



A CONSTITUTIONAL ASSESSMENT OF PRESIDENTIAL POWERS TO SUSPEND ELECTED OFFICIALS IN RIVERS STATE IN A STATE OF EMERGENCY: REVISITING *PLATEAU STATE OF NIGERIA* & *ANOR V ATTORNEY-GENERAL OF THE FEDERATION & ANORS*

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**A CONSTITUTIONAL ASSESSMENT OF PRESIDENTIAL POWERS TO SUSPEND ELECTED
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Abstract

*This paper interrogates the constitutionality of the President's power to suspend a democratically elected Governor during a state of emergency, particularly in light of President Tinubu's controversial action in Rivers State on 18 March 2025. The President had suspended Governor Fubara, his deputy, and members of the House of Assembly, appointing a sole administrator to govern the state for six months. This intervention is reminiscent of a similar occurrence in 2004 when former President Olusegun Obasanjo removed Governor Dariye of Plateau State and appointed an interim administrator following a state of emergency. The legal dispute that arose from that incident culminated in *Plateau State of Nigeria & Anor v Attorney-General of the Federation & Anor*, in which the plaintiffs sought to know, among other things, the constitutionality of suspending a sitting Governor and replacing him with an administrator. However, the Supreme Court struck out the suit on procedural grounds, leaving a significant knowledge gap on the legality of a President displacing an elected state executive and imposing administrators during a state of emergency. Accordingly, this study aims to fill this gap by calling in aid the relevant constitutional provisions—particularly Section 305 of the 1999 Constitution (as amended)—juxtaposed with expert opinions and related case laws. Through doctrinal legal analysis, the paper evaluates whether the procedures and grounds for declaring a state of emergency were observed in Rivers State and whether the President's actions align with Section 305 of the 1999 Constitution (as amended). The findings reveal that the 1999 Constitution (as amended) does not expressly empower the President to suspend elected state officials or appoint administrators during emergencies, and that such actions undermine the principles of federalism and democratic accountability. The paper concludes that the procedural and substantive safeguards in Section 305 are not mere formalities but essential checks on executive power.*

Keywords: 1999 Constitution, Rivers State, Plateau State, federalism, Section 305, state of emergency

1.0 INTRODUCTION

On Tuesday, 18 March 2025, the President of the Federal Republic of Nigeria, Bola Ahmed Tinubu, declared a state of emergency in Rivers State, invoking the provisions of Section 305 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Pursuant to this declaration, the President suspended the Governor of Rivers State, Siminalayi Fubara, alongside his deputy Mrs Ngozi Odu and all elected members of the Rivers State House of Assembly, for a period of six months. In their place, Vice Admiral Ibok-Ete Ekwe Ibas (Rtd) was appointed as the sole administrator to oversee the governance of the state during the emergency period. This unprecedented suspension of a democratically elected Governor and the legislative arm of a state by executive fiat has generated widespread constitutional debate. It raises fundamental questions about the scope of presidential powers under the Nigerian Constitution, and the nature and limits of a state of emergency in a federal system.

Significantly, this is not the first time such a scenario has played out in Nigeria's recent political history. On Tuesday, 18 May 2004, then-President Olusegun Obasanjo similarly declared a state of emergency in Plateau State, sacking Governor Joshua Dariye.¹ In that instance, President Obasanjo also suspended the Plateau State House of Assembly and appointed a retired military officer General Chris Alli as interim administrator of the state. Both cases raise similar constitutional issues: can the President of the Federal Republic of Nigeria unilaterally suspend elected state officials, including a governor and the legislature, under the guise of a state of emergency? Does Section 305 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) empower the President to override the will of the people expressed through elections? And how does the principle of federalism, which guarantees autonomy to state governments, reconcile with such executive interventions?

This paper therefore seeks to interrogate the constitutionality of President Tinubu's recent action in Rivers State by examining the landmark Supreme Court case of *Plateau State of Nigeria & Anor v Attorney-General of the Federation & Anor*.² That case, which arose from President Obasanjo's suspension of Governor Dariye, provides a significant judicial precedent to assess the extent of presidential authority during

¹The New Humanitarian, 'Obasanjo Declares State of Emergency in Plateau State.' (18 May 2004) <<https://www.thenewhumanitarian.org/news/2004/05/18/obasanjo-declares-state-emergency-plateau-state>> accessed 19 May 2025.

² [2006] 3 NWLR (Pt. 967) 346.

state of emergencies. After all, judicial precedents serve as both interpretive guides and predictive tools in constitutional law. Through this analysis, the paper aims to determine whether President Tinubu's action is constitutionally justified.

2.0 SUMMARY OF *PLATEAU STATE OF NIGERIA & ANOR V ATTORNEY-GENERAL OF THE FEDERATION & ANOR*

Plateau State of Nigeria & Anor v Attorney-General of the Federation & Anor arose out of a major constitutional and political crisis in Nigeria during the administration of former President Olusegun Obasanjo (1999 – 2007). On 18 May 2004, following violent ethno-religious conflicts in Plateau State, which resulted in serious breakdown of law and order and loss of lives and properties, the former President declared a state of emergency in the North central State. Citing Section 305 of the 1999 Constitution (as amended), he claimed that the situation in the state posed a clear and present danger to public peace, safety, and national security, warranting urgent intervention by the Federal Government.

Pursuant to the emergency declaration, Obasanjo issued an Executive Order which removed the sitting Governor of Plateau State, Chief Joshua Dariye, from office for an initial period of six months. He also dissolved the State House of Assembly and suspended all democratic structures within the state. In place of these elected institutions, he appointed a retired military officer, Major-General Chris Alli (Rtd), as sole administrator to oversee the affairs of the state for the duration of the emergency rule. The Plateau State Government, aggrieved by the actions, instituted a suit against the Federal Government at the Supreme Court. The state argued that the former President had acted unconstitutionally by removing a democratically elected Governor and suspending the state's legislature without due process or constitutional authority. The plaintiff maintained that while Section 305 of the Nigerian Constitution empowers the President to declare a state of emergency, it does not confer the power to unilaterally remove elected officials or dissolve legislative bodies.

For the purpose of this paper, the following were the key legal issues for determination:

- i. The extent to which the 1999 Constitution (as amended) grants the President the power to suspend a Governor or the state legislature;
- ii. The constitutionality of appointing a sole administrator to replace a democratically elected Governor;
- iii. The compatibility of the President's actions with the principles of federalism entrenched in the 1999 Constitution (as amended).

The aforementioned issues also come up for consideration in the most recent case of Rivers State where President Tinubu suspended the Governor, Deputy Governor, and legislators under the guise of a state of emergency, purportedly acting on the powers granted by Section 305 of the 1999 Constitution (as amended). As the suspension of the Rivers State Governor by President Tinubu in 2025 mirrors the earlier Plateau experience, the authors aim to examine the constitutionality of the action through the lens of *Plateau State of Nigeria & Anor v Attorney-General of the Federation & Anor*.

3.0 HISTORICAL OVERVIEW OF EMERGENCY RULE IN NIGERIA SINCE 1960

President Tinubu's declaration of a state of emergency in Rivers State has historical precedents. This is against the backdrop of similar declarations, first in 1962 in the then Western Region by the government of Sir Abubakar Tafawa Balewa and subsequent declarations by President Olusegun Obasanjo in 2004 and 2006, and by President Goodluck Jonathan in 2013.

Ipsa facto, the history of state of emergency in Nigerian politics dates back to the political crisis in the Western Region in 1962. This was triggered by political disagreements between the leader of the Action Group party, Chief Obafemi Awolowo and his deputy and Premier of the Western Region, Chief Samuel Ladoke Akintola. Akintola was expelled from the party. Members of the Western Region House of Assembly passed a vote of no confidence on the Premier and this led to violent attacks on the floor of the House of Assembly and killings and destruction of property by opposing supporters of the two leaders.³ This earned the region the nickname "Wild Wild West." Following the vote of no confidence, the Regional Governor, Sir Adesoji Aderemi, removed Akintola and appointed Alhaji Dauda Adegbenro as Premier. Akintola challenged his removal in *Akintola v Aderemi*,⁴ and the Supreme Court ruled in his favour. However, in *Adegbenro v Akintola*,⁵ the Privy Council reversed the decision, holding that the removal was valid under the Western Region's constitution. The Privy Council based its decision on Section 33(10) of the Western Region of Nigeria Constitution, 1960 which empowered the Governor to remove the Premier of the Region if "it appears to him that the Premier no longer command the support of the majority of the House of Assembly."⁶ Despite the apex court's verdict, the political instability in the region persisted and on 29 June 1962, Prime Minister Tafawa Balewa intervened and declared Nigeria's first state of emergency, invoking Section 65 of

³Igwenyi, BO, Nwogbo-Egwu, CC, & Igwe, CA, 'Nigerian Governors Get Jittery When "State of Emergency" Is Mentioned: A Juristic Overview of S.305 of the Constitution of the Federal Republic of Nigeria, 1999 as Amended.' *Beijing Law Review* [2019] (10) 1346-1355 <<https://doi.org/10.4236/blr.2019.105072>>accessed 20 May 2025.

⁴ [1962] 1 All NLR 440.

⁵ [1962] 1 All E.R. 465.

⁶ Asein, JO, *Introduction to Nigerian Legal System* (2nd edn, Ababa Press Ltd 2005) 67.

the 1960 Constitution.⁷ He suspended elected state officials and appointed Dr Moses Majekodunmi as interim administrator of the region. This misuse of emergency powers⁸ contributed to growing national instability and partly set the stage for the first military coup in Nigeria on 15 January 1966.⁹

The next state of emergency was declared in Plateau State by former President Olusegun Obasanjo on 18 May 2004. It was necessitated by an ethno-religious violence in Yelwa Local Government Area of the state which led to the death of over 600 Muslims.¹⁰ Accusing the Governor, Mr Joshua Dariye, of being “lackadaisical” about ending the conflict between the Christian and Muslim communities in the state, Obasanjo suspended him, his Deputy, and the House of Assembly for six months. A retired Army General, Chris Alli was appointed as interim administrator of the state for the duration of the emergency period. The third in the series of the declaration of state of emergency in Nigeria came up on the 18 October 2006 by the same Obasanjo. He followed his precedent in Plateau State by suspending the sitting Governor of Ekiti State, Peter Ayodele Fayose, his Deputy, Mrs Abiodun Olujimi, and the state legislature for six months. Obasanjo appointed a retired Army General, Tunji Olurin to oversee the affairs of the state for the next six months.¹¹ This followed the impeachment of Governor Fayose by the House of Assembly and the swearing in of the Speaker of the House of Assembly, Friday Aderemi, as Governor.

Another state of emergency was declared in the northeastern states of Adamawa, Borno and Yobe by former President Goodluck Jonathan on 14 May 2013 because of the activities of the Islamist militant group *Boko Haram*.¹² The declaration came after a spate of unprovoked attacks on security forces, communities, state officials, and government buildings and facilities by *Boko Haram*. It was aimed at curbing the violent attacks by the armed group. Notably, Jonathan remarkably departed from the precedents of 1962, 2004, and 2006 by leaving the state functionaries in the affected States to continue in office. According to Igwenyi *et al*, he complied substantially with Section 305 of the 1999 Constitution (as amended).¹³ It suffices to mention that Jonathan made a similar move on 31 December 2011 in response also to the violent Islamist insurgency,

⁷ Section 65 of the 1960 Constitution deals with the special powers of the Federal Parliament in relation to periods of emergencies.

⁸ Section 65 of the 1960 Constitution only allows the Parliament to make emergency laws. It does not empower the Prime Minister to suspend elected officials like governors or lawmakers.

⁹ Igwenyi BO et al (n3) 1350.

¹⁰ The New Humanitarian (n1).

¹¹ NBC News, ‘Nigerian President Declares Emergency in State’ (19 October 2006) <<https://www.nbcnews.com/news/wbna15326570>> accessed 20 May 2025.

¹² Al Jazeera, ‘Nigeria President Declares State of Emergency’ (15 May 2013) <<https://www.aljazeera.com/news/2013/5/15/nigeria-president-declares-state-of-emergency>> accessed 20 May 2025.

¹³ Igwenyi BO et al (n3) 1352.

but in that case, the emergency rule only applied to specific Local Government Areas in four states viz Yobe, Plateau, Borno, and Niger.¹⁴

4.0 THE RIVERS STATE CRISIS AND THE DECLARATION OF STATE OF EMERGENCY

After a decade, Nigeria has witnessed yet another emergency rule, this time in Rivers State under President Tinubu. The declaration was precipitated by a deepening political crisis in the State. The crisis began as a fallout between Governor Siminalayi Fubara and his predecessor and political godfather, Nyesom Wike, who currently serves as Minister of the Federal Capital Territory. Wike had been instrumental in supporting Fubara as Governor, but their relationship deteriorated rapidly after Fubara assumed office in May 2023. The rivalry quickly escalated into a full-blown confrontation involving the Rivers State House of Assembly and local party structures. The immediate trigger for the state of emergency was the violent confrontation in Port Harcourt on 30 October 2023, when an attempt to impeach Governor Fubara by pro-Wike lawmakers spiraled into chaos. The tension escalated following the bombing of the Rivers State House of Assembly complex the night before,¹⁵ which was allegedly intended to disrupt the impeachment proceedings. Despite the attack, the legislators loyal to Wike proceeded to sign an impeachment notice against Governor Fubara early the next morning.¹⁶ Twenty-seven members of the House of Assembly opposed Governor Fubara while only four members aligned with him, leading to a legislative deadlock. The Governor was unable to present any Appropriation Bill to the House, which prevented access to funds necessary to run the affairs of the state, causing governance paralysis. The impasse extended to the point where the Supreme Court ruled that “there was no government in Rivers State,”¹⁷ highlighting a collapse of constitutional government as the executive and legislative arms were at deadlock.

President Tinubu initially intervened through political dialogue, hosting reconciliation meetings at the Presidential Villa, Abuja, and securing a fragile truce in December 2023. However, the peace accord collapsed within months as hostilities resumed, prompting heightened insecurity, disruption of governance,

¹⁴ Vanguard, ‘Boko Haram: Read Jonathan’s Declaration of State of Emergency Address’ (31 December 2011) <<https://www.vanguardngr.com/2011/12/boko-haram-read-jonathans-declaration-of-state-of-emergency-address/>> accessed 20 May 2025.

¹⁵ Dennis Naku, ‘Explosion Rocks River Assembly, Armed Men Take Over Complex’ *Punch*(30 October 2023) <<https://punchng.com/breaking-explosion-rocks-river-assembly-armed-men-take-over-complex/>> accessed 18 September 2025.

¹⁶ Ignatius Chukwu, ‘Rivers House of Assembly Members Table Impeachment Notice to Gov Fubara, Deputy’ *BusinessDay*(17 March 2025) <<https://businessday.ng/politics/article/rivers-house-of-assembly-members-table-impeachment-notice-to-gov-fubara-deputy/>> accessed 18 September 2025.

¹⁷ Unini Chioma, “‘No Government in Rivers State’: FG Cites Supreme Court to Justify Emergency Rule, Seeks Dismissal of PDP’s Governors’ Suit” *TheNigeriaLawyer*(11 May 2025) <<https://thenigeriaLawyer.com/no-government-in-rivers-state-fg-cites-supreme-court-to-justify-emergency-rule-seeks-dismissal-of-pdp-governors-suit/>> accessed 18 September 2025.

and fears of a total breakdown of law and order. The crisis also involved vandalism of critical economic assets, including oil pipelines, further destabilising the state. Against this backdrop, the President invoked Section 305 of the 1999 Constitution (as amended) and declared a state of emergency in Rivers State on Tuesday, 18 March 2025.¹⁸ In line with historical precedent, he suspended the elected political leadership, including Governor Fubara, his Deputy, and the State House of Assembly for an initial period of six months. He subsequently appointed a sole administrator, Vice Admiral Ibokette Ibas (Rtd), to oversee the state's affairs during the emergency period. These measures, the President said, were “extraordinary measures to restore good governance, peace, order and security” in Rivers State.

5.0 SCOPE OF SECTION 305 OF THE 1999 CONSTITUTION

Section 305 of the 1999 Constitution (as amended) extensively provides for the procedure for the 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, the Governors of the affected states, and the State House of Assembly in the process.

5.1 Meaning of State of Emergency

The 1999 Constitution (as amended) does not give a concise definition of a state of emergency, which is synonymous with a period of emergency. Its meaning can, however, be gleaned from Section 45(3) of the constitution. It 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.”¹⁹ Section 305 itself does not explicitly spell out the meaning of the term. As stated earlier, the section spells out the procedure for declaration of a state of emergency and the conditions that will engender such a declaration, among others. Additionally, Section 45 of the constitution²⁰ reveals that a period of emergency means such a period where certain fundamental rights guaranteed under Chapter IV of the constitution may be derogated from or limited.²¹ From the foregoing, it is clear that the 1999 Constitution (as amended) does not help as to the definition of what a state of emergency is. Hence, it is expedient to

¹⁸ State House, ‘President Tinubu Declares State of Emergency in Rivers State on Tuesday 18 March 2025’ (18 March 2025) <<https://statehouse.gov.ng/news/president-tinubu-declares-state-of-emergency-in-rivers-state-on-tuesday-18-march-2025/>> accessed 18 September 2025.

¹⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 45(3).

²⁰ CFRN 1999, s 45(2).

²¹ Bright Erazé Oniha, ‘Legality of the Presidential Declaration of a State of Emergency in Some States of Nigeria and Its Implication on State Government Functionaries’ 2-3 <<https://edojudiciary.gov.ng/wp-content/uploads/2017/07/LEGALITY-OF-THE-PRESIDENTIAL-DECLARATION-OF-A-STATE-OF-EMERGENCY-IN-SOME-STATES-IN-NIGERIA-AND-ITS-IMPLICATION-ON-STATE-GOVERNMENT-FUNCTIONARIES-BY-BRIGHT-E.-ONIHA.pdf>> accessed 20 May 2025.

consider other definitions. It has been defined as a situation in which a government is empowered to perform actions or impose policies that it would normally not be permitted to undertake. A government can declare such a state during a disaster, civil unrest, or armed conflict.²² It is also defined as a situation in which a government is empowered to implement policies that it would normally not be permitted to do, for the safety and protection of its citizens.²³

5.2 Conditions that Necessitate Declaration of State of Emergency

The 1999 Constitution (as amended)²⁴ succinctly and in unambiguous terms provides for conditions that must exist before the President can declare a state of emergency. The constitutional provisos are as follows:

- i. When the Federation is at war;
- ii. When the Federation is in imminent danger of invasion or involvement in a state of war;
- iii. When there is actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to restore peace and security;
- iv. When 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;
- v. When there is 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;
- vi. When there is any other public danger which clearly constitutes a threat to the existence of the federation; and
- vii. When the Governor of a state with the sanction of a resolution supported by two-thirds majority of the members of the House of Assembly requests the President to issue a proclamation of a state of emergency when there exists within the state any of the situations specified above.

Some salient points are inferred from the foregoing. First, neither the Governor nor a Local Government Chairman has the power to declare a state of emergency. The Governor can only request the President to make such proclamations.²⁵ Lastly, declarations of a state of emergency in Nigeria's constitutional history have always been premised on the breakdown of law and public order, public safety,

²² Pembroke Pines, 'What is a State of Emergency?' (n.d) <<https://www.ppines.com/Faq.aspx?QID=363>> accessed 20 May 2025.

²³ Wikipedia, 'State of Emergency' (n.d) <https://en.wikipedia.org/wiki/State_of_emergency> accessed 20 May 2025.

²⁴ CFRN 1999, s 305(3).

²⁵ CFRN 1999, s 305(4).

and security concerns such that there is the tendency to lose sight of the fact that such a declaration can also arise as a result of natural disasters²⁶ or a public danger that threatens the existence of the country.²⁷

5.3 Procedures for the Declaration of a State of Emergency

The 1999 Constitution (as amended) stipulates the procedure for the proclamation of a state of emergency. The first step is that 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.²⁸ The second step is that the President, immediately after the publication, is expected to transmit the official gazette containing the proclamation, including the details of the emergency to the President of the Senate and Speaker of the House of Representatives. Upon the receipt of the official gazette, the President of the Senate and the Speaker of the House of Representatives shall convene a meeting of each of the House to consider the situation and decide whether or not to pass a resolution approving the proclamation.²⁹

From the clear wording of the sections reproduced *in extensio* above, there are essentially two hurdles the President must cross to declare a legally valid state of emergency. The first being the issuance of a proclamation of a state of emergency by an instrument published in the official gazette of the government of the federation. The second hurdle is the immediate transmission of copies of the official gazette including the details of the state of emergency to both houses of the National Assembly for consideration and approval or rejection. Until these two hurdles are effectively crossed, there cannot be a valid declaration of a state of emergency.³⁰ Also germane to the issue of proclamation is the fact that the 1999 Constitution (as amended) restricts the President's power to declare a state of emergency without the input of a Governor, under normal circumstances.³¹ This means that the Governor of a state is the one to request the President to declare a state of emergency in situations of serious breakdown of law and order, public danger, or natural disasters. The President can only step in if the Governor delays unreasonably to make such request. This is a constitutional safeguard to prevent the President from unilaterally declaring a state of emergency under normal conditions.

²⁶ CFRN 1999, s 305(3)(e).

²⁷ CFRN 1999, s 305(3)(f).

²⁸ CFRN 1999, s 305(1).

²⁹ CFRN 1999, s 305(2).

³⁰ Oniha (n21), 6.

³¹ CFRN 1999, s 305(5).

5.4 Cessation of Emergency Rule

A proclamation of a state of emergency made by the President shall cease to have effect in the following circumstances:³²

- i. If revoked by the President by instrument published in the official gazette of the government of the federation;
- ii. If there is no resolution supported by two-thirds majority of members of each House of the National Assembly approving the proclamation within two days when the House is in session and within ten days when the House is not session following its publication;
- iii. After a period of six months has elapsed since the state of emergency has been in force; and
- iv. At any time when each House of the National Assembly revokes the proclamation by a simple majority vote of all the members of each House.

It is to be noted, however, that Section 305(6)(c) empowers the National Assembly to extend the period of the state of emergency for another period of six months before the expiration of the initial six months.

6.0 THE PLATEAU STATE CASE AND THE LEGAL VACUUM AROUND EMERGENCY POWERS

In *Plateau State of Nigeria & Anor v Attorney-General of the Federation & Anor*, the Supreme Court of Nigeria was asked to decide on the legality of the suspension of duly elected state officials and the appointment of an administrator by former President Obasanjo during a state of emergency. In light of recent events, such as the declaration of a state of emergency in Rivers State by President Tinubu and the suspension of its elected officials, the Plateau State case serves as a reference point in interrogations about the constitutional scope of presidential powers to suspend elected state officials and impose administrators during emergencies. There is no doubt that the Rivers and the Plateau cases agree on material facts. Hence, the same key legal issues for determination in *Plateau State of Nigeria & Anor v Attorney-General of the Federation & Anor* also come up for determination following the event of 18 March 2025. The most significant constitutional issues thrown up by the presidential order pertain to the validity of actions taken by the President pursuant to the proclamation, particularly the suspension of the Governor and the Deputy

³² CFRN 1999, s 305(6).

Governor, suspension of the State House of Assembly, and appointment of a Sole Administrator in place of an elected government during the emergency period.³³ Hence, the critical question that arises is whether the constitutional power granted the President to declare a state of emergency necessarily incorporates the power to remove or suspend democratically elected public officeholders and replace them with an administrator.

In the case under review, the plaintiffs argued that the suspension violated Sections 176 and 90 of the 1999 Constitution (as amended), which respectively establish the offices of the Governor and the State House of Assembly as constitutional organs of government at the state level. They contended that the Obasanjo's actions were *ultra vires* and unconstitutional because the 1999 Constitution (as amended) does not confer on the President the power to suspend these elected officials or dissolve the House of Assembly. Quite surprisingly, the Supreme Court, in a unanimous judgment delivered by Justice Kutigi, JSC, did not address the substantive constitutional validity of Obasanjo's suspension of the Plateau State Governor, the Deputy Governor, and the House of Assembly or the appointment of an administrator. Instead, the court dismissed the suit on procedural grounds, primarily focusing on the plaintiffs' lack of proper authorisation to institute the action on behalf of the Plateau State Government during the emergency period. The court held that the administrator appointed by the former President was the *de facto* authority of Plateau State during the emergency period and that the Governor and House of Assembly, having been suspended, lacked the legal capacity to sue. The plaintiffs' failure to secure the administrator's consent or authorisation, therefore, rendered the suit incompetent. As a result, the court declined to make a substantive ruling on the constitutional questions raised.

By so doing, the court effectively sidestepped the constitutional issues raised, leaving critical questions about the legality of presidential suspension of democratic structure and appointment of administrators during an emergency period unresolved at the apex judicial level. The Supreme Court's refusal to engage substantively with the critical constitutional issues about the legality of presidential suspension and appointment of administrators has left a jurisprudential gap. Reflecting on the impact of the decision of the apex court on the case, Justice Pats-Acholonu, JSC (as he then was), remarked: "The issue before us in this case raises important constitutional questions which, all things being equal, would have enabled this court to give a careful consideration to it. It is disheartening and disturbing that a case is lost because of the inability of counsel briefed to determine or ascertain the procedural law that would enable the

³³ Mojeed Olujinmi A. Alabi 'Emergency Powers in Nigeria: Legal and Constitutional Issues' *The Constitution* [2005] (5) (4) 1-22 <https://journals.co.za/doi/pdf/10.10520/AJA15955753_142> accessed 21 May 2025.

party complaining of infraction to have due access to the court, failing ignobly.”³⁴ This has significant implications for subsequent instances of presidential suspension of Governors, such as the recent suspension of the Governor Fubara by President Tinubu. Prof. Sagay sums the situation thus: “It is a great setback for democracy, the rule of law, and federalism, that the Supreme Court dodged responsibility when Plateau State brought a suit to challenge the validity of the emergency declaration and regulation made under it. It is a sad episode in Nigeria’s constitutional history that the Obasanjo regime got away with such gross acts of illegality and emasculation of federalism.”³⁵

To resolve the quagmire, the authors would now turn to the *grundnorm* and the *fons et origo* of all laws in Nigeria, the 1999 Constitution (as amended) for answers.

7.0 CONSTITUTIONAL ANALYSIS OF PRESIDENT TINUBU’S EMERGENCY INTERVENTION IN RIVERS STATE

Any debate on the constitutionality of the imposition of a state of emergency in Rivers State ultimately revolves around compliance with the procedural steps for declaring a state of emergency as provided for in Section 305 of the 1999 Constitution (as amended) and the legality of suspending elected state officials.

7.1 ASSESSMENT OF COMPLIANCE WITH PROCEDURAL STEPS

Section 305(1) vests the President with the power to declare a state of emergency in the federation and any part of the federation. However, this power is not absolute as the section also imposes strict procedural safeguards to prevent abuse of emergency powers. According to the Section 305(1) and (2), such declaration has to be done through a notice in the Government Gazette, copies of which must be sent immediately to the President of the Senate and the Speaker of the House of Representatives. They are required to convene a meeting of the two chambers to consider the declaration and then decide whether to pass a resolution supported by a two-thirds majority of the two chambers approving the emergency proclamation within two days if in session or ten days if not in session. Without this approval, the proclamation lapses. It suffices to state that the discretion to declare a state of emergency is clearly that of the President and as Alabi noted,³⁶ this discretion seems unfettered. The President is the sole determinant and

³⁴ Bolanle Olabimtam, ‘FACT CHECK: Did Supreme Court Rule Obasanjo’s Suspension of Joshua Dariye Unconstitutional?’ *TheCable* (19 March 2025) <<https://factcheck.thecable.ng/fact-check-did-scourt-rule-obasanjos-suspension-of-joshua-dariye-unconstitutional/>> accessed 22 May 2025.

³⁵ Professor IE Sagay, SAN, ‘Nigeria: The Unfinished Federal Project’ (Being a Paper Delivered at the 8th Justice Idigbe Memorial Lecture at the Akin Deko Auditorium of the University of Benin on 30 April 2008) 57.

³⁶ Alabi (n33) 3.

initiator of the exercise except under circumstances provided for under Sections 305(3)(g), (4) and (5).³⁷ Section 305(4) mandates that where the situation is confined to a single state, the President must act on a request from the Governor, supported by a two-thirds majority of the State House of Assembly. Section 305(5) stipulates that the President shall not issue such a proclamation unless the Governor of the state fails within a reasonable time to make a request to the President to issue the proclamation.

In this instance, President Tinubu proceeded with the declaration without a formal request from Governor Fubara, asserting that the Governor had “failed to make a request to me as President to issue this proclamation as required by Section 305(5) of the 1999 Constitution as amended.”³⁸ As regards compliance with Section 305(1) and (2), reports³⁹ confirm that a proclamation was issued and published in the Official Gazette,⁴⁰ fulfilling the first procedural requirement. Also the transmission of copies to the President of the Senate and the Speaker of the House of Representatives as prescribed by Section 305(2) was to be done “immediately after the publication” of the Official Gazette, which was also done. Once the President had issued the proclamation, the obligation shifted to the National Assembly to either approve or disapprove the presidential order. The National Assembly subsequently approved the proclamation two days later,⁴¹ thereby fulfilling the procedural requirement of legislative endorsement. The main controversy lies in whether the legislative approval satisfied the constitutional threshold.

Section 305(6)(b) requires that the resolution be passed by a two-thirds majority of all members of each chamber. Instead of conducting a formal roll-call to record individual votes, both Houses adopted a voice vote – a method where lawmakers simply shout “aye” or “nay”, and the presiding officer subjectively determines which side has the majority – which raises doubts about whether the constitutional requirement was strictly met. In the Senate, 74 lawmakers⁴² voted in favour of the emergency rule, with the President of

³⁷ Ibid.

³⁸ Premium Times, ‘Tinubu’s Speech Declaring State of Emergency in Rivers (Full Text)’ (18 March 2025) <<https://www.premiumtimesng.com/regional/south-south-regional/781791-tinubus-speech-declaring-state-of-emergency-in-rivers-full-text.html>> accessed 23 May 2025.

³⁹ Unini Chioma, ‘[Download] Federal Govt Gazete Declaring State of Emergency in Rivers, Suspending Governor & Assembly’ *The Nigeria Lawyer* (27 March 2025) <<https://thenigerialawyer.com/download-federal-govt-gazette-declaring-state-of-emergency-in-rivers-suspending-governor-assembly/>> accessed 23 May 2025.

⁴⁰ Federal Republic of Nigeria Official Gazette No. 47, Vol. 112, 18th March 2025.

⁴¹ Whitney Igariwey, ‘National Assembly Endorses President Tinubu’s Declaration of State of Emergency in Rivers State’ *National Assembly Library Trust Fund* (20 March 2025) <<https://naltf.gov.ng/national-assembly-endorses-president-tinubus-declaration-of-state-of-emergency-in-rivers-state/>> accessed 23 May 2025.

⁴² Rotimi Ojomoyela, ‘How 74 Lawmakers Voted for Emergency Rule in Rivers – Senate’ *Vanguard* (6 April 2025) <<https://www.vanguardngr.com/2025/04/how-74-lawmakers-voted-for-emergency-rule-in-rivers-senate/>> accessed 23 May 2025.

the Senate Godswill Akpabio saying that the “approval is done with unanimity, without a single ‘nay.’”⁴³ For the House of Representatives, the decision was made by 243 members.⁴⁴ With 109 senators and 360 representatives, this means that at least 73 senators and 240 representatives must vote in favour of the state of emergency.

Notwithstanding this flaw, any attempt to invalidate the proceedings of the National Assembly may not be successful. This is so because in deference to the principle of separation of powers and other statutory provisions, the courts generally, and the Supreme Court in particular, have restrained themselves from interfering in the internal proceedings of the National Assembly.⁴⁵ However, precedent shows that they may intervene where there is a clear breach of constitutional provisions. On the authority of *Jideonwo & Ors v Governor of Bendel State*,⁴⁶ the courts would not be precluded from exercising jurisdiction on matters arising from proceedings of a legislative house, particularly where the defects in procedure relate to violations of constitutional provisions. Notably, in the case of *Attorney General of Bendel State v Attorney-General of the Federation & Ors*,⁴⁷ where the procedure adopted in the passage into law of the Allocation of Revenue (Federation Accounts, etc.) Bill, 1980 was challenged, the Supreme Court of seven justices held that the court could enquire into the mode of exercising the legislative powers of the National Assembly in order to determine its conformity with constitutionally prescribed procedure for the exercise of such powers. Therefore, if challenged, the approval of the Rivers State emergency proclamation could be declared void if the courts find that the reliance on a voice vote fell short of the express two-thirds majority requirement in Section 305(6)(b) of the 1999 Constitution (as amended).

7.2 THE LEGALITY OF SUSPENDING POLITICAL OFFICEHOLDERS OF A STATE IN A PERIOD OF EMERGENCY

The historical perspective of the exercise of emergency powers in Nigeria by the Federal Government is an interesting one. In all previous declarations of a state of emergency before the administration of former President Jonathan, regional/state government functionaries *viz* the Governor, Deputy Governor, and members of the regional or State House of Assembly were removed from office. In their stead were

⁴³ Adesuwa Tsan, ‘UPDATED: Senate Approves State of Emergency in Rivers’ *The Sun* (Lagos, 20 March 2025) <<https://thesun.ng/updated-senate-approves-state-of-emergency-in-rivers-state/>> accessed 23 May 2025.

⁴⁴ Olalekan Adigun, ‘House of Reps Endorse President Tinubu’s Declaration of State of Emergency in Rivers’ *Nairametrics* (20 March 2025) <<https://nairametrics.com/2025/03/20/house-of-reps-endorse-president-tinubus-declaration-of-state-of-emergency-in-rivers/>> accessed 23 May 2025.

⁴⁵ See *Chike Obi v Jalo Wadri* [1961] All NLR 371; *Fajinmi v The Speaker of Western Region House of Assembly* [1962] NSCC 144; and *M.O.Oloyo v B.A.Alegbe* [1985] 6 NCLR 61.

⁴⁶ [1981] 1 NCLR 4 16.

⁴⁷ [1981] All NLR 85.

appointed administrators who were given the task of governing the affected region or states during the emergency period. President Jonathan departed from this precedent and instead retained all the state functionaries. However, the recent declaration by President Tinubu saw a return to the earlier controversial precedents where elected state officials were suspended and an administrator put in charge of state affairs. The question that we shall now address is whether a proclamation of a state of emergency necessarily displaces state government institutions and functionaries of the affected state. To answer this question satisfactorily, it is imperative to examine the relevant constitutional provisions.

First, it suffices to state that the power of the President to declare a state of emergency is not in doubt. This is particularly so as the 1999 Constitution (as amended) empowers the President to proclaim a state of emergency when the federation or any part thereof is in a state of war, in imminent danger of invasion, or faces breakdown of public order and safety, among other grounds. Nonetheless, while the President undoubtedly has the power to declare a state of emergency, the exercise of the power must not contravene the provisions of the constitution. Section 305 of the 1999 Constitution (as amended) vests such powers in the President “subject to the provisions of this Constitution.” The implication of this phrase is that everything relating to the declaration of a state of emergency must be done in accordance with the provisions of the constitution. Explaining the import of the phrase, the Court of Appeal held in *Kabo Air Ltd v Oladipo*⁴⁸ that when a provision is “subject to the provisions of this Constitution,” it means the other provisions of the constitution shall prevail over the specific provision understated should there be a conflict between the former and the latter. Notably, nowhere in Section 305—or elsewhere in the 1999 Constitution (as amended)—is the President empowered to remove or suspend democratically elected state officials such as the Governor or members of the State House of Assembly upon declaring a state of emergency.

There are several provisions of the 1999 Constitution (as amended) that clearly negate the unilateral suspension of public officeholders or appointment of sole administrators to replace them by any individual or group, including the President. A literal interpretation of Section 1(2)⁴⁹ of the 1999 Constitution (as amended) makes it clear that no authority or group has the legitimacy to take absolute or unchecked control of the country or any part of the country outside what the constitution allows. This provision is a strong constitutional safeguard against unconstitutional takeovers of government such as military regimes, interim governments imposed outside due process, and forceful suspension of state officials and their replacement with administrators. A conjunctive reading of Section 1(1), which establishes the constitution as the supreme

⁴⁸ [1999] 10 NWLR (Pt 623) 533.

⁴⁹ The section states categorically that “The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government or Nigeria or any part thereof except in accordance with the provisions of this Constitution.

law, and (2) renders *ultra vires*, null, void, and of no legal effect any act of the President done in contravention of the provisions of the constitution. The 1999 Constitution (as amended) makes elaborate and succinct provisions for the tenure⁵⁰ and removal of the Governor and Deputy Governor,⁵¹ for the dissolution of a House of Assembly,⁵² for the recall of individual legislators,⁵³ for resignation of the Governor and Deputy Governor,⁵⁴ for the succession to the office of the Governor in case of temporary absence or permanent incapacity of the officeholder.⁵⁵ While Section 188 prescribes the only lawful procedure for the removal of a Governor—namely by the State House of Assembly, Section 189 provides that a Governor or Deputy Governor shall cease to hold office if a medical examination reveals that they are incapable of discharging the functions of their office. However, the resolution to remove them from office must be supported by two-thirds majority of all members of the executive council of the state. Even during a period of emergency, only the National Assembly is empowered to take over the performance of the functions of the State House of Assembly but then only to the extent “necessary or expedient” and only if the assembly “is unable to perform its functions.” Furthermore, the subsection contains an important caveat: “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.”⁵⁶

On the basis of the foregoing constitutional provisions, it is difficult to justify President Tinubu’s removal of state officials and the appointment of a sole administrator for Rivers State because a state of emergency is in place. Whereas, the 1999 Constitution (as amended) empowers the President to declare a state of emergency in the whole federation or any part thereof, it is quite obvious from the provisions of Section 305 that the draftsmen of the constitution did not intend for the dissolution of the state executive and legislature as well as the appointment of a sole administrator in their stead during an emergency period. For Alabi,⁵⁷ the provision of Section 305(4) would be rendered nugatory if the Governor and the House of Assembly of a state were to know that the consequences of requesting the President to declare a state of emergency would be the loss of their own powers. One cannot therefore agree less with Osigwe⁵⁸ that

⁵⁰ CFRN 1999, s 180(1).

⁵¹ CFRN 1999, ss 188 & 189.

⁵² CFRN 1999, s 105(1).

⁵³ CFRN 1999, s 110.

⁵⁴ CFRN 1999, s 306(5).

⁵⁵ CFRN 1999, s 191(1).

⁵⁶ CFRN 1999, s 11(4).

⁵⁷ Alabi (n33) 12.

⁵⁸ The President of the Nigerian Bar Association, Afam Osigwe made the remarks in a press statement titled ‘State of Emergency in Rivers: “Suspension” or Otherwise Summary Removal of a Democratically Elected Governor and Other Elected Officials is Unconstitutional’ issued following President Bola Tinubu’s declaration of a state of emergency in

President Tinubu's suspension of Governor Fubara and appointment of a Sole Administrator were "unconstitutional, unlawful, and a dangerous affront to our nation's democracy." Osigwe further noted that the power given to the President under Section 305 of the Nigerian Constitution does not empower him to suspend a Governor, Deputy Governor, or other democratic organs of government. Hence, the 1999 Constitution (as amended) does not grant the President power to suspend or otherwise prevent elected state officials from exercising the functions of their offices under the guise of a state of emergency. President Tinubu, therefore, committed a "grave violation or breach of the provisions of this constitution" that could, in normal democratic setting, earn him removal from office in terms of the provisions of Section 143(11) of the constitution.

8.0 FEDERALISM AND THE CONSTITUTIONAL LIMITS OF EMERGENCY POWERS

The 1999 Constitution (as amended) is a federal constitution. Under a federal constitution, there is division of power between the central and other regional governments, each enjoying some degree of autonomy.⁵⁹ The constitution clearly establishes a federal structure consisting of the Federal Government, State Government, and Local Government. Under this arrangement, states or regional governments are not mere administrative extensions of the Federal Government; rather, they possess their own executive, legislative, and judicial arms, each with constitutionally guaranteed autonomy. It is against this backdrop that the legality of suspending elected state officials during a state of emergency must be examined.

Section 305 of the 1999 Constitution (as amended) provides the legal basis for the declaration of a state of emergency.⁶⁰ This provision underscores the principle of cooperative federalism, where the federal and state governments are expected to work collaboratively during emergencies. It also implies that the Governor remains a legitimate and necessary stakeholder in managing emergencies, thereby making the unilateral suspension of the Governor and other elected officials constitutionally questionable. Sagay⁶¹ underscored this when he pointed out that "the whole tenor of Section 11 of the Constitution (which is the section containing all the powers exercisable during an emergency) shows that an emergency declaration is intended to be a cooperative endeavour between the Federal Government and state government, whose organs, Governors, House of Assembly and judiciary are fully functioning." The implication of Sagay's remark is that federalism demands respect for the autonomy of state institutions, and any action undermining that autonomy should be approached with caution.

Rivers. <<https://blog.nigerianbar.org.ng/2025/03/18/state-of-emergency-in-rivers-suspension-or-otherwise-summary-removal-of-a-democratically-elected-governor-and-other-elected-officials-is-unconstitutional/>> accessed 23 May 2025.

⁵⁹ Mowoe, KM, *Constitutional Law in Nigeria* (Vol. IV, Northline Press 2021) 14.

⁶⁰ Refer to 'Procedures for the Declaration of a State of Emergency' in 4.3.

⁶¹ Sagay (n35) 56.

Hence, the power to declare a state of emergency, while critical in addressing serious threats, is not a *carte blanche* for the President to encroach on the autonomy of state governments. Elected officials derive their mandate from the people, and their removal must follow due constitutional process rather than administrative fiat from the presidency. As the Supreme Court stated in *Attorney General of Bendel State v Attorney General of the Federation*,⁶² the powers of each arm and level of government are to be exercised strictly within the limits prescribed by the constitution. Thus, former President Jonathan's restraint in not removing elected officials during the 2013 emergency declarations in Borno, Yobe, and Adamawa States, which was a notable departure from the practice of suspending state functionaries, arguably reflected a more constitutionally faithful application of emergency powers.

9.0 CONCLUSION

This paper has critically examined the constitutional basis of the President's power to suspend a Governor and appoint an administrator during a state of emergency in Nigeria. Through a doctrinal analysis of Section 305 of the 1999 Constitution (as amended) and a close reading of relevant expert views, it is evident that the Constitution does not confer on the President the authority to unilaterally remove or suspend elected state officials, even in times of crisis. By examining the events in Rivers State through the lens of constitutional provisions, this paper has established that the President's actions in suspending the Governor and his Deputy, exceeds the powers granted by Section 305 and contravenes both the letter and spirit of the constitution. Furthermore, replacing the executive with a Sole Administrator has no legal backing within the constitution. The study recommends a clear judicial interpretation of the limits of presidential emergency powers to prevent future misuse as the Supreme Court missed the opportunity to rule decisively on the issue in the case of *Plateau State of Nigeria & Anor and Attorney-General of the Federation & Anor*. The failure to confront this issue squarely may embolden future administrations to repeat similar unconstitutional actions.

⁶²[1981] 10 SC 1.