with respect to the matter referred to in this section, including the provision for maintenance and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services.
(3) During any period when the Federation is at war the National Assembly may make such laws for the peace, order and good government of the Federation or any part therefore with respect to matters not included in the Exclusive Legislative List as may appear to it to be necessary or expedient for the defence of the Federation.
(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.
(5) For the purposes of subsection (4) of this section, a House of Assembly shall not be deemed to be unable to perform its functions so long as the House of Assembly can hold a meeting and transact business.

5. Proclamation of a State of Emergency in River State: Concerns and Endorsement

In recent years, the nature and operation of the emergency power under sections, 45, 11 and 305 of the constitution has generated a lot of controversy. This is arising mainly from the fact it is not clearly settled as to proper intent and limit of the emergency power within the constitutional framework and to whom is empowered the duty to define clearly its operational modalities. This has led to series of political contentions and litigations as a way of determining it proper import. Charting the fault lines of discourse, the issues open for interrogation is whether the president who is the chief executive of one tier of government can suspend an elected chief executive who is the chief executive of another tier of government? Alternatively, whether the President or National Assembly can determine the tenure of an elected governor and state legislators vide a proclamation of a state of emergency pursuant to section, 11 or 305 of the constitution? Furthermore, does a proclamation of a state of emergency by necessary implication displace democratic state institutions/functionaries and necessitates the appointment of sole administrators? And what is the proper import of a state of emergency?

Concerns on the Power of the President to Suspend a Governor and State Legislators

In some quarters, contentions over the call for the suspension of elected government functionaries as in Rivers, have sought to rely on the provisions of section 180(1)(d), 305(4)(5), 11(4)(5) and yet, overstretched to include section 5(1)(b). Specifically, and most interestingly, section 180 (1) (d) provides thus: Subject to the provisions of this Constitution, a person shall hold the office of Governor of a state until- (d) he otherwise ceases to hold office in accordance with the provisions of this constitution. Premised upon the above, it is important to state that, the provision of Sections 180(1)(d), 11(4)(5), 5(1)(b) and particularly section 305 of the 1999 Constitution as amended are so clear and plain and do not require any ambiguous or imported interpretation. It is a principle of interpretation that the language of the Constitution where clear and unambiguous, must be given its plain evident meaning and that a constitutional provision should not be construed so as to defeat its evident purpose. For contentions hidden under the omnibus provisions of section 180 (1) (d) to the argument that the president can suspend an

elected governor and his deputy, a handy guide and reference must be had to the case of *All Progressives Congress (APC) v Peoples Democratic Party (PDP) & Ors*[9] wherein it was held thus:

> Now, the offices of the Governor of a State and Deputy Governor of that State are creations of the Constitution, which is the *grundnorm* that regulates the conduct of government. Thus, Section 176 (1) of the Constitution stipulates that, there shall be for each State of the Federation, a Governor.[10] The qualifications of a person to be elected Governor of a State are laid down in Section 177 of the Constitution. Where a person qualifies to contest for the Governor of a State, he will be declared duly elected if he satisfies the requirements of Section 179(1) (a) and (b), or 179(2) (a) and (b), or 179(3) (a) and (b), or 179(4) (a) and (b) of the Constitution. The equivalent provisions of the Constitution relating to the office of Deputy Governor of a State are Sections 186 and 187 (1) and (2). In the instant case, the 3rd and 4th Respondents satisfied the requirements of Section 179(2) (a) and (b) of the 1999 Constitution and were accordingly declared duly elected and sworn in on 29/5/2019. The 1st Respondent has not contested nor denied those facts. It should be noted that the 3rd and 4th were to occupy the offices of Governor and Deputy Governor of Ebonyi State for a term of four (4) years from the 29th day of May, 2019. See Section 180 (2) of the 1999 Constitution (as amended). However, by Section 180(1) of the Constitution, they shall not vacate or deemed to have vacated the office of Governor until: (a) when their successors in office take oath of that office; or (b) the date when their resignation from office take effect; or (d) They otherwise cease to hold office in accordance with the provisions of the Constitution. It is apparent from the above stated provision of the Constitution, that their term of office shall end when their successors in office have been validly elected and sworn in; or where they die during the subsistence of their terms of office; or where they resign; or they otherwise cease to hold office...

Section 180 (1) (d) appears to be a general or omnibus provision to accommodate other circumstances, which may truncate or terminate the tenure of four (4) years prescribed by the Constitution. It is the view of this writers, that paragraph (d) of subsection 1 to Section 180 of the Constitution is meant to accommodate a situation where the Governor may be removed from office pursuant to Section 188 and 189 of the Constitution. Untying the Gordian knot of this sectional issue above against the backdrop of presidential suspension of elected governors and legislators vide the emergency power in a most critical approach will now be made and further explored. Starting off, and on the first note, section 305 of the Constitution begins with the phrase, *'subject to the provisions of the Constitution'*. The implication of this is that everything relating to the declaration of a state of emergency in that section must be made in such a way and manner that it does not impugn or significantly alter other provisions of the Constitution as it may relates to the objects of the said section. It is settled law that provisions of the Constitution are not to be interpreted in isolation but that other provisions must be taken into consideration in the exercise.[11] By the provisions of section 305 (4) of the Constitution, the preservation of these state functionaries (Governors and State Legislators) are sanctified in a formaldehyde of the constitution against waste and decay of presidential emergency powers.[12] Under section 305(4), the section provides for a situation where *the Governor of a state* may, with the sanction of a resolution supported by two-third majority of *the House of Assembly*, request the President to issue a proclamation of a state of emergency in the state where there is in existence any of the situations specified in subsection (3) (c), (d) and (e) of section 305 and such a situation does not extend beyond the boundaries of the state. It is quite obvious to the print disabled, that the drafters of the Constitution had the continuous existence of these state functionaries in mind, this admittedly is borne out of the obvious, because it would have been difficult if not impossible for a state governor to make such a request to the president knowing well that he has consciously and unwittingly set in place the machinery for a return to unemployment or the abridgement of his tenure in office. Same can also be said of the House of Assembly members who must also approve such a request.

Moving on, it is apposite to note that argument calling for the suspension of state elected officials have naively and boorishly failed to realize that reasons stated in the Constitution for a declaration of a state of emergency includes the occurrence of natural calamity or disaster. Poser, were there to be the occurrence of such a situation and prompting a declaration of a state of emergency, will all democratic structures in an affected state by implication be dissolved or suspended because of such an act of God completely independent of any blameworthiness on their part? Certainly, quite unlikely, *or should the president declare a state of emergency over the federation does that implicitly suspend the president or national assembly legislators?* Surely, the proper import and ambits of the emergency power is indeed naively misconstrued and lacking in sound judgment.

Furthermore, the provision of section 11(2) (4) adds credence rather than detract on the continuity of elected state functionaries even during the period of a state of emergency founded on ground of public order and security. The proviso of section 11(4) expressly sanctifies the place of the Governor and Deputy Governor from being removed, it implicitly meant that the constitution envisages the continuity of the state legislators in performing their constitutional duties in effecting the removal of the governor or deputy governor before, during, or after such a proclamation of a state of emergency. This is further accentuated

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[9](2022) LPELR-58952(CA) at PP. 42-44 paras. C-C; See also the decision of *Engineer David Nweze Umahi & Anor v Peoples Democratic Party (PDP) & Ors*, (2022) LPELR-58994(CA) at PP. 67-68, paras. C-F,

[10] Emphasis ours

[11] See the case of *Hon. Michael Dapianlong & Ors v Chief (Dr.) Joshua Chibi Dariye & Anor* (2007) LPELR-928(SC) at PP. 55-57, paras. D-A.

The Supreme Court in *Marwa v Nyako* (2012) 6 NWLR (pt.1296) 199 at 337 SC, restated that when interpreting the provisions of our Constitution, not only should the Court look at this Constitution as a whole, the provisions should be construed in such a way to justify the hope and aspirations of those who made strenuous efforts to provide us with a constitution to ensure good governance, but also to protect the rights of Nigerians who are the beneficiaries of the provisions of the Constitution, particularly to ensure durable democratic institutions

[12] S. 305 (4), S. 11(4).

and strengthened by the use of the word *remove(d)* in the proviso to section 11(4) and same word similarly used in section 188 of the 1999 constitution for which the state legislators are the principal actors in the said section 188 or how else could they (governor and deputy) have been possibly **removed,** without the implicit continued existence of the state legislators? Nothing is more far seen in this truism as tersely pointed out by Sagay on the import of section 11 of the constitution.

> …The whole tenor of section 11 of the Constitution (which is the section containing all the powers exercisable during an emergency show that an emergency declaration is intended to be a cooperative endeavor between the federal government and state government, whose organs, governors, House of Assembly and judiciary are fully functioning.[13]

Continuing, in the area of public order and security, a peek at the March 18th address by the president declaring a state of emergency in Rivers State, is apposite to set the tune for an appraisal of the verity of the express and implied condition of public order and security as a ground for the declaration of emergency rule in Rivers.

> …The latest security reports made available to me show that between yesterday and today there have been disturbing incidents of vandalization of pipelines by some militant without the governor taking any action to curtail them. I have, of course given stern order to the security agencies to ensure safety of lives of the good people of Rivers State and the oil pipelines. With all these and many more, no good and responsible President will standby and allow the grave situation to continue without taking remedial steps prescribed by the Constitution to address the situation in the state, which no doubt requires extraordinary measures to restore good governance, peace, order and security.[14]

It is a notorious fact that state governors and their various Houses of Assembly have little or no operational control over the armed forces within their domain. The various arms of the armed forces are under the control and supervision of the federal government. The President is designated as the Commander-in-Chief of the Armed Forces of the Federation by Section 130(2) of the constitution. Section 218 grants the President the power to: Determine the operational use of the Armed Forces of the Federation; Appoint the Chief of Defence Staff, Chief of Army Staff, Chief of Naval Staff, and Chief of Air Staff and other military officers, subject to confirmation by the Senate; and Issue directives on defence policy and deployment of troops. As regards the control of the police, the Nigerian Police Force (NPF) is under the control of the President through the Inspector General of Police (IGP). Section 214(1) establishes the Nigeria Police Force as the only national police force. Section 215(1) (a) & (b), the President appoints the Inspector-General of Police (IGP) based on advice from the Police Council. Section 215(3) mandates the President to give lawful directions to the IGP, and the IGP is obligated to comply. Although the state governors are members of the Nigerian police council,[15] and they are given powers to give direction to the commissioner of police in their states with respect to the securing and maintaining of public security and order,[16] the powers of the governor is, by the proviso to that section made subject to the final dictate of the president or his designated minister. The Supreme Court said this much in the case of *A. G. of Anambra State v. A.G. Federation & 35 Ors.*[17] Additionally, the paramilitary forces include agencies such as the Nigeria Security and Civil Defence Corps (NSCDC), Immigration Service, Prisons Service (now Correctional Service), and Customs Service. The President exercises control over these agencies through their governing statutes and appointment powers. Section 5(1) (a) & (b) vests executive powers of the Federation in the President, which includes control over paramilitary agencies. The heads of these agencies are appointed by the President and are subject to removal at his discretion or in accordance with their governing Acts.

Still going, although under the Public Order Act,[18] the Commissioner of Police may in consultation with the Governor of the State take necessary steps to preserve public order in a state, and s. 4(7), 11(2) of the 1999 Constitution grants States powers to make laws for the maintenance of law and order in the state. No state law has been enacted till date following the prior repeal of all state laws in respect of maintenance of public peace and order.[19] The implication of this is that only the Public Order Act is still applicable to the whole federation. In the light of the foregoing, it is quite untenable to blame the state government functionaries for any perceived failure to maintain public order and security which was used as a basis for the suspension from office by President Tinubu of the elected executives and legislators in Rivers State, who from both legal, moral and logical perspective is as much and more so complicit in the breach of public order and security for which he rely on, being so, directly and vicariously liable as one who is at the helm of affairs over the control and operational use of this security institutions saddled with the responsibility over public order, defense and security. Dramatically and evidently, the President has unwittingly declared his incompetence in this area and ought to be placed ideally under scrutiny of the National Assembly instead of passing the buck and using an elected state executives and legislators as a pawn for such presidential acts of incompetence. Supporting this view, Chief F.R.A. Williams (SAN) put it succinctly when he stated as follows:

> It follows from this that if there is actual breakdown of public order the responsibility for blame (if any) must fall more on the federal government than on the state government concerned and why should that not be so when the Federal Government controls all the armed forces, the police and state security agencies. And why should the

[13] Itse Sagay, "Nigeria: The Unfinished Federal Project", being a paper delivered at the 8th Justice Idigbe Memorial Lecture (University of Benin) 2008, 50.
[14] President Tinubu's March 18th Nationwide broadcast declaring a state of emergency in River State.
[15] The Third Schedule, Part 1, para. 27.
[16] Section 215(4)
[17] (2005) 9 NWLR (Pt. 93), 572
[18] Cap. 42 LFN 2004.
[19] See the Public Order Act of the Federal Republic of Nigeria.

> members of the State Assembly for whom the people of Plateau State voted to make laws for the peace, order and good government be suspended? What is it suggested they should have done which they failed to do…? [20]

Similarly, on a moral and ethical ground, the president was quick in his address playing the blame game when he referenced a February 28, 2025, Supreme Court judgment in respect of about eight consolidated appeals concerning the political crisis in Rivers State and quoted the court saying:

> …a government cannot be said to exist without one of the three arms that make up the government of a state under the 1999 Constitution as amended. In this case the head of the executive arm of the government has chosen to collapse the legislature to enable him to govern without the legislature as a despot. As if there is no government in Rivers State.

It shocks one to the marrow, how the President could not see or realize the contradictions and self-indictment in the above excerpt which he relied on, but went on head strong, to make a pronouncement upon such wiggling foundation. If admitting, that the state government have been indicted of collapsing the legislature in order to rule as a despot, or that a government cannot be said to exist without one of the three arms of government. What makes then the President who by his acts and declaration of a state of emergency, have unwittingly taking two arms and collapsing the executive and legislative arm of a state government and appointing an undemocratic sole administrator? *Can a government be said to exist in River State by his act? Has the president not inadvertently admitted to being a despot?*

Going further, Chapter VI, part 11 comprising section 176-212 and section 5(2) (3) of the 1999 Constitution makes extensive provision for the executive arm of government at the state level. The 1999 Constitution clearly spells out the procedure and the grounds for the removal from office of the governor[21] and deputy governor. The tenure of State Governors is provided for in Section 180 of the Constitution. Section 180(1) provides a Governor shall hold office for a term of four years from the date he takes the oath of office. Section 180(2) states Governor may seek re-election for one further term of four years. Section 180(3) states if Nigeria is at war and the President determines that elections cannot be held, the tenure of a Governor may be extended by the National Assembly. Additionally, Section 182 lists grounds for disqualification of a Governor, section 188 provides for the removal of the governor through impeachment ensuring that tenure is only lost through constitutional means.

On the other hand, Chapter V, Part 11 comprising section 90-129 and section 4 (6)-(9) of the 1999 Constitution makes provision for legislative arm of government at the state level. The tenure of members of the State House of Assembly is provided under Section 105 of the Constitution. Section 105(1) provides that the House of Assembly of a State shall continue for four years from the date of the first sitting. Section 105(2) states upon the expiration of four years, the House stands dissolved, and fresh elections are conducted. Section 105(3) if Nigeria is at war and the National Assembly determines that elections cannot be held, the tenure may be extended. Similarly, Section 106 provides conditions for qualification, while Section 109 outlines the grounds for losing a seat, and section 110 provides for recall, ensuring tenure is protected unless constitutionally forfeited. These provisions collectively guarantee the tenure of State Governors and House of Assembly members, subject to lawful removal, resignation or recall. The situation is better put by asking: assuming that the president declares a state of emergency, suspending the governor as the case with River State with the governor having six months till the end of his tenure does such suspension effectively ends his tenure having served for a term of 7 years and 6 months? Does INEC have the power to conduct election for Rivers in 2027 when the governor's term would have natural lapsed? Does the 6months emergency period recon in the computation of the tenure of the governor for the purposes of election. Either way, Could this have been the intent from the overall provisions of the constitution? Nowhere was it provided under the Constitution for the removal, suspension or abridgement of the tenure of these officials because there is in place a declaration of a state of emergency. The constitution on the contrary is more incline towards tenure elongation. The President or National Assembly is not mandated to proclaim or legislate over the tenure of elected state executives or legislators. Neither is there any provision in the Constitution that makes provision for the appointment of an undemocratic sole-administrator under any circumstance.

It is fitting also, to advert mind to some disturbing provisions of the scope and grounds within the emergency framework under the constitution by raising some few select posers which will set the stage for a reassessment of the constitutional emergency frameworks. Who determines (to what extent) that there is an 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? Who determine that 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 measures to avert such danger? Who determine there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the federation? Who determine the reasonability of time for the governor to make a request to the President to issue such a proclamation pursuant to section 305(5)? Who determine the time when any House of Assembly of a State is unable to perform its functions by reason of the situation prevailing in that State and who determine such time as the House of Assembly is able or unable to resume its functions pursuant to section 11(4)? Who determine whether or when the House of Assembly can or cannot hold a meeting and transact business pursuant to section 11(5)? The effect of this political and constitutional reality underscored by the above posers has been so far to confer very wide discretionary powers on the President and the national Assembly.[22] Obviously, this odious practice appears to be lifted from previous post-independence and military enactments on the subject

[20] F.R.A William, *Obasanjo Acted Illegally* Sunday Vanguard, May 23, 2004, 5.
[21] S.188 of the 1999 constitution as amended.
[22] This appears to go beyond supervision by the Federal Government as envisaged by the Constitution.

and therefore ought not to be allowed in this present democratic dispensation. Such discretion had caused a lot of problems leading to the eventual collapse of the First Republic as revealed in the case of *Adegbenro v Akintola*.[23] In that case, while interpreting section 33(10) of the Constitution of the defunct Western Nigeria which empowered the Governor to remove the Premier if 'it appears to him that the premier no longer commands the support of a majority of the House of Assembly' the Judicial Committee of the Privy Council held that by the words 'it appears to him', the legislature intended that the judgment as to whether the premier no longer commanded the support of a majority of the House was to be left to the Governor's assessment without any limitation as to the material on which he was to base his judgment or the contacts to which he might resort for the purpose. Accordingly, it was held that the Governor could remove the premier from office under the provision without a prior decision or resolution on the floor of the House to the effect that the Premier no longer commanded the support of a majority of the House.

However, section 305 runs counter to the principle of division of powers among the three tiers of government recognized under the Constitution. A situation where a Chief Executive of one tier of Government is given wide discretionary powers to suspend an elected Chief Executive of another tier of Government and to eventually suspend him from office is not only alarming but also violently violative of any known principle of true Federalism. The provision is tantamount to abuse of executive authority. As a pointer to the least common multiple of good governance emanating from principles of rule of law; James Madision, in the Federalist Articles (Dictionary of American Politics) has aptly commented as follows:

> …If men were angels, no government would be necessary. In framing a government which is to be administered by men, the great difficulty lies in this: *You must first enable the government to control the governed; and in the next place, to oblige the government to control itself.' (Emphasis mine)*

Concern on the Appointment of a Sole Administrator

One area that has generated a lot of controversy and debate is the question of whether the appointment of a sole administrator is constitutional in line with provisions of the 1999 Constitution. Pursuant to the executive powers of the president under sections 305 of the 1999 Constitution, the president has made proclamations for the appointment of a sole administrator to run the affairs of states pending a determinative period. The reason given for this was the need to restore normalcy to the distressed state in question. Pointedly, the system of a democratically elected Governor, deputy governor and state legislators are guaranteed under the constitution and cannot be suspended or abridged under any guise including the powers reserved to the president under section 305 of the constitution. The appointment of a sole administrator is without any constitutional upper body strength but simply the product of 'excessive politicking' in favour of the federal governments, a situation which is clearly oppressive of the state government and violative of section 1(2) of the constitution. It is interesting that similar position, now canvassed against the suspension of democratically elected executives and legislators and substituting them by appointment of undemocratic sole administrators akin to caretaker committees at the local level have been severally addressed by the court which by *extenso* applies alike. *Balogun & Ors v. Attorney-General Lagos State*,[24] *Akan v. Attorney-General Cross River State*,[25] in *Akinpelu & Ors v. Attorney-General Oyo State*,[26] the learned trial judge in his judgement stated; *'A fortiori, the setting up of a Caretaker Committee to replace a democratically elected Council is clearly unconstitutional, illegal and ultra vires the powers of the 2nd respondent*. Similar position was taken by the learned trial Judge Ntem Isua, J. in the case of *Etim Akpan & Ors v. Hon Peter Umah & Ors*.[27] And most lately so too, in the Supreme Court case of *AG Federation v AG Abia & 35* [28]

6. Conclusion and Recommendations

It is familiar to many that the process of judicial and legal reform of disfavoured law requires at least three steps. The first of this is to divine what a purpose the law is intended to serve. The second is to discover that a mythical being called the 'legislator' in the pursuit of this imagined purpose overlooked something or left some gap or imperfection in his work. Then comes the final and most refreshing part of the task, which is, of course, to fill in the gaps thus created. One could not wish for a better case to illustrate the nature of this gap filling process than looking into the vexed issue of the emergency powers of the President and National Assembly against the backdrop of the 1999 constitution and it far reaching implications for democratic governance in Nigeria. Endeavouring to achieve this, it is fitting to the reminded of the issues that accentuated this research. The declaration of a state of emergency in Rivers State which have been greeted with mixed feelings and wide debates amid shades of opinions. The declaration has elicited major constitutional and political commentary having far-reaching political and constitutional consequences. While the 1999 Constitution provides for emergency powers of the President, past experiences show that such declarations are often contentious and legally challenged. The writers submit that based on the arguments raised and settled in the forgoing sections, they do not endorse and approve the declaration of emergency rule in River State being legally un-justified, politically prejudiced/tendentious and constitutionally skewed in upholding Nigeria's democratic principles. While Section 305 of the Nigerian Constitution is necessary for maintaining national stability, reforms are needed to prevent misuse, enhance accountability, and safeguard democracy. The researchers hereby recommend as follows:

A *Clarification of the Scope and Grounds for the Declaration of a State of Emergency under the 1999 Constitution (as amended):* Section 305 outlines conditions under which a state of emergency can be declared, such as war, natural disasters,

[23] (1962) 1 All N.L.R. 465.
[24] (1984)5 NCLR 447 at 574 HC Oyo State.
[25] (1982) 3 NCLR 881.
[26] (1982) 2 FNR 48 at 221.
[27] (2002) 23 WRN 52.
[28] (2024) LPELR-62576 (SC).

civil unrest, and threats to national security. However, these grounds can be broadly interpreted. There should be clearer definitions of what constitutes an 'actual or imminent' danger, to prevent abuse by the executive. Similarly, section 11(4) (5) should be clearly defined by removing excessive discretion in it wordings and subjecting same to judicial review. The President should only declare emergency rule under clear constitutional justifications. Section 11(4) be amended to read: *Provided that nothing in this section shall be construed as conferring on the National Assembly or President the power to remove the Governor, Deputy Governor of the State or other elected state functionaries from office.*

Enhance Legislative Oversight and Approval Process: The Constitution requires the National Assembly to approve an emergency declaration within two days (if in session) or ten days (if not in session). This timeframe is too short for thorough deliberation. The period should be extended to allow for adequate debate and scrutiny, ensuring that emergency powers are not granted arbitrarily.

Prevent Executive Overreach: Past experiences (e.g., emergency declarations in Plateau, Ekiti, and Adamawa states) show that governors have been removed under emergency rule. This raises concerns about political motivations. There should be constitutional safeguards to prevent the President from using emergency powers to remove elected officials unless judicially sanctioned.

Time Limit and Periodic Review of Emergency Rule: Section 305 allows emergency rule for six months but is subject to renewal. This can lead to prolonged rule by decree, affecting democracy. There should be a strict maximum duration for emergency rule, with periodic judicial review to ensure it remains justified.

Judicial Review and Human Rights Protections: Emergency rule often leads to restrictions on fundamental rights such as freedom of movement and expression. The courts should have clear powers to review the necessity and proportionality of emergency measures to protect citizens' rights. Special human rights monitoring mechanisms should be put in place during an emergency.

State-Level Emergency Powers: Currently, state governors lack the constitutional authority to declare a state of emergency without the President's approval. Consideration should be given to granting governors limited emergency powers, subject to legislative oversight, to handle localized crises efficiently.

Public Transparency and Accountability: Emergency rule should not be a tool for suppressing dissent. The government must be transparent in providing justifications for emergency declarations. Independent institutions such as the National Human Rights Commission (NHRC) and civil society organizations should have a role in monitoring the impact of emergency measures.

State power on public order and operational use of security apparatus: The state should be empowered to legislate on public order, and providing them with greater operational use of the security apparatus and agencies in Nigeria to better curtail prevailing domestic crisis, thereby arresting situations of public disorder timeously and more effectively, dissuading the activation of intervention by the federal government.