

DECLARATION OF STATE OF EMERGENCY VIS-A-VIS THE SUSPENSION OF THE GOVERNOR OF A STATE: THE POSITION OF HIS CONSTITUTIONAL IMMUNITY

***Dr Okpako Omudhowo**
****Mr Akpomedae Emejoror Godwin**

Abstract

Nigeria is a Federation comprising of thirty-six States and a Federal Capital Territory which operates a constitutional democracy. The Constitution of Nigeria has a supreme status and provides for the office of the Governor who is the Chief Executive of each of the States. The Constitution also specifies not only his tenure of office and the circumstances under which he can cease to hold office but also grants him immunity through which no civil or criminal proceedings shall be instituted or continued against him during his period of office. Regrettably, the concept of “suspension” which is not among the circumstances under which a Governor of a State can cease to hold office has become closely associated with the declaration of a state of emergency in Nigeria. During a state of emergency, a suspended Governor goes into limbo and he is not certain as to what to do next because he waits for a further decision to be taken on him by the authority that suspended him. The fundamental questions that come to mind are, “what is the status of his Constitutional immunity whilst on suspension? Does his suspension through which he no longer functions as the Governor of a State strip him of his immunity? Although there are few judicial authorities in respect of declaration of a state of emergency and the removal of a State Governor through suspension in Nigeria, it warrants discourse on the vexed issue and answers the posers through the examination of the Constitution of the Federal Republic of Nigeria, and some secondary source materials.

Keywords: Declaration, Emergency, Immunity, Proclamation, Suspension.

1. Introduction

Currently, the Federation of Nigeria is made up of a Federal Capital Territory and thirty-six States. Nigeria operates a Constitutional democracy wherein, the Constitution¹ is supreme.² Whilst the office of a President³ who shall be the Head of State, the Chief Executive of the Federation and Commander in Chief of the Armed Forces of the Federation was established for the Federation, the office of a Governor who shall be the Chief Executive of the State was established for the State.⁴

* PhD (Law), LL.M, Ekpoma; LL.B (Hons.), Ibadan; BL, Lagos; M.Sc. (Econs), B.Sc. (Hons.) Benin. Lecturer, Faculty of Law, Benson Idahosa University, Benin City, Edo State. GSM: 08163040404; E-mail: ogomedede@gmail.com and Ookpako@biu.edu.ng.

** LL.M, LL.B (Hons), Oleh; BL, Yola; PGDE, Uniben; BSc. (Hons), Abraka; TRCN, Abuja; Lecturer, College of Law, Western Delta University, Oghara, Delta State. GSM: 08033488270; E-mail: emejoror@gmail.com

¹ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

² *ibid.*, s. 1(1) and (3).

³ *ibid.*, s. 130; and (n 1).

⁴ *ibid.*, s. 176.

In view of the enormous responsibilities attached to those offices, occupiers are granted immunity in the Constitution through which no civil or criminal proceedings shall be instituted or continued against them during the period of their tenure of office⁵ except where such civil proceedings are in their official capacity and where they are nominal parties in such civil and criminal proceedings.⁶ The immunity also covers the non-application for and issuance of any court process which is capable of requiring or compelling the appearance⁷ of all the persons who are entitled to the aforementioned Constitutional immunity.⁸ Again, all the persons on whom the constitutional immunity has been bestowed including the Governor of a State shall not be arrested or imprisoned while their tenure of office subsists either pursuant to a court process or otherwise in Nigeria.⁹

Even as the Constitution grants immunity to some office holders including the Governors of the States, it recognises that there may be some very difficult times in the life of the country when the President may need some extraordinary powers to bring certain situations under control. Consequently, the President was empowered to issue a proclamation of a state of emergency through an instrument published in the official gazette of the Government of the Federation.¹⁰ Among others, the constitution identified the situations under which the President shall have power to issue a proclamation of a state of emergency to include: when the Federation is at war, when the Federation is in imminent danger of invasion or involvement in a state of war, when there is actual breakdown of public order and public safety, when there is the occurrence of any disaster or natural calamity amongst others.¹¹

The provisions for the declaration of a state of emergency in the constitution are intended to avail the President with the power to take certain overriding or extraordinary measures to restore calm, public order and protect lives and property in the process of which a limited violation of individual liberties such as freedom of movement may be allowed. The removal through suspension of a Governor and the appointment of a “Sole Administrator” may not have been contemplated by the constitution else, provisions relating to them would have been incorporated in it. It is germane to remark here that the Constitution empowered the President not only to declare a state of emergency on a State or constituent part of Nigeria but also on the entire Federation when the need arises.¹²

Since independence in Nigeria, rightly or wrongly, democratically elected Governors have been removed from office a number of times albeit temporarily through the concept of “suspension”. Although, the constitution provides that the Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of the constitution,¹³ we are not examining the propriety or otherwise of the suspension of elected Governors and the appointment of Sole Administrators in this article rather, this article examines the status or position of the immunity of a suspended Governor under the Constitution of the Federal Republic of Nigeria, 1999 as amended.

⁵ *ibid.*, s. 308(1)(a).

⁶ *ibid.*, s. 308(2).

⁷ *ibid.*, s. 308(1)(c).

⁸ *ibid.*, s. 308(3).

⁹ *ibid.*, s. 308(1)(b) (note: immunity does not extend outside Nigeria).

¹⁰ *ibid.*, s. 305(1).

¹¹ *ibid.*, s. 305(3).

¹² See section 305(1), (2) and (6) (b) of the Constitution.

¹³Section 1(2) of the 1999 Nigerian Constitution.

2. Clarification of Terms

A proper understanding of this discourse requires the clarification of some terms as follows:

- a. **Emergency:** This is a sudden serious and dangerous event or situation which needs immediate action to deal with it.¹⁴
- b. **Emergency Power:** This refers to the power of the Crown or the President to make proclamation and declare a state of emergency; and make regulations to facilitate emergency operations to gain or regain control.
- c. **Immunity:** The word, “immunity” depends on the context in which it is used. It refers to a state or condition of being protected or exempted from something. According to Brayan A. Garner,¹⁵ it is any exemption from duty, liability or service of process; especially, an exemption granted to a public official. It is essentially exemption from legal proceedings.¹⁶
- d. **State of Emergency:** This is a situation in which a government is empowered to put through policies that would normally not be permitted, for the safety and protection of its citizens.¹⁷ It is essentially a situation of national danger such as when there is civil unrest, armed conflict, medical pandemic or other biosecurity risk or natural disaster such as earthquake in which a government suspends normal constitutional procedures in order to regain control. Actions taken to address such crisis often involve the temporary suspension of normal operations or the imposition of restrictions such as, lockdown, curfews, or evacuation orders.
- e. **Suspension:** The *Black's Law Dictionary* defines suspension as the act of officially removing somebody from his job, school, team, etcetera, for a period of time, usually as a punishment.¹⁸

3. Governor's Constitutional Immunity

Immunity simply connotes a state of being shielded from prosecution. Where such immunity is the creation or derivation of the Constitution, it is known as “Constitutional Immunity”. In Nigeria, the Governor of a State and the Deputy Governor of a State are among the public office holders that are granted constitutional immunity.¹⁹ The enormous responsibilities attached to the office of the Governor may have caused the granting of immunity by the Constitution with a view of shielding the occupier of that office from prosecution while the tenure of his office lasts. As observed by some scholars:²⁰

Although the marginal note to section 308 talks of restrictions of legal proceeding, the intendment of the provisions therein is to shield and immune, albeit temporary, certain public office holders from legal actions, civil or criminal, for as long as their tenure subsists.

The Supreme Court also has the same view in *Tinubu v I.M.B Securities Plc.*,²¹ when it said that:

¹⁴ A. S. Hornby, *Oxford Advanced Learner's Dictionary of Current English*, 7th edition, (Oxford, Oxford University Press, 2005), p. 477.

¹⁵ *Op.cit.*, @ p. 765.

¹⁶ See Sheila Bone, *Osborn's Concise Law Dictionary*, 9th edition, (London, Sweet & Maxwell, 2001), p. 198.

¹⁷ <https://en.wikipedia.org/wiki/State-of-emergency>. Accessed on 19/04/2025 @ 2010 hours.

¹⁸ *Op.cit.*, @ p. 1492.

¹⁹ Section 308(3) of the 1999 Constitution of Nigeria.

²⁰ Bamgbose, Y., Akinbiyi, S., *Criminal Law in Nigeria*, (Ibadan, Evan, 2015), p. 311.

²¹ (2001) 16 NWLR (Pt.740) 670.

Section 308(a) of the 1999 Constitution grants the incumbent of the relevant office immunity, which forbids the courts from considering any civil or criminal action regarding any claim or remedy against the individual to whom that section of the Constitution applies while he is in office.

In Nigeria, apart from immunity from prosecution, the immunity clause in the constitution also covers the non-application for and the issuance of any court process which is capable of requiring or compelling the appearance of the State Governor.²² Consequently, a State Governor shall not be arrested or imprisoned while his tenure of office subsists either pursuant to a court process or otherwise in Nigeria.²³

It is crucial to note that, even though the constitutional immunity of state governors is the focus of this article, holders of the positions of president, vice president, and deputy governor of a state in Nigeria are also entitled to constitutional immunity for the duration of their tenure which is necessary to carry out their duties.²⁴

It is evident from the Constitution's provisions that a Nigerian governor enjoys immunity and cannot be the subject of any (i) civil or criminal proceedings while in office, and (ii) if he was the subject of a civil or criminal proceeding prior to taking office, that proceeding will cease as soon as he takes office and will not continue during his term in office.²⁵

However, it should be noted that a state governor cannot be considered "untouchable" despite having constitutional immunity. In addition to the fact that his term will not last forever, section 52(1) of the Independent Corrupt Practices and Other Related Offences Commission Act has made it possible to look into claims of corruption against any Nigerian, including the president, vice president, state governor, and deputy governor of a state, as part of the fight against corruption in Nigeria.

It is thus settled by statutory provisions that the constitutional immunity bestowed on a State Governor in Nigeria has the following features:

1. No criminal or civil action will be brought against him while he is in office.
2. No civil or criminal proceeding that is pending against the Governor of a State in any court shall continue.
3. No application for a court process requiring or compelling his appearance shall be made.
4. No court process requiring or compelling his appearance shall be issued.
5. In Nigeria, no one holding the position of governor of a state may be arrested while in office.
6. In Nigeria, no individual holding the position of governor of a state may be imprisoned while serving in such capacity.
7. The immunity of the Governor of a State does not prevent covert investigations being made on him once there is sufficient cause to do so arising from allegations of

²² See section 308(1) (c) of the Nigerian Constitution of 1999.

²³ *ibid* See paragraph (b).

²⁴ *ibid*, in subsection 3.

²⁵ Section 308 of the Constitution.

corruption or anything purporting to contravene the provisions of the Anti-Corruption Act, 2000.

It is pertinent to remark here that the Governor of a State in Nigeria can enjoy all the above immunities only within Nigeria because his immunity in Nigeria will not cover him once he is outside the shores of Nigeria.

4. Legal Framework for the Declaration of a State of Emergency

An emergency is not a typical circumstance. It entails limiting residents' civil liberties, suspending regular law and order, and stepping up security measures. It is important to note that without a legal framework to direct the declaration of a state of emergency by outlining the procedures to be followed and identifying the circumstances that may allow the emergency rule to be activated, the extraordinary measures that could be taken and intended to restore normalcy could be abused.

In Nigeria, the legal frameworks for the declaration of a state of emergency are contained in the Constitution.²⁶ The ability to declare a state of emergency in any state or region of the Federation is noteworthy. The President of the Federal Republic of Nigeria is the authority that can declare a state of emergency and the situations include,²⁷ war, the country being in imminent danger of evasion, actual breakdown or clear and present danger of actual breakdown of public order and public safety to such extent as to require extraordinary measures to restore peace and security, natural disaster, and a request to do so from a Governor of a State in Nigeria where such extraordinary circumstances are within his State.

A state of emergency shall elapse after a period of six months although the National Assembly may by a resolution grant extension of the period for the proclamation to remain in force from time to time for a further period of six months.²⁸ Where any of the above situations that can necessitate the declaration of a state of emergency on the Federation or any constituent part of it is present, the Constitution authorises the President to publish in the Official Gazette of the Federation an instrument wherein a proclamation of a state of emergency in the Federation or any part of the Federation is issued.²⁹ The ability to declare a state of emergency in any state or region of the Federation, as well as throughout the Federation, is noteworthy. The president of the Federal Republic of Nigeria has the power to declare a state of emergency in the following circumstances: war, an impending threat to the nation's safety or order, a natural disaster, or a breakdown in public order and safety that necessitates extraordinary measures to restore peace and security. A governor of a Nigerian state may also request the declaration of a state of emergency if such extraordinary circumstances exist within his state.³⁰

It is important to remark that the President shall not issue a proclamation of a state of emergency in any State where the situation necessitating such proclamation and emergency is within the boundaries of that particular State without request for a declaration of a state of emergency from the State Governor unless the State Governor fails within reasonable time to make a request to the President to issue such proclamation.³¹ However, where the request for the

²⁶ The 1999 Constitution of Nigeria in section 305.

²⁷ *Ibid.*, in subsection 3.

²⁸ *ibid.*, subsection 6(c).

²⁹ *ibid.*, subsection 1.

³⁰ *ibid.*, subsection 2.

³¹ *ibid.*, subsection 5.

declaration of a state of emergency is coming from the Governor of a State of the Federation, the conditions precedent are that:

- (i) The Governor shall obtain approval from the State House of Assembly through a resolution supported by two-third majority of the members of the House of Assembly of the State.³²
- (ii) The situation requiring extraordinary measures as specified in subsection 3(c), (d) and (e) of section 305 of the Constitution of the Federal Republic of Nigeria, 1999 does not extend beyond the boundaries of the State.³³

A proclamation made by the President pursuant to section 305 of the Federal Republic of Nigeria, 1999 Constitution, as amended, will stay in effect until one of the following circumstances takes place:³⁴ (i) it is revoked by the President through an instrument published in the official gazette of the Government of the Federation;³⁵ (ii) no resolution made by two-third majority of the Houses of the National Assembly approving it within two days where the National Assembly is in session and within ten days where the National Assembly is not in session;³⁶ after a period of six months has elapsed since it came to force;³⁷ and when revoked by a simple majority of all members of the National Assembly.³⁸

5. The Historical Perspective of the Declaration of State of Emergency in Nigeria

Nigeria has declared several states of emergency in various regions since gaining political independence from Great Britain in 1960 and continuing to this day in 2025. Following the severe political crisis that consumed the Action Group, then-prime minister Tafawa Balewa announced a state of emergency in the Western Region of Nigeria on October 26, 1962, marking the first time that Nigeria had ever experienced such a declaration. An Administrator, Dr Moses Majekodunmi was appointed to replace the Premier of the Western Region.³⁹ The second declaration of a state of emergency took place on May 18, 2004, when the Federal Government of Nigeria, led by President Olusegun Obasanjo, imposed a state of emergency on Plateau State because of ongoing bloodshed between the state's Christian and Muslim communities that had been going on for more than three years. After Governor Joshua Dariye was suspended, retired Major-General Chris Alli was named Administrator in his stead. Following the contentious impeachment of Governor Ayo Fayose, widespread unrest and a breakdown of law and order, the Federal Government of Nigeria led by the same individual, proclaimed a state of emergency in Ekiti State on October 19, 2006, approximately two years later. Adetunji Olurin, a retired Brigadier-General, was named the State Administrator.⁴⁰

Similar to this, President Goodluck Ebele Jonathan's Federal Government of Nigeria twice proclaimed a state of emergency. First, he responded to early Boko Haram attacks and inter-communal strife by imposing a state of emergency on some Local Government Areas in Borno

³² *ibid.* subsection 4.

³³ *ibid.*.

³⁴ *ibid.*, in subsection 6.

³⁵ *ibid.*. paragraph a.

³⁶ *ibid.*. paragraph b.

³⁷ *ibid.*. paragraph c.

³⁸ *ibid.*, paragraph d.

³⁹ <https://tribuneonlineng.com> Brief History of State of Emergency in Nigeria. Accessed on 20/4/2025 at 1200 hours.

⁴⁰ <https://www.channelstv.com> Timeline of Emergency Rule in Nigeria since 1999. Accessed: 15/4/2025 at 0300 hours.

and Plateau States on December 31, 2011. On May 14, 2013, in response to severe attacks, bombings, kidnappings, and kidnapping of schoolchildren, notably the Chibok School girls by Boko Haram and other terrorist organizations, he proclaimed a second state of emergency in the states of Borno, Yobe, and Adamawa. However, unlike all the previous “state of emergency” that was declared before Dr Goodluck Ebele Jonathan became the President of Nigeria, the democratic structures in the states were left. Thus, even when there was a state of emergency in Borno, Yobe and Adamawa States, Governors Kashim Shettima, Ibrahim Gaidam, and Murtala Nyako respectively maintained their offices and were not suspended.⁴¹

Again, the Federal Government of Nigeria under the leadership of President Bola Ahmed Tinubu announced the declaration of a state of emergency on Rivers State on the 18th day of March, 2025 and was endorsed by both houses of the National Assembly on the 20th day of March, 2025. Following political tension that caused a rift between the political factions of the current governor, Siminalayi Fubara, and his immediate predecessor, Nyesom Wike, who is the Minister of the Federal Capital Territory, Abuja, the state of emergency was declared in Rivers State due to the intensifying tension and breakdown of law and order in the state. The state of emergency resulted in a six-month suspension of the state's governor, deputy governor, and other elected officials. In the place of Governor Siminalayi Fubara, retired Vice Admiral Ibokette Ibas was appointed as the Administrator.⁴²

6. Suspension of a Governor of a State in Nigeria

According to the provisions of the Federal Republic of Nigeria's Constitution as amended, suspension from office is not one of the grounds by which a governor of a state in Nigeria may be removed from office, even though the term has been used to remove some elected governors from office, albeit temporarily. The Constitution of the Federal Republic of Nigeria, 1999, as amended, does not mention the removal of a state governor, regardless of how short the suspension may be, or the declaration of a state of emergency, which allows the president to use extraordinary power. As a result, a governor's term in office would end as defined by the Federal Republic of Nigeria's 1999 Constitution after he is elected to a fixed term.

It is perhaps pertinent to state that by the Constitution,⁴³ the Governor has a “period of office” which covers a specific duration of four years and it starts from the date an elected Governor takes the Oath of Allegiance and oath of office.⁴⁴ This period of office is however not absolute because the Constitution recognises situations or circumstances whereby a Governor can cease to hold office even within the specified duration of four years. Such circumstances as provided in the Constitution of the Federal Republic of Nigeria, 1999, as amended include:

1. When the Governor’s tenure of office expires and his successor takes oath of office;⁴⁵
2. When he dies whilst holding the office;⁴⁶
3. When he resigns from office;⁴⁷

⁴¹ <https://pmnewsnigeria.com> Nigeria’s History of Crisis: a Timeline of State of Emergency. Accessed on 10/4/2025 at 0634 hours.

⁴² Statehouse.gov.ng President Tinubu Declares State of Emergency in Rivers State. Accessed: 22/4/2025 at 1439 hours.

⁴³ The Nigerian 1999 Constitution.

⁴⁴ *ibid.*, in section 180(2).

⁴⁵ *ibid.*. Section 180(1) (a).

⁴⁶ *ibid.*, Section 180(1) (b).

⁴⁷ *ibid.*, Section 180(1) (c).

4. When he ceases to hold office as a result of removal for gross misconduct in accordance with the provisions of the Constitution;⁴⁸ and
5. When he is permanently incapacitated.⁴⁹

Combining the provisions of sections 180 and 308 of the Constitution of the Federal Republic of Nigeria, one can say without any fear of contradiction with respect to a Governor of a State in Nigeria as follows:

1. He has Constitutional immunity for his period of office which is four years beyond which it lapses.
2. His Constitutional immunity remains with him until his death if he dies while in office within the four years.
3. His Constitutional immunity remains with him until the date of his resignation takes effect within the four years which ought to be his period of office.
4. His Constitutional immunity remains with him until he is constitutionally and validly removed from office within his four years period of office.

7. Conclusion

Arising from the foregoing, it is of utmost importance to reiterate that the Constitution of Nigeria is supreme and any law that is inconsistent with it is void to the extent of its inconsistency. The Constitution has specified the ways through which a Governor can cease to hold his office which are: the expiration of his tenure, death, resignation, removal for gross misconduct in accordance with the provisions of the Constitution and permanent incapacitation. The occurrence of any of the above situations signifies the end of the Constitutional immunity of the Governor of a State in Nigeria.

Where a Governor is removed from office through “suspension” irrespective of the duration, in the “eyes” of the Constitution of the Federal Republic of Nigeria, 1999 as amended, he has not been removed from or ceased to hold office. Consequently, his Constitutional immunity is still intact and will remain with him until he is validly and constitutionally removed from office. It follows that while the suspension lasts, the Governor of a State cannot be lawfully arrested, prosecuted or imprisoned in Nigeria. Also, no court process would be applied for or issued against him that could require or compel his appearance in any court in Nigeria.

8. Recommendations

In view of the foregoing expositions, it is recommended that the process of the removal of a Governor of a State in Nigeria should be outside the gray area through the use of concepts that are foreign or unknown to the Constitution of the Federal Republic of Nigeria. The removal from or cessation of a Governor of a State in Nigeria to hold office must be in line with the dictates of the Constitution. This will give credence to the supremacy of our grund norm and there will be no room for the misconception or interpretation of the action of the authorities that are saddled with such responsibilities.

⁴⁸ *ibid.*, Sections 180(1) (d) and 188.

⁴⁹ *ibid.*, Section 189.