

EXECUTIVE DISCRETION AND THE USE OF EMERGENCY POWERS IN NIGERIA: A TALE OF WHO IS IN POWER

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Abstract

Emergency powers constitute one of the most extensive constitutional mechanisms available to governments in times of crisis. Under the 1999 Constitution of the Federal Republic of Nigeria (as amended), the power to declare a state of emergency was intended as an exceptional measure for the preservation of public order, national security, and constitutional stability. However, the exercise of emergency powers in Nigeria has generated significant constitutional and political debate, particularly regarding the extent of executive discretion and the implications for democratic governance. This article examines the exercise of emergency powers in Nigeria from 1999 to date under successive administrations. It argues that beyond the constitutional conditions prescribed under section 305 of the Constitution, the practical invocation and implementation of emergency powers have often reflected prevailing political interests and the dynamics of executive power. The article argues that the exercise of emergency powers in Nigeria often goes beyond genuine constitutional emergencies and, in some cases, is used as a tool for political control and increased federal authority. It concludes that while emergency powers remain necessary for the protection of the State, stronger institutional safeguards and stricter constitutional adherence are essential to prevent their transformation into tools of political expediency.

Keywords: Executive Discretion, Emergency Powers, State of Emergency

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1.0 INTRODUCTION

The security and welfare of the people constitute the primary purpose of government.¹ It follows that the state bears a duty to respond to any situation that threatens these interests. Thus, where threats of sufficient gravity confront the state, giving rise to a breakdown or risk to public security and welfare, an emergency may be said to exist.² A major emergency tests the foundation of a country, and can change how power is used and how government operates because if a government cannot protect its people from imminent crisis, that government is not likely to survive.³ Consequently, the Constitution bestows on the Executive, in this case, the President, the power to act decisively in times of emergency, enabling him to adopt measures aimed at protecting the state and maintaining public order.⁴ This is known as the exercise of emergency powers. The basic rationale for its use lies in the recognition that certain crises may overwhelm the capacity of ordinary legal frameworks, thereby necessitating recourse to extraordinary or exceptional measures.⁵ It is also predicated on the Maxion '*salus populi supremalex*', which literally means that the welfare of the people is the supreme law. Thus, any situation that constitutes a threat to the security and welfare of the people or the stability of a nation such as war, national disaster, civil unrest, etc may necessitate the use of extraordinary measures by the state to address such situations.⁶ To further, there is the need to preserve the existence of the state. Thus, in certain circumstances, the state may derogate

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 14 (2)(b)

² F O Iloh and S A Omisore, 'A Critical Analysis of the Conditions for State of Emergency' (2021) 3(2) *IRLJ* 47-56, 47 < <https://eprints.gouni.edu.ng/4812/1/1534-3029-1-SM.pdf>> accessed 28 April 2026

³ P J D Griffin, 'An Overview of Federal Emergency Powers' [2022] 15(859) *New York University Journal of Law and Liberty* 860

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 305

⁵ Griffin(n3)

⁶ F C Nwoke, 'Conditions for the Declaration for the State of Emergency: Breakdown of Public Order and Public Safety' in Epiphany Azinge (ed), *State of Emergency in Nigeria: Law and Politics* (NIALS Press 2013) 275

from its legal or constitutional provisions to protect civil liberties in an attempt at safeguarding the interest of the state.⁷ In Nigeria, the exercise of emergency powers has largely been marked by inconsistencies, with no clearly defined or stable pattern of application.⁸ Notwithstanding the clear criteria set out in the Constitution for the declaration of a state of emergency, the assessment of whether prevailing conditions satisfy those criteria has varied across administrations.⁹ This can be attributed to the fact that, even where the conditions warranting a declaration of a state of emergency are present, the decision to invoke such powers ultimately remains within the discretion of the President. The power of the President to declare a state of emergency has been exercised across different parts of Nigeria with the first ever declaration of state of emergency in 1962 in the Western Region during the First Republic.¹⁰ Against this historical backdrop, this article examines the deployment of emergency powers across successive administrations from the inception of the Fourth Republic in 1999 to date, with particular emphasis on how different Presidents have responded to comparable situations. It highlights the extent to which the application of emergency powers has varied in practice, notwithstanding the existence of constitutionally defined criteria.

⁷ *ibid*

⁸ E Emenike and C O Ajie, 'Emergency Powers in Nigeria Whether Wrongly or Rightly Exercised' [2022] 10(1) *Rivers State University Journal of Public Social Issue on Contemporary Laws and Diplomacy* 202-221, 203

⁹ *ibid*

¹⁰ B E Oniha, 'Legality of the Presidential Declaration of a State of Emergency in Some States in Nigeria and its Implication on State Government Functionaries' (2017) < <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 2 May 2026

2.0 CONCEPTUAL FRAMEWORK

To provide a proper foundation for this discussion, it is important to define executive discretion, emergency powers and state of emergency, the key terms which underpin this study. This is important, as a proper understanding of these terms will facilitate a clearer appreciation of how they are applied in their legal sense.

2.1 Executive Discretion

Executive discretion refers to the power of a person or group of persons with executive authority to make decisions within certain legal boundaries.¹¹ It is the administrative and legal authority given to the executive branch to make policies, implement and enforce such policies especially where statutory provisions give room for flexibility and do not stipulate a particular course of action. Therefore, the executive such as the President or Governor can make independent choices to suit the complexities of the real-world, however, this is within a framework of checks and balances.

In relation to the declaration of state of emergency, executive discretion simply means the extent of powers granted to the President or the Governor of the State during such declaration.

2.2 State of Emergency

In periods of extreme crisis, such as war or widespread disorder, the preservation of the legal order may require a temporary departure from the ordinary operation of the law. A state of emergency is a temporary suppression of rules to deal with an extremely dangerous or difficult situation.¹² It derives from a governmental declaration made in response to an extraordinary situation posing a fundamental threat to

¹¹ J O Fatile and G L Ejalonibu, 'Emergency Rule: A Panacea for Peace and Conflict Resolution in Nigeria' [2014] 9(1) *Journal of Policy and Development Studies* 123

¹² P C Aneke, 'The Exercise of Emergency Powers in Nigeria: The Position of ACHPR and Conformity with the Minimum International Standard' [2021] 1 *MUNFOLLI* 105

the country.¹³ In constitutional terms, a period of emergency denotes any period during which a Presidential proclamation of a state of emergency, made pursuant to Section 305 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), remains in force. Such declaration may suspend normal governmental functions, alter the normal behaviour of citizens, or authorise government agencies to implement emergency preparedness plans as well as to limit or suspend civil liberties and human rights.¹⁴ The need for exercising emergency powers becomes necessary when a nation is faced with grave danger, which threatens the nation and the security and freedom of its citizens.¹⁵

The 1999 Constitution does not expressly state the meaning of a state of emergency. Its meaning can however, be gleaned from a reading of section 45(3) which provides that ‘a period of emergency means 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 the Constitution. Typically, a country’s constitution outlines the conditions under which a state of emergency may be declared, prescribes the procedures to be followed, and defines the scope and limits of the powers that may be exercised, including any permissible restrictions on fundamental rights.¹⁶ More so, a state of emergency is characterized by certain features. It is temporary and only intended to operate for as long as the exigency persists. It may involve giving increased power to the executive arm of government, which may change the usual balance of power between the different branches of government.¹⁷ At the same time, it remains

¹³ Geneva Centre for the Democratic Control of Armed Forces, ‘States of Emergency’ (2005) < <https://share.google/ZUVGuVrPVvTtMODkY> > accessed 1 May 2026

¹⁴ S Oguche, ‘Challenges of Use of State of Emergency in Democratic Governance: Plateau and Ekiti Experiences’ in Epiphany Azinge (ed), *State of Emergency in Nigeria: Law and Politics* (NIALS Press 2013) 313

¹⁵ D K Derri and P J Fawei, ‘Comparative Examination of Exercise of Emergency Powers (Nigeria, India and Egypt)’ [2018] 9(2) *NAUJILJ* 46-57, 47

¹⁶ Geneva Centre for the Democratic Control of Armed Forces (n13)

¹⁷ D M Tuan, ‘Emergency Powers, Human Rights and Rule of Law’ (2020) *Vietnam National University School of Law* 3 < <https://share.google/ziP1MlkkidmcDGf9M> > accessed 2 May 2026

subject, at least in principle, to constitutional safeguards such as legislative oversight, and where applicable, judicial review. A careful reading of Section 305 of the 1999 Constitution further demonstrates that these characteristics are embedded within the constitutional framework governing emergency powers. The adoption of a state of emergency carries the risk of misuse or overreach, particularly where the circumstances justifying its declaration are not clearly defined or consistently applied. It is for this reason that the constitutional framework treats a state of emergency as a measure of last resort, to be invoked only in situations where ordinary legal mechanisms prove insufficient. Accordingly, while a state of emergency involves a departure from the normal operation of the legal system, it remains grounded in law. It is an exceptional mechanism within the constitutional framework, intended to preserve the state in times of crisis.¹⁸ However, as this study will show, its practical application has not always reflected this structured and limited design, raising important questions about consistency, discretion, and the role of executive judgment in the use of emergency powers in Nigeria.

2.3 Emergency Powers

Emergency powers refer to the extraordinary authority vested in government, particularly the executive, to respond effectively to situations of crisis that threaten public order, national security, or the continued existence of the state.¹⁹ These powers are typically invoked in response to public emergencies and are designed to enable swift and decisive action where ordinary legal processes may prove inadequate. The concept of emergency powers is rooted in the recognition that constitutional systems must possess the capacity to address unforeseen and immediate threats. Historically, this idea can be traced to early governance systems, where temporary and exceptional authority was

¹⁸ J B Kelly and G A Pelletier, 'Theories of Emergency Government' (1966) 11(1) *South Dakota Law Review* 42-69, 42 <
<https://red.library.usd.edu/cgi/viewcontent.cgi?article=3755&context=sdlrev>>
accessed 2 May 2026

¹⁹ *ibid*

granted to preserve the political order in times of crisis.²⁰ In modern constitutional democracies, this rationale persists, with emergency powers conceived not as a means of displacing the legal order, but as a mechanism for its protection and continuity. A defining feature of emergency powers is their exceptional nature. They permit actions that would ordinarily fall outside the scope of regular governmental authority. This may include the ability to issue regulations without the usual legislative process, to act outside standard procedural requirements, and to adopt measures that would otherwise be impermissible under normal circumstances. Such measures may extend to restrictions on certain rights and freedoms, increased security operations, and broader control over public and private activities. However, the exercise of emergency powers carries inherent risks. While they are intended to safeguard the state, their expansive nature creates the potential for abuse, including undue interference with fundamental rights and the concentration of power in the executive. Consequently, in constitutional practice, emergency powers are generally framed as temporary and exceptional measures, to be employed only where strictly necessary and where ordinary legal mechanisms are insufficient to address the crisis at hand.

3.0 LEGAL FRAMEWORK FOR EXERCISE OF EMERGENCY POWERS IN NIGERIA

Like any body of law, emergency powers are bounded by constitutional limits, but are also regulated and implemented via statute. Although there were legislative attempts to modernise Nigeria's emergency powers framework, most notably through the Emergency Powers (Repeal and Re-enactment) Bill, 2018,²¹ the failure

²⁰ U U Omini, O E Ushie-Oshomole and E Bassey 'Politics of State of Emergency as Instrument for State Capture: A Study of Rivers State Public Administration, Nigeria' (2025) 9(8) *Wukari International Study Journal* 266-280,268 < <https://share.google/UHZQ9aiaFWUOmFgC9>> accessed 4 May 2026

²¹ Policy and Legal Advocacy Centre, 'Senate Passes the Emergency Powers (Repeal and Re-enactment) Bill, 2018' < <https://placng.org/i/senate-passes-the-emergency-powers-repeal-and-re-enactment-bill-2018/>> accessed 9 May 2026

of the Bill to secure presidential assent means that the country continues to rely primarily on the constitutional framework under Section 305. In addition, the subsisting statutory framework remains the Emergency Powers Act of 1961,²² which operates in a supplementary capacity by providing for the implementation of measures once a state of emergency has been declared.

Emergency powers serve as essential mechanisms to tackle national exigencies such as security threats, civil unrest. Section 305 however does not also expressly spell out the meaning of the expression ‘state of emergency’. The section only provides extensively 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, the Governors of the States and its Legislative House in the process. It states as follows:

- (1) 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 Representatives, each of whom shall forthwith convene a meeting of the House of which he is the presiding officer to consider the situation and decide whether or not to pass a resolution approving the Proclamation.

The President’s powers during a state of emergency appears to be wide, however, section 305(3) restricts the circumstances in which the President can declare a state of emergency. It succinctly provides the following restrictions;

- (3) The President shall have power to issue a Proclamation of a state of emergency only when-
 - (a) the Federation is at war;
 - (b) the Federation is in imminent danger of invasion or involvement in a state of war;

²² Laws of the Federation of Nigeria 2004, Cap E9

- (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.

Therefore, the President cannot out of his own volition, declare a state of emergency and the Constitution equally guides the enforcement of such a declaration. This implies that the President is constitutionally bound to act with regard to the rule of law and respect for the fundamental rights of citizens protected by Chapter IV of the Constitution. Any derogation is permitted only to the manner reasonably necessary to restore public order and protect the integrity of the state as provided in Section 45.

The judiciary is however, immune to such a declaration. It retains its power granted pursuant to section 6 which vests the courts with judicial power over all matters relating to the determination of civil rights and obligations, including the power to review the legality and constitutionality of executive measures even in periods of emergency and to act as a check on executive actions during such declarations.²³ Other constitutional provisions which further expound on emergency powers can be found in section 305 (4), (5), (6)(a) - (d), of particular mention is subsection 5 which provides thus:

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

²³ O M Atoyebi, 'State of Emergency in Nigeria: Powers and Duties of the President' (2025) *Omaplex Law Firm* < <https://omaplex.com.ng/state-of-emergency-in-nigeria-powers-and-duties-of-the-president-2/> accessed 4 May 2026

4.0 CHRONOLOGICAL OVERVIEW OF DECLARATION OF STATE OF EMERGENCY FROM 1999 TO DATE

In the history of Nigeria, the Federal Government has felt compelled to declare a state of emergency once in the First Republic, and a handful of times in the period covered by the 1999 Constitution.²⁴ This section will take a cursory glance at the situations leading to those proclamations beginning from the Fourth Republic till date.

4.1 President Olusegun Obasanjo Era (1999-2007)

On the 18th day of May 2004, President Olusegun Obasanjo declared a state of emergency in Plateau State, sacking the incumbent Governor – Joshua Dariye, accusing him of failing to act to end the cycle of violence between Muslims and Christians in Plateau State, which claimed more than 2000 lives since September 2001.²⁵ The President also dissolved the Plateau State House of Assembly and appointed retired General Chris Ali as Sole Administrator. This was a corollary of the crisis in Plateau state which began in September, 2001 due to protracted boundary disputes and ethno-religious disturbances between Christians and Muslims in Yelwa, Langtang, Shendam and Wase Local Government Areas of the state, which eventually degenerated in 2004.²⁶ In the process, thousands of persons were rendered homeless and became refugees in neighbouring states.²⁷ The Federal Government had earlier on set up peace committees with the aim of finding solutions to the crises, however, their efforts were all

²⁴ A U Kalu, 'The Act of Proclamation of State of Emergency' in Epiphany Azinge (ed), *State of Emergency in Nigeria: Law and Politics* (NIALS Press 2013) 46

²⁵ Daniel Ojukwu, 'Flashback: Obasanjo Suspended Plateau, Ekiti Governors. Tinubu Said It Was Illegal' [2025] *Foundation for Investigative Journalism* <<https://fij.ng/article/flashback-obasanjo-suspended-plateau-ekiti-governors-tinubu-said-it-was-illegal/>> accessed 4 May 2026

²⁶ N Aduba, 'Presidential Powers and State of Emergency' in Epiphany Azinge (ed), *State of Emergency in Nigeria: Law and Politics* (NIALS Press 2013) 88

²⁷ *ibid*

frustrated.²⁸ The situation came to a climax in 2004 which prompted the invocation of Section 305 by the President.²⁹

In the same vein, on the 19th of October, 2006, President Obasanjo declared a State of Emergency in Ekiti State on the basis of what he referred to as breaches of the Constitution by members of the Ekiti State House of Assembly. According to the President, the removal of the Governor and his deputy was a clear case of usurpation of power.³⁰ The declaration of a state of emergency in this case also led to the suspension of elected officials, particularly, the Acting Governor and his Deputy, as well as the Ekiti State House of Assembly.³¹ An Administrator in the person of General Tunji Olurin (Rtd) was nominated to manage the affairs of the state for a period of six months.³² Elected officials below the state level were not suspended and the Federal Gazette containing the declaration was forwarded to the National Assembly in accordance with the Constitution.³³ It has been contended that the declaration of a state of emergency in this instance lacked sufficient factual foundation in that there was no demonstrable collapse of public order or outbreak of violence that could justify the invocation of such an extraordinary constitutional measure.³⁴ Civil life reportedly continued with residents engaging in their lawful activities without disruption.³⁵ More strikingly, there were

²⁸ *ibid*

²⁹ *ibid*

³⁰ Iloh (n26) 115

³¹ A Nwaiwu, 'State of Emergency and Limits of Extraordinary Measure' in Epiphany Azing (ed), *State of Emergency in Nigeria: Law and Politics* (NIALS Press 2013) 140

³² M E Aluko, 'The State of Emergency in Ekiti State and the Nebuchadnezzar Non-Option' (2006) < <http://www.segundawodu.com/aluko149.htm> > accessed 26 April 2026

³³ *ibid*

³⁴ *ibid*

³⁵ *ibid*

reportedly other state in Nigeria at that time experiencing worse socio-political situations which did not receive similar intervention.³⁶

Nevertheless, while the foregoing analysis calls into question the factual justification for the Ekiti State declaration, it does not negate the reality that emergency powers by their very nature are discretionary, and to a large extent informed by the President's assessment of national security and public order. It also underscores the breadth of executive latitude in this domain. It is therefore essential to examine how subsequent administrations have exercised this discretion.

4.2 President Umar Musa Yar'Adua Era (2007-2010)

Although President Yar'Adua did not invoke emergency powers during his administration, his tenure was not devoid of conditions that could arguably have justified such a declaration. The Niger Delta region, in particular, was engulfed in sustained militancy, marked by pipeline sabotage, crude oil theft, and the kidnapping of expatriate oil workers, largely orchestrated by groups such as the Movement for the Emancipation of the Niger Delta.³⁷ These developments posed significant threats to national economic stability and internal security. In a state such as Nigeria, where public finance is heavily dependent on crude oil revenues, sustained militancy in the Niger Delta through pipeline sabotage, production shutdowns, and the disruption of export flows did not merely create localised insecurity but translated directly into reduced national income and fiscal strain.³⁸ In that sense, the crisis

³⁶ Nwaiwu (n35)

³⁷ A Olaniyan, 'Destroying to Destroy: Militancy and Environmental Degradation in the Niger Delta' (2017) *Environment and Society Portal* <<https://www.environmentandsociety.org/arcadia/destroying-destroy-militancy-and-environmental-degradation-niger-delta>> accessed 4 May 2026

³⁸ H A Umar and others, 'Assessing the Economic Consequences of Pipeline Sabotage in the Niger Delta Area of Nigeria Using Geographical Information System' (2019) International Graduate Conference of Built Environment and

operated simultaneously as a security breakdown and an economic emergency. Yet, notwithstanding this dual impact, Umaru Musa Yar'Adua refrained from invoking Section 305, opting instead for a conciliatory strategy, most notably through the Presidential Amnesty Programme initiated in 2009.³⁹ This underscores that the activation of emergency powers in Nigeria is deeply dependent on presidential discretion. In effect, Yar'Adua's restraint illustrates that even in the face of severe insecurity, the choice to declare a state of emergency remains as much political as it is legal.

4.3 President Goodluck Ebele Jonathan Era (2010-2015)

On the 14th of May, 2013, President Goodluck Jonathan declared a state of emergency in three northern states, namely, Adamawa, Borno and Yobe states, following the increasing rise in insurgency and terrorism in these states by Boko Haram actors.⁴⁰ Consequently, on the 20th of May 2013, the Constitution of the Federal Republic of Nigeria 1999, State of Emergency (Certain States of the Federation) Proclamation 2013 was published in the Official Gazette of the Federal Republic of Nigeria.⁴¹ Legislative approval of both Houses of the National Assembly was subsequently obtained on Tuesday, 22nd May, 2013. In the previous declarations of a state of emergency under the President Obasanjo Administration, state government functionaries, including the Governor, Deputy Governor and members of the State Houses of Assembly were suspended from office. In their stead were appointed Administrators who were mandated to govern the affected states. However, President Jonathan remarkably departed

Surveying 240-252, 248 <<https://share.google/ricF81mB8dfW2FDtv>> accessed 4 May 2026

³⁹ F A Ikenga, '13 Years of the Amnesty Programme in Nigeria: An Assessment of its Impact on the Niger Delta Region' (2023) 4(14) *Journal of Global Social Sciences* 285-306, 286 <<https://share.google/DJtHEiXf0xMbaARzw>> accessed 4 May 2026

⁴⁰ T R Ayebusi and J R Rukema, 'The Politics of Emergency Rule in North-Eastern Nigeria (2013-2014)' (2019) 6(2) *African Journal of Democracy and Governance* 107-124, 115 <<https://share.google/Wgt0ui9mW32Yr8GUt>> accessed 5 May 2026

⁴¹ No.27, Vol. 100

from the precedent of previous administrations by leaving the state functionaries in the affected states to continue in their various offices.⁴² Also, a major attribute of state of emergency under President Goodluck Jonathan was its restriction to troubled Local Governments instead of the whole State as was seen under President Obasanjo.

4.4 President Muhammadu Buhari Era (2015-2023)

Similar to the restraint observed under President Umar Musa Yar'Adua, the administration of Muhammadu Buhari did not invoke a formal state of emergency under Section 305, despite facing multiple and overlapping crises. On the public health front, the government responded to recurrent outbreaks such as Lassa fever and the global spread of COVID-19 through a range of urgent measures, including movement restrictions, lockdowns, and coordinated institutional interventions. In 2018, the administration also endorsed what was described as a 'state of emergency' in the Water, Sanitation and Hygiene (WASH) sector.⁴³ However, this was a policy-driven declaration aimed at improving sanitation and public health outcomes, and not a constitutional proclamation under Section 305. As such, it did not activate the extraordinary legal framework ordinarily associated with emergency powers.⁴⁴ At the same time, Buhari's tenure was marked by a notable escalation in internal security challenges, including widespread banditry, mass kidnappings, and intensified farmer-herder conflicts, particularly in northern Nigeria, alongside the continued insurgency of Boko Haram.⁴⁵ Notwithstanding the scale and persistence of these threats, the government relied primarily on conventional security responses, especially military deployments

⁴² Ayebusi and Rukema (n44)

⁴³ Presidential Villa State House, 'President Buhari Declares State of Emergency on Water, Sanitation Sector, Urges State to Follow Suit' (2018) <<https://statehouse.gov.ng/president-buhari-declares-state-of-emergency-on-water-sanitation-sector-urges-states-to-follow-suit/>> accessed 5 May 2026

⁴⁴ *ibid*

⁴⁵ L Y Olowolagba, 'Nigeria's National Security Challenges: An Evaluation of the Buhari Administration' (2025) *MSI Journal of Arts, Law and Justice* 18-33,22 <<https://share.google/OFJhGE2axjW0AG9cC>> accessed 5 May 2026

across affected regions, rather than resorting to a formal declaration of emergency.⁴⁶ This approach contrasts with that of Goodluck Jonathan, who, in response to the Boko Haram insurgency, formally declared a state of emergency in certain states. The divergence between these administrations is instructive. It suggests that the invocation of emergency powers in Nigeria is not determined solely by the severity or existence of crisis conditions. Rather, it depends significantly on the choices and governing approach of the President.

4.5 President Bola Ahmed Tinubu Era (2023-Date)

The administration of Bola Ahmed Tinubu provides a recent illustration of how emergency powers continue to be applied in a selective and context-dependent manner. In March 2025, the President formally proclaimed a state of emergency in Rivers State following a combination of political instability and security concerns, including tensions within the state government and incidents affecting critical oil infrastructure.⁴⁷ The proclamation led to the suspension of the Governor, Deputy Governor, and members of the State House of Assembly, alongside the appointment of an interim administrator, Vice Admiral Ibokette Ibas (Rtd.) to oversee the affairs of the state for a six-month period, subject to legislative approval.⁴⁸ This marked one of the few instances in Nigeria's Fourth Republic where emergency powers were invoked in response to a subnational political crisis. At the same time, the broader national context during this administration has been characterised by persistent and, in some areas, escalating insecurity, including insurgency, terrorism, banditry, and kidnapping across different regions of the country. Notably, despite these widespread challenges, there has been no corresponding declaration of a

⁴⁶ *ibid*

⁴⁷ Presidential Villa State House, 'President Tinubu Declares State of Emergency in Rivers State on Tuesday 18 March 2025' (2025) <
<https://statehouse.gov.ng/president-tinubu-declares-state-of-emergency-in-rivers-state-on-tuesday-18-march-2025/>> accessed 5 May 2026

⁴⁸ *ibid*

nationwide or regional state of emergency under Section 305. Instead, the Federal Government has largely relied on security deployments, institutional responses, and policy measures to address these threats. Taken together, it is submitted that the invocation of a state of emergency in Nigeria does not follow a uniform or clearly predictable threshold, but varies according to the specific context and the choices of the incumbent government. At this point, the discussion now turns to a critical analysis of the patterns of exercise of emergency power and implications of their use.

5.0 SUMMARY OF FINDINGS

5.1 Exercise of Emergency Power: A Tale of Who is in Power

A careful examination of the exercise of emergency powers under the Constitution of the Federal Republic of Nigeria 1999 as amended, reveals a pattern of inconsistent application by successive Presidents. While section 305 sets out specific criteria, the practical invocation of these powers has over time not adhered to a uniform standard. Instead, several instances demonstrate that the determination of what constitutes emergency is largely contingent on the subjective assessment of the incumbent President. Situations of comparative intensity have sparked divergent responses; in some instances, the incumbent President has invoked emergency rule, while other equally grave circumstances have been met with cold feet and managed without recourse to emergency rule.

Under the administration of Olusegun Obasanjo, emergency powers were invoked in response to severe internal crises, notably, the declaration of a state of emergency in Plateau State in 2004 following ethno-religious violence as aforementioned. This pattern continued

under Goodluck Jonathan who declared a state of emergency in 2013 in Borno, Yobe and Adamawa states in response to the escalating insurgency led by Boko Haram. The intensity of violence, including territorial control by insurgents clearly satisfied the constitutional threshold of a breakdown of public order and threats to national security. By contrast, the administration of Muhammadu Buhari was marked by a noticeable reluctance to invoke formal emergency rule, despite persistent insecurity challenges including banditry, Herdsmen/Farmers clash, and continued insurgent activities. Instead, the President relied on military deployments and administrative measures. This suggests a more restrained or selective approach to the constitutional mechanism. The current administration of Bola Ahmed Tinubu presents yet an even sharper illustration of this discretionary pattern. Despite ongoing incidents of violent attacks, high rate of kidnapping and insecurity in parts of the country that apparently threatens national security and public order, there has been no recourse to section 305. Yet, in 2025, a state of emergency was declared in Rivers State following a political crisis. This juxtaposition raises a serious concern as to whether the threshold for invoking emergency powers may be influenced more by political exigencies than by objective assessments of threats to public safety and national security.

This divergence in deployment suggests that the constitutional thresholds in section 305 are not being applied as binding legal criteria, but rather as flexible guidelines subject to executive discretion. In effect, the provision operates less as a rule-based constraint and more as an enabling framework that permits selective activation depending on political, strategic, or institutional considerations. The implication is significant: where constitutional safeguards are designed to limit extraordinary powers to clearly defined situations, their inconsistent application risks undermining the principles of constitutional supremacy and introduces a form of executive arbitrariness, where the declaration of a state of emergency becomes a function of ‘who is in power’ rather than a principled

application of constitutional standards. Although, the power to declare a state of emergency is vested in the President and necessarily involves the exercise of executive discretion, it does not follow that such power is insulated from judicial review.⁴⁹ Accordingly, while the President retains discretion in assessing whether prevailing circumstances satisfy these conditions, such discretion is not unfettered, but bounded by constitutional limits and therefore amenable to judicial scrutiny. To hold otherwise would be to convert a constitutionally regulated power into an unchecked prerogative contrary to the principle of constitutional supremacy.

Notwithstanding, it is essential to also recognize that under Section 305, the power to proclaim a state of emergency is framed as an exceptional mechanism, intended to preserve the integrity, security, and stability of the state in circumstances that transcend ordinary governance capacity. The language and structure of the provision suggest that it is conceived as a measure of last resort, to be invoked only where existing legal and institutional frameworks prove insufficient to address a crisis of significant magnitude. In this sense, the restraint observed across several administrations including those of Umaru Musa Yar'Adua, Muhammadu Buhari and at present Bola Ahmed Tinubu, may also be understood as consistent with a constitutional preference for minimal disruption of normal democratic order. This interpretation, however, does not diminish the seriousness of Nigeria's present security landscape. The persistence of mass kidnappings, religiously framed violence, and insurgency, particularly involving groups such as Boko Haram raises legitimate questions about whether existing mechanisms remain adequate to safeguard public order and national cohesion. Nonetheless, the constitutional logic appears to resist normalising emergency rule, even in the face of severe and recurring threats. Rather, it preserves the declaration of a state of emergency as an extraordinary intervention, to be deployed

⁴⁹ Derri and Fawei (n15)

only in the most extreme and unmanageable circumstances. In this light, the Nigerian framework reflects a tension between necessity and restraint: while conditions on the ground may at times appear to justify extraordinary measures, the constitutional design deliberately sets a high threshold, positioning emergency powers not as a first response, but as a final recourse in the preservation of the state.

6.0 CONCLUSION AND RECOMMENDATIONS

The exercise of emergency powers remains one of the most far-reaching constitutional mechanisms available to any government, particularly in democratic societies where the preservation of public order and national security must be the primary aim of government. Under the 1999 Constitution, the declaration of a state of emergency was envisioned as an extraordinary measure, to be invoked only in exceptional circumstances threatening the peace, security, and stability of the nation. However, the Nigerian experience since 1999 reveals that the invocation, scope, and implementation of emergency powers have often reflected prevailing political interests and the dynamics of power at particular moments in Nigeria's political history. While certain declarations were made in response to genuine security threats and breakdowns of public order, others generated significant constitutional controversy, particularly where democratic institutions were suspended or federal authority appeared to expand beyond constitutionally permissible limits. In this regard, the exercise of emergency powers in Nigeria increasingly appears to be not merely a constitutional response to crisis, but also a reflection of who occupies political power and how such power is deployed. The selective nature of certain interventions, the varying thresholds applied across administrations, and the limited effectiveness of institutional restraints collectively raise important concerns regarding executive arbitrariness and constitutional accountability. Consequently, the legitimacy of emergency powers cannot rest solely on constitutional proclamation, but must equally depend on fidelity to democratic principles, proportionality, and constitutional restraint. Finally, while emergency

powers remain necessary for the survival and protection of the State, their exercise must not become a pathway for political expediency or executive overreach. There is therefore a continuing need for stronger institutional safeguards, more rigorous legislative oversight, and a more assertive judicial role in ensuring that emergency powers are exercised strictly within constitutional boundaries. Without such safeguards, the constitutional exception risks becoming an instrument of political convenience, thereby undermining the very democratic order it was intended to protect.