

Derogation of Human Rights During Proclamation of State of Emergency Under The 1999 Nigerian Constitution

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Abstract

The protection of fundamental human rights is a major requirement of constitutional democracy in Nigeria. Nonetheless, extraordinary circumstances such as war, insurgency, or widespread breakdown of public order may necessitate the temporary restriction of certain rights. The aim of this paper is to discuss the derogation of human rights during the proclamation of State of emergency under the Nigerian Constitution. It is the argument of the paper that the entire system of the legal regulation of emergency is aimed at providing measures to protect and assure the human rights and citizens' rights when they are in one or more localities or the whole country faced with war, imminent danger of invasion, actual breakdown of public order and public safety threatening the lives, health and property of the citizens. It further argues that although emergency powers are necessary for maintaining national security and public order, their existence must be subject to constitutional limits, legislative oversight and judicial review. The paper reveals that the constitutional provisions abrogating or restricting human rights and civil rights in certain cases relate to national defence, national security, social order and safety, social morality and community health. The paper adopts the doctrinal methodology. In applying this methodology, the paper draws upon primary sources, including the Constitution of the Federal Republic of Nigeria 1999 (as amended), particularly sections 305 and 45, the fundamental rights provisions contained in Chapter IV, judicial decisions of Nigerian courts, and relevant international instruments such as the International Covenant on Civil and Political Rights 1966 and the African Charter on Human and Peoples' Rights 1981. These are complemented by secondary sources comprising scholarly monographs, journal articles, and commentaries that engage with the theoretical foundations of human rights and the jurisprudence of emergency powers. It is the conclusion of the paper that emergency constitutional provisions are necessary because they enable the state to respond effectively to crises while keeping the exercise of emergency powers within the rule of law and human rights framework. Derogation of human rights during a state of emergency in Nigeria is constitutionally limited but strictly regulated. It recommends that the provisions governing emergency powers under the Nigerian Constitution should be strengthened to clearly define the scope and limits of derogation of fundamental rights during a state of emergency.

Keywords: Derogation, Constitution, Human rights, Proclamation, State of emergency

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1. Introduction

A state of emergency is a situation in which the government is empowered to be able to put through policies that will normally not be permitted to do, for the safety and protection of their citizens. In Nigeria, the President shall have power to issue a proclamation of a state of emergency under certain circumstances such as war, actual breakdown of public order and public safety, natural calamity respectively (Constitution of the Federal Republic of Nigeria, 1999, s.305(3)). In Nigeria, where there exists public emergencies, the constitutional rights and democratic constitutional order can be obstacles to be derogated. Hence, the Constitution includes emergency provisions that allow the authorities to take actions necessary to safeguard national security, and therefore may permit the government to limit or suspend certain constitutional rights, and to set aside some institutional checks and balances so as to concentrate decision-making power in the central authority.

It is thus commonly acknowledged that restriction or limitation on a certain human right means that the state does not allow beneficiaries of this right to exercise it at the absolute level (Barak, 2012, p.102). A constitutional right is perceived as a legal principle, accordingly, its realization targeted at the greatest extent possible is acknowledged and applied depending on specific circumstances (Alexy, 2002, pp.47-49). The level of protection of constitutional rights is often limited. If the state does not create sub constitutional norms to limit the scope of application of a certain constitutional right, its beneficiaries can exercise it at the absolute level in principle, in other words, it is not limited.

In Nigeria, the majority of constitutional rights are non-absolute, which means that they are implicitly targeted at an ideal standard. Nevertheless, in fact, every state must use sub constitutional norms to place a particular

limitation on the realization of those rights. Constitutional rights limitation at a particular level is generally a democratic state's regular needs under normal circumstances. Thus, sub constitutional legal documents often set out stable long-term limitations on relative rights (for instance, the setting of the minimum age for marriage).

Under the Nigerian Constitution, in the declaration of state emergency, a need for special constitutional rights limitation emerges, which results in the state's derogation from rights. Thus, derogation from rights is a state jurisdiction prescribed by law, allowing the suspension of certain individual rights under special circumstances such as the state of emergency or war; (Gross and N'Aolin, 2006, p.257).

The declaration of emergency and derogation of human rights is one of the clauses found in International Covenant on Civil and Political Rights (ICCPR) article 4, the European Convention on Human Rights (ECHR) article 15 and the American Convention on Human Rights (ACHR) article 27. State parties to these instruments may take measures derogating from their obligations under the instruments in time of public emergencies. The situation that activates the power of the state to derogate from its obligations under human rights, in the case of the ICCPR and the ECHR is a threat to the life of the nation, in the case of the ACHR is a threat to the independence or security of the state (Jayawickrama, 2002, p.202).

The protection of fundamental human rights is a central principle of constitutional democracy. However, extraordinary circumstances such as war, terrorism, or widespread civil disorder may require government to temporarily limit certain rights in Nigeria. The legal framework for the derogation of human rights is provided under section 305 of the 1999 Constitution (as amended). While the 1999 Constitution recognizes the necessity of emergency powers, it also establishes safeguards to prevent abuse of those powers and to preserve the rule of law.

The aim of this paper is to discuss the derogation of human rights during proclamation of state of emergency under the Nigerian constitution and in achieving this, the paper is divided into six parts. Part 1 is the introduction. Part 2 deals with the clarifications of concept. Part 3 is the procedure for declaration of state of emergency in Nigeria. Part 4 concerns with the protection of human rights during declaration of human rights in international human rights. Part 5 examines the derogation of human rights during the proclamation of state of emergency in Nigeria while part 6 is the conclusion.

2. Clarification of concepts

2.1 Concept of Human Rights

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involves respect for, and protection and fulfilment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal, in other words, they belong inherently to all human beings and are interdependent and indivisible (OHCHR, n.d.). In *Hallam Statmak v. Commissioner of Police & Anor*, the Court of Appeal held that human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country. According to Ortuanya (Ortuanya, 2022, p.10), the moral doctrine of human rights aims at identifying the fundamental prerequisites for each human being living a morally good life. In the words of Cranston, human rights are forms of moral rights and they differ from other rights in being the rights of all human beings at all times and in all situations. Buttressing this point, Nwabueze, (Nwabueze, 2004, p.809) submits that human rights are rights attaching to man as a man because of his humanity. Similarly, Ikhariale, (Ikhariale, 1995, p.5) sees human rights as sacred rights inborn in man because they are implanted in man by a divine nature and therefore, positive law can neither establish nor abolish them, but only protect them. The Black's Law Dictionary in the same way defines human rights as the freedoms, immunities, and benefits that. According to modern values (esp. at an international level), all human beings, should be able to claim as a matter of right in the society in which they live (Garner, 2014, p.889).

This concept of universalism of human right is different from the concept of relativism. The adherents of relativism do not see human rights as universal. According to them, it does not correspond to common sense that human rights are seen as the same everywhere. The concept of relativism was introduced by, among others, the Sophist Protagoras. He rejected objective truth about universalism of human rights and was quoted by Plato thus: "The way things appear to me, in that way, they exist for me and the way things appear to you, in that way, they exist to you" (UKEssays, n.d.). The concept of universalism has received attacks from many critics on so many fronts by way of appraisals and criticism. According to Wilfred in his work, *Heiti, Nigeria and Human Rights*,

he describes it as the ‘Charge against Universalism’. One of these charges is that the Universal Declaration of Human Rights (UDHR) on which the human rights regime has been erected, is an ethnocentric document and a form of cultural imperialism as it failed to take social and cultural differences into consideration. According to the proponents of this view, the UDHR is the product of dominant western views, which are unknown to the most African and Asian countries (UKEssays, n.d.).

The human rights law of Nigeria is contained, inter alia, in two major documents. These are the 1999 Constitution the Federal Republic of Nigeria and the African Charter on Human and Peoples’ Rights. Thus, in the words of Denon West, JCA in *Olutide & Ors v. Hamzat & Ors* (Ojukwu v. Yar’adua, 2016), the erudite Justice posited in his wisdom that human rights are moral principles or norms that describe certain standards of human behaviour, and are regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable fundamental rights. These rights are based on the belief that everyone is equal and should have the same rights and opportunities. Embedded in these rights, are the abilities to understand another person’s feelings, experience and the rule of law (Ortuanya, 2022, p.12). According to the erudite Justice of the Supreme Court, Hon. Justice C.C. Nweze (Nweze, 2003), the concept of human rights has acquired new elements thereby moving its essence beyond the original notion. He further stated that the pivotal concern of human rights now harps on the full development (empowerment) of each individual human being in relation to the threats to human dignity: poverty and hunger, underdevelopment, corruption, impunity etc (Nweze, 2003).

In general terms, Human Rights are entitlements due to every man, woman and child because they are human. In other words, certain inherent and inalienable rights are due to human beings simply of being human. Human rights as defined by Donnelly (Donnelly, 2013) who referred to it as “the rights of man”, as “literally the rights that one has because one is human”. As pointed out by Bantekas and Oette, a lot of people and groups use human rights in a loose way to mean rights available to every person because they are human (Bantekas and Oette, 2016). However, as loosely as that understanding might be, it actually reflects on a basic level, the essence of the two words that came together to form the term. Human refers to everyone on earth irrespective of their age, ethnicity, nationality, ideology, orientation, sex or creed. Rights are usually legally enforceable in character and application. Human rights are therefore privileges and opportunities which a person is entitled to by the simple virtue of the fact that he or she is a human being (Nweke, n.d.). Article 4 of the African Charter on Human and Peoples’ Rights states that “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.” According to the Charter of the United Nations, Article 55 (c), the Universal Declaration of Human Rights, Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by state agents that interfere with fundamental freedom, entitlements and human dignity. The full spectrum of human rights involve respect for, and protection and fulfilment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal, in other words, they belong inherently to all human beings and are independent and indivisible.

However, the definition of Human Rights is more technical and “to take the meaning of human rights for granted, or simply to refer to formulas denoting rights that we have by virtue of being human, would ignore the controversy surrounding their foundations and validity.” (Bantekas and Oette, 2016)

The concept of human rights derives from human dignity and inherent worth of a human being. Therefore, it is suggested that whatever adds to human dignity and the fundamental freedom of humans is a human right. In other words, Human Rights are what each human being is entitled to as human being to live a dignified, secure life of one’s choice. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. This assumption is derived from the natural rights theory according to which the right to liberty and equality is man’s birth right and cannot be alienated; and that because man is a rational and moral being he is different from other creatures on earth and therefore entitled to certain rights and freedoms which other creatures may not enjoy.

The following are some salient features about the concept of human rights: (Bantekas and Oette, 2016)

- 1). Human rights are universal moral rights; they belong to everybody because they are human.
- 2). One of the guiding principles is that rights are available to all persons in the State irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status (Article 2 of the Universal Declaration of Human Rights).

3). They are universal in the sense that they transcend the national boundaries or ideologies. They are designed to be culturally and ideologically neutral; they are not specifically liberal or socialist, Eastern or Western, Northern, developed or developing, Christian, Buddhist, Islamic or Hindu.

4). The concept of human rights is comprehensive in its nature and content. It includes all categories of rights, such as civil and political, economic, social and cultural and even the newly emerging group or collective rights like, rights of minorities, indigenous peoples, right to development, right to peace and right to clean environment etc. The list of rights is expanding every day. More so, no catalogue elaborating specific human rights will ever be exhaustive or final. The content of human rights goes hand in hand with the state of moral consciousness, or civilization development at any given time in history.

5). Also, all rights and freedoms are invisible and interdependent. The UN does not rank them in any hierarchy or any order of priority. Though we may classify rights in different categories, they are all complementary to each other. They are also inter-related. No set of rights has priority over the other.

6). Rights are not absolute or unlimited. Some of them can be suspended during war or public emergency. Justifiable and reasonable limitations can be imposed on their exercise, which are necessary to protect national security, public order, public health or morals or the rights and freedoms of others (Article 2 of the Universal Declaration of Human Rights).

Despite the above, there is a disagreement among countries about which rights belong to the domain of human rights. The United States (US), for example, has signed but not ratified the Covenant on Economic, Social and Cultural Rights, while China signed but did not ratify the Covenant on Civil and Political Rights (UN, 2015). Furthermore, some rights that are included in actual human rights documents do not seem to be an urgent nature at all: the right to holiday with pay, which is included in the Covenant on Economic, Social and Cultural Rights is infamous (Gusman, 2015, p.3).

2.2 State of emergency

Recognizing a state of emergency or enclosure status originates from Roman times (Kretzmer, 2008). The term “*Justitium*”, is derived from the Latin term “*Juris*”, is a concept in which parliament can make a final decree (*Senatus Consultum Ultimum*) without having to discuss, approve and vote. Some scholars also regard it as an exception state, derived from the required state (Ayda and Klaus, 2019).

About the state of emergency in legal theory, Dicey says that in an emergency situation, public officials might find themselves compelled to act outside the law and Parliament might then indemnify them. But an Act of Indemnity does not make what the officials did legal, Parliament has ‘legalized illegality’; (Dyzenhaus, 2005, pp.65-89). Rather, it places them in a zone uncontrolled by law, a legal black hole, to use the correct term (Dyzenhaus, 2005, pp.65-89). His point is that political power can be exercised in a brute fashion, permitting those who wield it to break free of the constraints of constitutionality and legality.

State of emergency, also known as “state of exception”, “state of alarm” or “state of siege”, (DCAF, n.d.) is a long-standing concept and has been used in many legal systems under all political regimes. In the past, many countries use these concepts referring to certain statutes such as the state of war, and in these scenes, the priority of the executive may be prescribed by the laws. In the modern era, the state of emergency has been widely applied in countries around the world even in a peaceful context and has become a constitutional concept. After the World War II, most Constitutions have regulated executive priority in emergencies. In this scene, the executive branch instead of the legislature, on behalf of state apparatus may declare state of emergency, curfew or urgency in part, or the whole of the national territory.

A state of emergency allows the government to use special measures to deal with a special situation, but not all measures. Only the measures that are necessary in specific circumstances are legal. The validity of an emergency must be strictly considered. In response to a special situation, as required by the executive, one or more civil liberties may be suspended or restricted. Thus, declaring a state of emergency means suspending the enforcement of law, especially acts relating to human rights. However, the executive power to derogate citizens’ rights is not absolute. The exercise of the executive power must follow the principle corresponding to the declaration of a state of emergency that has been declared. Moreover, it should be noted that measures that are applied in a state of emergency cannot infringe on absolute rights such as right to life of the people, freedom from torture, freedom of thought, whether such rights are regulated in national law or not. There are only a handful of absolute rights, which are not derogated in any case. These include right to human dignity, freedom from torture, inhuman treatment or punishment, degrading treatment or punishment not recognized as absolute rights and cannot be restricted or derogated. Except for absolute rights, others may be limited or derogated at different levels.

The state of emergency is widely recognized both in legal science worldwide as well as in global political legal instruments. Typically, Article 4 of the International Covenant on Civil and Political Rights (ICCPR) (ICCPR, 1966) of 1966 states: “In the event of an emergency which threatens national survival and has been formally declared, Member States may take measures to restrict the rights stated in the Convention, in moderation due to the urgent need of the situation, provided that these measures are not inconsistent with the other obligations of that country resulted from international law and do not contain any racial discrimination, race, colour, gender, language, religion, or social background”. The exception to this provision is that certain rights cannot be restricted by the ICCPR 1966 such as the right to life, (Article 6 of the ICCPR) the right not to be tortured, treated and punished cruelly, (Article 7 of the ICCPR) the right not to be enslaved (Article 8 of the ICCPR).

The implementation of emergency power may easily lead the executive to abuse of power. To avoid such abuse, national Constitutions stipulate that the legislature must be convened not later than certain time after declaration of state of emergency for ratification, modification, or abolition of this declaration.

In view of the above, a state of emergency may be declared by government when and where necessary and this usually takes precedence over the rule of law. The Latin maxim *necessitas non habet legem*, meaning “necessity has no law”. It means that the violation of a law may be excused by necessity. However, this is not a rule of general application in international law but it may be applicable in some exceptional cases for reason of equity.

Derogation of human rights is a temporary deviation in the way of detracting from many of the rights provided in the law, international or domestic law (Steiner and Alston, 2000, p.144). Conde defines derogation as ‘the act of a state suspending the application and enjoyment of certain human rights upon its declaration of a state of public emergency affecting the life of a whole nation’. (Conde, 1999, pp.34-35). Derogation allows a state to take necessary measures to deal with the emergency without fear of violating human rights norms during the derogation period (Conde, 1999, pp.34-35). Derogation clause is ‘a treaty clause wherein it sets forth the right and criteria for a state to derogate from its obligations under a treaty’. (Conde, 1999, pp.34-35).

The rationale behind the derogation clause permitting the suspension of the exercise of certain rights is only for the sole and unique purpose of restoring normality and to guarantee the exercise of the most fundamental human rights (Association for the Prevention of Torture, n.d.). It entails the possibility of legally suspending the exercise of certain rights as the only means of guaranteeing the effective enjoyment of the most fundamental ones (University of Minnesota, n.d.). Nonetheless, it is exactly in states of emergency that human rights run a greater risk of being violated and require greater protection. Faced with an internal conflict or with terrorism states can be easily inclined to take harsh measures to overcome a crisis on the basis that the end justifies the means (University of Minnesota, n.d.). When a state declares, legalizes and limits freedoms, in the interest of the general well-being, it is only fulfilling its duty and is acceptable and legitimate. But when it intervenes to repress, restrain and limit freedoms for reasons of state, to protect itself according to the political tendency, which it represents, against an opponent, which it considers dangerous, to destroy fundamental freedom then it is against public interest. Then the laws, which it passes, are contrary to the principle of the international guarantees (University of Minnesota, n.d.). Derogation from rights is a special case of limitation on the rights. According to international human rights law, it is tied to a country’s state of emergency (UN Human Rights Committee, 2001). It includes limited and temporary measures in states of emergency under the ICCPR. While rights limitation measures are typically adopted at any time, derogation from rights is a type of rights limitation in temporary and limited manners in states of emergency. Thus, international human rights law has posed plenty of barriers to nations’ derogation from rights in comparison with ordinary rights limitation: derogation from rights is merely limited and temporary, international human rights law and national laws identify and interpret a large number of non-derogable rights and it is essential for derogation from constitutional rights in states of emergency to follow the principles of proportionality (Dat, 2023).

From the above, state of emergency has the following features:

- a. It must be a governmental declaration,
- b. It may suspend function performed by the executive, legislative and judicial arms of government of the affected region,
- c. It orders a particular government to implement urgency plans,
- d. It alerts citizens, and
- e. It may also suspend some rights and freedoms, even when guaranteed under Constitution.

3. Procedure for Declaration of State of Emergency in Nigeria

The procedure for the declaration of state of emergency in Nigeria is outlined under section 305 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It provides thus:

Section 305

- (1) Subject to the provisions of the 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 or arrange for a meeting of the House of which he is President or Speaker, as the case may be, to consider the situation and decide whether or not to pass a resolution approving the proclamation.
- (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;
 - c. There is actual breakdown of public order and public safety in the Federation nor any part thereof to such extent as to require extraordinary measures as 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 of 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.
- (4) The Governor of a State may, with the sanction of a resolution supported by two-thirds majority of the House of Assembly, request the President to issue a Proclamation of a state of emergency in the State when there is in existence within the State any of the situations specified in subsection (3) (c), (d) and (e) of this section and such situation does not extend beyond the boundaries of the State.
- (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 make a request to the President to issue such Proclamation.
- (6) A Proclamation issued by the President under this section shall cease to have effect: -
 - a) If it is revoked by the President by instrument published in the Official Gazette of the Government of the Federation;
 - b) If it affects the Federation or any part thereof and within two days when the National Assembly is in session, or within ten days when the National Assembly is not in session, after its publication, there is no resolution supported by two-thirds majority of all the members of each House of the National Assembly approving the Proclamation;
 - c) After a period of six months has elapsed since it has been in force Provided that the National Assembly may, before the expiration of the period of six months aforesaid, extend the period of the Proclamation of the state of emergency to remain in force from time to time for a further period of six months by resolution passed in the like manner; or
 - d) At any time after the approval referred to in paragraph (b) or the extension referred to in paragraph (c) of this subsection, when each House of the National Assembly revokes the Proclamation by a simple majority of all the members of each House.

The issue that crystallizes from section 305 (6) (c) is whether the National Assembly will continue to renew the period of the emergency from time to time. The answer is in the affirmative, since the proviso to that section empowers the National Assembly to extend the period for another six months from time to time.

However, it is clear that neither the Governor nor the Local Government Chairman has the powers to declare a state of emergency. It is trite that the Governor can with the sanction of two-third majority of the House of Assembly requests the President to make such proclamations (Constitution of the Federal Republic of Nigeria,

1999, s.305(3)(g)). The situation in the United States is different as the State Governor or even the Mayor has powers to declare a state of emergency.

4. Protection of human rights during declaration of human rights in international human rights law

Under international human rights law, rights and freedoms may be suspended during a state of emergency depending on the severity of the emergency and a government's policies. However, government policy on public emergency must comply with the strict provision on derogation of rights set forth in Article 4 of International Covenant on Human Rights (ICCPR) and subsequently concretized in the General Comment No. 29; Article 4: Derogations during a State of Emergency, which was adopted by Human Rights Committee at the 1950th meeting on 24 July 2001 (UN, 2020).

Article 4 of ICCPR provides that:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

As emphasized by ICCPR, Article 4 of the ICCPR on the one hand allows for a State party unilaterally to derogate temporarily from a part of its obligations under the Covenant; on the other hand, subjects both this very measure of derogation, as well as its material consequences, to a specific regime of safeguards (UN Human Rights Committee, 2001, para. 1). And, the restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant (UN Human Rights Committee, 2001, para. 1). More importantly, the measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Before a State moves to invoke Article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency (UN Human Rights Committee, 2001, para. 2). That means, not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation (UN Human Rights Committee, 2001, para. 6). The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation (UN Human Rights Committee, 2001, para. 6).

The issue of derogation of human rights in the state of public emergency is also stipulated in regional human rights conventions. For example, Article 15 of European Convention on Human Rights (ECHR) and Article 27 of Inter-American Convention on Human Rights contain similar provisions to the Article 4 of ICCPR. Their overarching principles and approaches are largely the same, though some regional variations exist. However, among regional human rights instruments, only the African Charter on Human and Peoples' Rights does not provide for states of emergency nor the possibility of derogations being made. Instead, the Article 22 of the 1999 OAU Convention on the Prevention and Combating of Terrorism states that "nothing in this Convention shall be interpreted as derogating from the general principles of international law, in particular the principles of international humanitarian law, as well as the African Charter on Human and Peoples' Rights" (ACHPR). Article 22 is regarded to be a 'safeguard' clause to prevent states parties from invoking any provisions under the Convention to justify diluting or even violating any provisions under the Convention to justify the diluting or even violating human rights protections. Thus, it has been established by the ACHPR (the Commission) in the case of *Commission Nationale des Droits de l'Homme et des Libertés v. Chad* (*Commission Nationale case*) that a member State of the ACHPR cannot derogate human rights in case of emergencies (UN Human Rights Committee, 2001). Hence, the Commission's issue of whether it is tenable to conclude that a state facing a situation that endangers the nation, should not at all derogate from the provisions of the ACHPR.

In another case, *Media Rights Agenda and Others v. Nigeria* (Media Rights case), (*Media Rights Agenda and Others v. Nigeria*, 2000) the Commission confirmed its view of the prohibition of derogation under the ACHPR. In the case, the communication involved the issuance of several decrees, after the annulment of the Nigerian election of 12 June 1993, which violates fair trial, freedom of expression and other rights. These decrees proscribed the publication of magazines and the subsequent seizures of copies of magazines critical of the government's decisions and arrest of newspaper vendors selling such magazines. The government in response to the complaint stated that it is in the public interest that all newspaper providers or publishers should ensure registration of their enterprises, and that it is convinced that such registration fees are reasonable and justifiable in any democratic society. The Commission then noted that, "the African Charter does not contain a derogation clause and, therefore, limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies or special circumstances (*Media Rights Agenda and Others v. Nigeria*, 2000, para. 13).

Emergency clauses, which permit derogation of human rights in times of emergencies are found in most legal instruments. Most African states, especially Nigeria also encompass this clause in its Constitution. Although the level of compliance by states are questionable, Nigeria's Constitution include a list of non-derogable rights.

In addition to the Article 4 of ICCPR and the CCPR General Comment No. 29, the Paris Minimum Standards of Human Rights Norms in a State of Emergency, adopted by the International Law Association in 1984, is also used to governing states of emergency. These Paris Minimum Standards are designed to ensure that "even in situations where a bona fide declaration of a state of emergency has been made, the state concerned will refrain from suspending those basic human rights which are regarded as non-derogable"; (Lillich, 1985, pp.1072-1081). The Paris Minimum Standards provide that the courts should have the power and jurisdiction to decide (Lillich, 1985, pp.1072-1081).

The ICCPR, ECHR and even ACHR offer different accounts of the conditions that declared states of emergency. These instruments use vague formulations such as "threats to the life of the nation", provide insufficient guidance to state decision makers. Although the ECtHR has asserted that exigent circumstances must affect an entire national population to constitute a genuine "public emergency", state notices of derogation suggest that states believe localized instability within a particular region could also trigger a limited state of emergency (United Nations Treaty Collection, n.d.). Another approach to defining "public emergency" in the phrase "war or other public emergencies" in Article 15 of ECHR would seem to support the interpretation, that large scale terrorism or civil war affecting a large segment of the population might be regarded as justifying derogations. There is, however, one gander that the government or other power wishing to invoke the derogation clause might create a violent context (or atmosphere of violence) in an area to support its claim that an emergency threatening the life of the nation exists (Schreuer, n.d., p.123). In the Greek Case, the applicant governments pointed out that a revolutionary government (was established after the military coup) could hardly justify derogation by relying on an emergency which it had created itself (*The Greek Case*, 1969).

5. Abrogation of Human Rights During the Proclamation of State of Emergency in Nigeria

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) include emergency provision that allow a temporary deviation from normal constitutional safeguards. During the state of emergency normally involves suspending or restricting certain rights and liberties that are otherwise constitutionally protected. The declaration of the state of emergency has a direct effect on constitutional rights even without further legislative action.

As noted earlier, a state of emergency comes into play when there is crisis or conflict in any part of the federation. Hence, in a state of emergency, certain fundamental rights of citizens can be derogated for the purpose of achieving public safety and security. However, the proviso to section 45 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for non derogable rights. Section 45 provides as follows:

45 (1) nothing in sections 37, 38, 39, 40, and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society.

- a. In the interest of defence, public safety, public order, public morality or public health; or
- b. For the purpose of protecting the rights and freedom of other persons

2. An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.

3. Provided that nothing in this section shall authorize any derogation from the provisions of section 33 of this Constitution, except in respect of death resulting from acts of war or authorize any derogation from the provisions of section 36 (8) of this Constitution.

From the above, in the exercise of such powers, states have to show that such derogation is necessitated by the exigencies of the situation and that such measures are consistent with other obligations the states have under international law. Accordingly, derogation is not automatic as it has to be subject to judicial review both domestically and internationally. In order to protect the foundation and essence of a state, a state of emergency is often proclaimed under existing laws to enable the government resort to measures of an exceptional and temporary nature (Jayawickrama, 2002).

Accordingly, derogation as a concept does not exist in vacuum. It is designed to be a temporary measure that comes with considerable political and legal costs, both domestically and internationally. It is often said that derogation provides a safety valve for the enormous pressures that governments face to repress individual liberties during times of crises. It is argued that derogations are rational response to domestic political uncertainty. More especially, derogation enables governments facing threats at home to buy time and legal breathing space to confront crises while at the same time, signaling to concerned domestic audiences that rights suspension is lawful (Aneke, 2021, p.106).

It important to note that sections 37, 38, 39, 40 and 41 referred to in section 45 (1) of the 1999 Constitution concerns the provisions relating to the right to private family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press and right to freedom of movement respectively. The import of section 45 (1) is that there can be no derogation from the very rights guaranteed under sections 37, 38, 39, 40 and 41 unless there is a law passed to that effect. Furthermore, such derogation has to be reasonably justified in a democratic society in the interest of justice, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons (Aneke, 2021, p.107).

It is interesting to note that the limit set out under section 45 does not envisage taking away the rights of citizens by dehumanizing, killing, causing grievous injury, torture, unlawful arrest, detention or terrific kinds of inhuman treatment. It is understood that in cases of emergency contemplated the Constitution, certain restrictions affecting movement of persons and property are allowed by the law to be carried out by security operatives, but such security measures are to be exercised reasonably in the interest of peace, public safety, morality and health of other citizens.

The Nigerian courts have made several pronouncements on the circumstances that can derogate rights of citizens or otherwise. In one of human rights actions, (*Federal Republic of Nigeria v. Daniels*, 2011) the court held that the rights of citizens guaranteed by the Constitution are qualified because they are protected by local laws, however, the rights are not absolute and may be restricted in circumstances of ensuring public interests, safety and morality. Similarly, in *Kalu v. Federal Republic of Nigeria*, (*Kalu v. Federal Republic of Nigeria*, 2012) the court held that human rights may not be infringed in the situation of emergency, public interests and safety.

In *Daniel Jagaba v. Nigerian Army and 2 Others*, (*Daniel Jagaba v. Nigerian Army*, 2011) the applicant seeks declaratory and damage reliefs against army officers that beat and wounded him seriously which led to his hospitalization. In defence of the suit, the respondents challenged the competence of the court to try the matter and relied on the provisions of a law that states as follows:

No action, prosecution, or other proceedings shall lie against a person subject to service law under this Act for an act done in pursuance or execution or intended execution of this Act or any regulation, service duty or authority or in respect of an alleged neglect or default in the execution of this Act, regulation, duty or authority, if it is done in aid to civil authority or in execution of military rules.

In deciding the matter, the court examined the foregoing provisions alongside other constitutional positions on the supremacy of the Constitution, jurisdiction of the courts in Nigeria to decide actions affecting rights and obligations and the extent circumstances when citizens' rights could be derogated. The court held that the provision of the Constitution is supreme law in Nigeria and therefore it is binding on all persons and authorities throughout the Federal Republic of Nigeria (Constitution of the Federal Republic of Nigeria, 1999, s.1(1)). Also, in the same vein, the constitutional provision which provides restrictions on human rights, creates a proviso that stipulates that "...but no such methods shall be taken in pursuance of any emergency save to the extent that those

measures are reasonably justifiable for the purpose of dealing with the situation that exists in that period of emergency” (Constitution of the Federal Republic of Nigeria, 1999, s.45(2)). Thus, no law exempts anybody or authority from liability where the citizens’ rights are violated unless the action is justifiable depending on the situation of every case. Additionally, international law limits the nation’s executive and the legislative right to not exceed its authority in a state of emergency by providing for the time and geographic scope specified in their notice of derogation.

It is usually difficult to ascertain what is reasonably justifiable in the interest of justice, public safety, public order, public morality or public health. Thus, Nwabueze expresses the opinion that in view of the opening phrase of the section, there is presumption of validity in favour of the validity of the law made under section 45, thereby placing the burden of proof on whoever asserts the contrary (Nwabueze, 1987). However, Ogbu counters that the onus of proving that a law is reasonably justifiable and that is made in the public interest lies on the authority that made the law, hence, whoever asserts must prove (Ogbu, 2013). Consequently, the burden of proof lies on whoever asserts that a law is not justifiable in a democratic society. This is because there is the presumption of the validity of laws made by the legislature, as the Constitution vests on the National Assembly the power to make laws for the peace, order and good government of the Federation (Constitution of the Federal Republic of Nigeria, 1999, s.4).

According to Aneke, in determining whether a law is reasonably justifiable, the test required for the restricting law is an objective one and the standards include:

- a. Whether there is a grave risk of harm to a larger section of the community;
- b. Whether the risk of harm is imminent and demanding grave urgency, and
- c. And this should not depend on the subjective view of opinion of the Governor of the State (Aneke, 2021, p.107).

From the above, the following are the derogable rights under the Nigerian Constitution:

- i. **Right to life.** By the provision of section 33 of the 1999 Constitution, every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of a court in respect of a criminal offence of which he has been found guilty in Nigeria. A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary;
 - a. For the defence of any person from unlawful violence or for the defence of property, (Zaman v. State, 2015)
 - b. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (Criminal Code, ss.271-273) or
 - c. For the purpose of suppressing a riot, insurrection or mutiny (Adiele Ndubuisi v. State, 2018).

Thus, it is a settled fact beyond conjecture that fundamental right to life is not absolute as held in *Usman & Ors v. IGP & Ors* (Usman & Ors v. IGP & Ors, 2018). They can be curtailed by the appropriate authorities where there are grounds for doing so.

The right to life is indeed the most fundamental of all rights, the absence of which makes all other rights unattainable. This right is recognized by all international regional and domestic or municipal treaties, conventions and laws. Article 3 of the UDHR, article 4 of the African Charter on Human and Peoples’ Rights, the International Covenant on Civil and Political Rights, Article 4 of the American Convention on Human Rights and Article 2 of the European Convention for the Prevention of Human Rights and Fundamental Freedoms, 1950 are among the global and regional international human rights instruments guaranteeing the right to life.

ii. Right to Personal Liberty

The right to personal; liberty of every individual is a derogable right under the 1999 Constitution of Nigeria. Hence, no person shall be deprived of such liberty. Personal liberty has been defined as the right not to be subjected to imprisonment, arrest and any other physical coercion in any other manner that does admit of legal justification (Akande, 2000, p.78). In Nigeria, this right is guaranteed under section 35 of the Constitution and the circumstances when this right can be derogated are listed in paragraphs a-e of Subsection 1. The section provides that:

- (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law: -

- (a) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) By reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;
- (c) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (d) In the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare.
- (e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community;
- (f) For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

Thus, the provisions of section 35 (1) as above do not guarantee absolute liberty to any person. This is well stated in the case of *Asari v. Federal Republic of Nigeria* (*Asari v. Federal Republic of Nigeria*, 2007). The Supreme Court refused bail, holding that where national security is threatened, individual rights may be restricted. The case is widely cited to justify derogation of liberty in the interest of national security.

However, the court must seek always to do justice at all cost, especially where it has to do with the liberty of an individual. The court must assume a more robust role in affairs of the fundamental rights of an individual (*Ezennaka v. C.O.P., Cross River State*, 2022). Also in *Williams v. Majekodunmi* (*Williams v. Majekodunmi*, 1962), the issue arose to whether the restriction on the applicant's liberty was lawful. The court held that the restriction was valid under the emergency regulations enacted during the state of emergency. The court thus established that fundamental rights may be restricted where emergency legislation authorizes such restrictions for public safety and order.

iii. Right to Privacy

The right to private and family life is guaranteed under section 37 of the Constitution. The section provides that: "the privacy of citizens, their homes, correspondence, telephone, conversations and telegraphic communications is hereby guaranteed and protected". This right is not absolute and can be infringed upon in the interest of public defence. In *Olmstead v. US*, (*Olmstead v. United States*, 1928) it was held that the evidence obtained by wiretapping of telephone in criminal prosecution is admissible. Also in Nigeria, it was held in the case of *Medical and Dental Practitioners Tribunal v. Emewulu*, (*Medical and Dental Practitioners Tribunal v. Emewulu*, 2001) that the decision of a person on religious or other grounds not to receive medical treatment in hospital is founded on this right.

The exceptions to the constitutional right to private and family life are:

1. Prevention of crime (*Thomas v. Sawkins*, 1935).
2. Investigation of crime (*Malone v. Commissioner of Police*, 1979).
3. Proper execution of a lawful search warrant, or other order (*Francome & Anor v. Mirror Group Newspapers Ltd*, 1984).
4. The public personality of the concerned individual.
5. The right of the public to know the truth. This is the public interest to know the truth compelling disclosure (*Woodward v. Hutchins*, 1977).
6. The restrictions or derogation under section 45 of the Constitution via any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedoms of other persons.

iv. Freedom of Thought, Conscience and Religion

The right to freedom of thought, conscience and religion is provided under section 38 (1-4) of the 1999 Constitution. This right is a derogable right under the Nigerian Constitution. In *Tega Esabunor & Anor v. Dr. Tunder Faweya & 4 Ors* (*Tega Esabunor & Anor v. Faweya & 4 Ors*, 2008) placing reliance on *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*, (*Medical and Dental Practitioners Disciplinary Tribunal*

v. Okonkwo, 2001) the court stated that the right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious beliefs. The limit of these freedoms in all cases are where they impinge on the right of others or where they put the welfare of society or public health in jeopardy. The sum total of the right which the individual has, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary.

iv. Freedom of Expression and the Press

While guaranteeing the freedom of expression and the press, the Nigerian Constitution, 1999 (as amended) is also quick to impose limitations. These limitations are provided in subsection (1) to section 39 (2). It provides thus:

- (2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination, ideas and opinions.
Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.
- (3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society-
 - (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or
 - (b) Imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

Section 45 (1) Nothing in section 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society

- (a) In the interest of defence, public safety, public order, public morality or public health or
- (b) For the purpose of protecting the rights and freedom of other persons.

In addition to the above, other laws or rules limiting freedom of expression and the press include:

1. The Constitution,
2. The Official Secrets Act,
3. Laws of sedition, as provided in the Criminal Code Act,
4. Defamation law,
5. Law of contempt,
6. Obscene and harmful publication laws,
7. Copyright law,
8. Advertising law, and
9. Ethics in Journalism, Code of Ethics of the Nigerian Press Organization and the laws and Rules making specific provisions (Oyeghe, 2023, p.191).

Government may therefore regulate communications or publications that can incite violence or undermine security operations.

v. Right to Peaceful Assembly and Association

Generally, everyone has the right to assemble freely with other persons of his choice, form and belong to lawful groups and associations without hindrance (Articles 10 and 11 of the African Charter). The right is enshrined in section 40 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It provides that:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party; trade union or any other association for the protection of his interest.

This right to peaceful assembly and association protected by this section shall however not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition (Nkpa v. Nkume, 2001; Agbai v.

Okagbue, 1991). The exceptions to this right are provided for under sections 37, 38, 39 and 41 of the 1999 Constitution (N.U.E.E. v. B.P.E., 2010).

Effectively therefore, public gatherings and protests may be restricted in order to maintain public order. Additionally, these restrictions are implemented through emergency regulations, security directives or legislation enacted during emergency periods.

vi. Right to Freedom of Movement

The right to freedom of movement is another derogable right under the Nigerian Constitution. Section 41 of the Constitution protects the right of every citizen of Nigeria to move freely throughout Nigeria and to reside in any part thereof, and by virtue of that section, no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit from (Article 12 of the African Charter contains a similar provision).

However, nothing under this section protecting the right to freedom of movement shall invalidate any law that is reasonably justifiable in a democratic society where:

- (a) Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in to prevent him from leaving Nigeria; (*Azuh v. Union Bank*, 2014)
- (b) Providing for the removal of any person from Nigeria to any other country to:
 - (i) Be tried outside Nigeria for any criminal offence, or
 - (ii) Undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty; provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

The right is a natural right of everyone who is not subject to the disabilities enumerated in the 1999 Constitution (A.G., Federation v. Godwin Ajayi, 2000). In *Director of SSS v. Olisa Agbakoba*, (*Director of SSS v. Olisa Agbakoba*, 1999) where the State Security Service seized the international passport of the defendant, preventing him from traveling abroad, the apex court held that although rights may be restricted for security reasons, such restrictions must be authorized by law. The court held further that the action of the security agency was unlawful because it lacked legal authority.

However, curfews and travel restrictions may be imposed to prevent violence or insurgent activities.

6. Conclusion

When designing a Constitution, a delicate balance must be struck between the need for protection of human rights and the obligation to protect the public and vital national interests, which may sometimes involve limiting those rights. The optimal balance between these objectives is not fixed. It can shift, with different priorities prevailing at different times and in different circumstances. In normal times, a democratic Constitution might emphasize inclusion and deliberation in decision-making, but in times of emergency swift and decisive executive action might have greater priority. Emergency constitutional provisions are therefore necessary because they enable the state to respond effectively to crises while keeping the exercise of emergency powers within the rule of law and human rights framework. If they are well designed and properly applied, emergency constitutional provisions are a self defence mechanism for democracy and human rights (International IDEA, n.d.).

Consequently, when considering emergency provisions, the law makers should therefore pay special attention on the issue of protection of constitutional rights. In addition, check and balance system are also improved in order to prevent the misuse of emergency powers. Thus, when faced with emergency situations which are likely to threaten the existence of a nation, government may resort to measures of an exceptional nature that will suspend or derogate from certain rights of its citizens in order to protect the foundation of the society.

Sections of 305 and 45 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) operate together to regulate the exercise of emergency powers and the derogation of human rights in Nigeria. Section 305 authorizes the declaration of a state of emergency, while section 45 provides the constitutional justification for restricting certain fundamental rights.

However, the foregoing chapters have demonstrated that the mere existence of these constitutional provisions does not, of itself, guarantee the protection of fundamental rights during states of emergency. The true measure of a nation's commitment to the rule of law is not found in the elegance of its written Constitution but in the fidelity with which its institutions adhere to constitutional limits precisely at those moments when the temptation to disregard them is greatest. It is in periods of emergency that human rights are most vulnerable, and it is

therefore in such periods that constitutional safeguards are most essential. The paradox of emergency powers lies in this: the very circumstances that are invoked to justify the restriction of rights are also the circumstances that render those rights most indispensable to the citizen.

This study has established that the Nigerian constitutional framework broadly conforms to international human rights standards in its formal architecture. Section 305 of the 1999 Constitution (as amended) provides a structured procedure for the declaration of a state of emergency, requiring presidential proclamation followed by legislative ratification by a two-thirds majority of each House of the National Assembly. Section 45 in turn delineates the scope of permissible derogations, preserving the non-derogable character of certain rights, most notably the right to dignity of the human person under section 34 and the prohibition against torture and inhuman or degrading treatment. These provisions align with Nigeria's obligations under Article 4 of the International Covenant on Civil and Political Rights and reflect the interpretive guidance of the Siracusa Principles, which require that emergency measures be strictly necessary, proportionate, non-discriminatory, and temporally limited.

Recommendations

In view of the above, the following are recommended:

- a. Periodic review of emergency measures-this should be regularly reviewed with the view of lifting them once threats subside to prevent permanent restriction of rights.
- b. the provisions governing emergency powers under the Nigerian Constitution should be strengthened to clearly define the scope and limits of derogation of fundamental rights during a state of emergency.
- c. Ensuring compliance with international human rights standards such as International Covenant on Civil and Political Rights and African Charter on Human and Peoples' Rights in order to ensure that measures adopted are strictly necessary, non-discriminatory and proportional.
- d. Proclamation must be approved by the National Assembly within a specified period. This requirement ensures that emergency powers are subject to democratic oversight.
- e. Strengthening of judicial review- courts should ensure that restrictions on rights remain consistent with constitutional principles.

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