



EMERGENCY, EXECUTIVE POWER, AND DEMOCRATIC ACCOUNTABILITY IN NIGERIA: THE RIVERS STATE TEST OF SECTION 305

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ABSTRACT

On 18 March 2025, President Bola Ahmed Tinubu proclaimed a state of emergency in Rivers State pursuant to section 305 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), simultaneously suspending the elected Governor, his Deputy, and all members of the State House of Assembly for six months and appointing a retired military officer as Sole Administrator. The National Assembly endorsed the proclamation on 20 March 2025. This article interrogates the constitutional validity of those consequential measures and the broader question of democratic accountability that they raise. It argues that while section 305 vests the President with the power to proclaim a state of emergency in defined circumstances, that provision confers no express authority to suspend or remove democratically elected officials, whose tenure is separately governed by the Constitution's closed removal code under sections 188, 69, and 110. The article examines the text and structure of section 305 within Nigeria's federal architecture, traces the historical pattern of Fourth Republic emergency declarations, and provides a sustained doctrinal critique of both the threshold justification and the institutional consequences of the Rivers State proclamation. It analyses the Supreme Court's judgment in *AG Adamawa State & 10 Ors v AG Federation & Anor SC/CV/329/2025*, delivered on 15 December 2025, which resolved the multi-state challenge on jurisdictional grounds while generating contested obiter pronouncements on the scope of presidential discretion during emergencies. Drawing on comparative experience from India, South Africa, Germany, and the United States, the article concludes that the Rivers State episode has exposed a constitutional ambiguity that demands authoritative judicial resolution and proposes four legislative reforms to section 305 to foreclose executive overreach in future emergencies.

KEYWORDS: Emergency powers; Section 305; Nigerian federalism; democratic accountability; 1999 Constitution

1.1 INTRODUCTION

Constitutional democracies must periodically confront the paradox that undergirds every emergency powers regime: the state, in order to survive a crisis, must temporarily curtail the very liberties and institutional arrangements that define it. Carl Schmitt famously observed that 'sovereign is he who decides on the exception'—a proposition that liberal constitutionalism has spent a century attempting to domesticate through procedural constraints, legislative oversight, and judicial review.¹

Nigeria's 1999 Constitution is no stranger to this tension. Section 305 provides a carefully calibrated emergency powers framework whose enumerated triggers, National Assembly oversight mechanism, and temporal limitations are all designed to prevent the exception from consuming the rule. Yet on 18 March 2025, President Bola Ahmed Tinubu did something that no plain reading of section 305 appears to sanction: he not only proclaimed a state of emergency in Rivers State but simultaneously suspended the elected Governor, Deputy Governor, and all members of the State House of Assembly, installing an appointed Sole Administrator in their stead.²

The National Assembly endorsed the proclamation two days later by voice vote, clearing the procedural threshold that section 305(2) mandates. Six months of administrative governance followed. When the emergency lapsed on 18 September 2025, all suspended officials were formally reinstated. The constitutional question, however, did not dissipate with the emergency. Eleven state Attorneys-General had instituted proceedings before the Supreme Court in March and April 2025, seeking declarations that the suspension of elected officials was constitutionally invalid. On 15 December 2025, the Supreme Court delivered its verdict in *AG Adamawa State & 10 Ors v AG Federation & Anor*—a judgment that resolved the immediate litigation on jurisdictional grounds while generating as much constitutional uncertainty as it dispelled on the underlying substantive question.³

¹Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press 2005) 5.

²President Bola Ahmed Tinubu, *Proclamation of State of Emergency in Rivers State* (Nationwide Broadcast, 18 March 2025) <<https://statehouse.gov.ng/president-tinubu-declares-state-of-emergency-in-rivers-state-on-tuesday-18-march-2025/>> accessed 15 April 2026.

³*AG Adamawa State & 10 Ors v AG Federation & Anor SC/CV/329/2025*, judgment delivered 15 December 2025, majority judgment per Mohammed Baba Idris JSC.



The central contention of this article is that the Rivers State episode exposed three interlocking constitutional failures: a threshold failure in the justification for invoking section 305(3)(c); an institutional failure in the executive's conflation of the power to declare an emergency with a non-existent power to suspend elected officials; and a judicial failure in the Supreme Court's unwillingness, in December 2025, to meet the substantive question directly. Each failure carries implications that extend well beyond the immediate political context of Rivers State, threatening to normalise executive conduct that is constitutionally groundless.

The article proceeds in six parts. Part II examines the text, structure, and federalist architecture of section 305. Part III traces the historical use of emergency powers in Nigeria's Fourth Republic, with particular attention to the 2004 Plateau State emergency and the 'precedent-by-practice' phenomenon. Part IV delivers a sustained doctrinal critique of the Rivers State proclamation, addressing both the threshold and the institutional consequences. Part V analyses the Supreme Court's December 2025 judgment, the lone dissent of Ogbuinya JSC, and the comparative constitutional dimensions that the majority invoked. Part VI proposes four legislative and institutional reforms. The conclusion draws together the article's principal arguments and identifies the path towards constitutional resolution.

2.1 THE CONSTITUTIONAL ARCHITECTURE OF EMERGENCY POWERS

2.1.1 The Text and Structure of Section 305

Section 305 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is the primary gateway to federal emergency powers. It vests in the President the power to issue a proclamation of a state of emergency 'in the whole or in any part of the Federation' when certain defined circumstances obtain.⁴ Subsection (3) enumerates the triggering conditions, including: the federation being at war or in imminent danger of invasion; a breakdown of public order and public safety to such extent as to require extraordinary measures to avert danger to persons and property; a clear and present danger of disaster or natural calamity; and a situation where the President receives a request from the Governor and State House of Assembly of the affected state.⁵ The procedural architecture of the section reflects a deliberate allocation of authority between the executive and the legislature. Subsection (2) requires that a proclamation, once issued, be published in the Official Gazette and transmitted to the President of the Senate and the Speaker of the House of Representatives. Under subsection (6), the National Assembly must convene within two days if in session, or within ten days if not, to vote on the proclamation, which lapses unless approved by a two-thirds majority of each chamber.⁶

What section 305 conspicuously omits is equally significant as what it contains. Nowhere in that section does the Constitution expressly empower the President to suspend, remove, or otherwise interfere with the offices of a Governor, Deputy Governor, or members of a State House of Assembly. The provision authorises the proclamation of a state of emergency; it does not prescribe the institutional consequences of that proclamation for sub-national governmental structures within the affected state. That textual silence is not accidental as it reflects a structural commitment to federalism that pervades the entire constitutional instrument.⁷

2.1.2. Emergency Powers and the Federalism Constraint

Section 2(2) of the Constitution declares Nigeria a federation, and section 5(2) vests the executive powers of each state in its Governor. The Constitution then establishes a closed, exclusive code for removing a sitting Governor, which is that only the impeachment procedure under section 188 or the nullification of an election by a court of competent jurisdiction can result in removal. The Governor's tenure is protected by section 180, which stipulates a fixed four-year term subject only to these constitutional mechanisms. No provision cross-references these tenure-protection provisions with section 305 so as to create a pathway for executive suspension.⁸ The Nigerian Bar Association, in its statement of 18 March 2025, articulated this structural argument with precision; that is, a declaration of emergency does not automatically dissolve or suspend elected state governments, and the Constitution does not empower the President to unilaterally remove or replace elected officials. Such actions amount to an unconstitutional usurpation of power and a fundamental breach of Nigeria's federal structure.⁹

Section 11 of the Constitution offers no firmer textual foundation for executive suspension. Subsections (4) and (5) provide that where a State House of Assembly is unable to perform its functions, the National Assembly may exercise legislative power over the relevant state. It cannot rationally be construed to authorise the President to appoint an unelected administrator to discharge executive functions constitutionally confided to an elected Governor under section 5(2).¹⁰

⁴Constitution of the Federal Republic of Nigeria 1999 (as amended), s 305(1). All subsequent references to 'the Constitution' are to this instrument.

⁵Constitution of the Federal Republic of Nigeria 1999 (as amended), s 305(3)(a)–(f).

⁶Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 305(2), 305(6).

⁷Policy and Legal Advocacy Centre (PLAC), 'Tinubu's Emergency Proclamation in Rivers State - An Unconstitutional Overreach' (Legist, 19 March 2025) <<https://placng.org/Legist/tinubus-emergency-proclamation-in-rivers-state-an-unconstitutional-overreach/>> accessed 15 April 2026.

⁸Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 2(2), 5(2), 180, 188.

⁹Nigerian Bar Association, 'State of Emergency in Rivers: Suspension or Otherwise Summary Removal of a Democratically Elected Governor and Other Elected Officials is Unconstitutional' (NBA Statement, 18 March 2025) <<https://blog.nigerianbar.org.ng/2025/03/18/state-of-emergency-in-rivers-suspension-or-otherwise-summary-removal-of-a-democratically-elected-governor-and-other-elected-officials-is-unconstitutional/>> accessed 15 April 2026.

¹⁰Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 11(4), 11(5), 5(2).



3.1 EMERGENCY POWERS IN NIGERIA'S FOURTH REPUBLIC: HISTORICAL ANTECEDENTS

The Rivers State emergency of 2025 was not the first occasion on which a Nigerian President deployed section 305 to displace elected state officials. The relevant Fourth Republic precedents are instructive both for what they reveal about the accumulated executive understanding of the provision and for how they illustrate the gradual normalisation of practices that lack clear constitutional warrant. In 2004, President Olusegun Obasanjo declared a state of emergency in Plateau State, suspended Governor Joshua Dariye and the State Legislature, and appointed a retired General as its Administrator. Noteworthy, these steps were never the subject of a definitive judicial ruling on their constitutionality. The Plateau proclamation was premised on sectarian violence of a scale that, whatever its merits as a policy response, represented a more discernible security breakdown than the essentially political conflict that underpinned the 2025 Rivers State declaration.¹¹ Emergencies were also declared in Ekiti State in 2006 and, later, in Borno, Adamawa, and Yobe States during the height of the Boko Haram insurgency. The insurgency-era proclamations, involving active armed conflict and mass displacement, presented circumstances more clearly within the 'breakdown of public order' trigger of section 305(3)(c). Neither the 2006 Ekiti declaration nor the insurgency-era emergencies generated the kind of sustained doctrinal analysis that the present article undertakes, in part because the political will for constitutional litigation was absent or dissipated before a final judicial resolution could be achieved.¹² These patterns of constitutional underdetermination has produced what this article terms a 'precedent-by-practice' phenomenon. They are executive actions that lack constitutional foundation repeated across administrations until the absence of judicial invalidation comes to be misread as positive constitutional authorisation. The Rivers State episode is, in part, a product of that dynamic.

Each unremedied exercise of the suspension power makes the next invocation more difficult to challenge on the ground of novelty and supplies a set of facts to which the executive can point as supposed precedent.

4.1 THE RIVERS STATE PROCLAMATION: A DOCTRINAL CRITIQUE

4.1.2. The Threshold Question: Did the Circumstances Warrant the Declaration?

Section 305(3)(c) of the Constitution permits a proclamation where there is a breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to avert danger to persons and property. The operative language demands a qualitative threshold that is not merely a disorder, but a breakdown of such gravity that ordinary legal mechanisms are insufficient to address it.¹³

President Tinubu's stated justifications rested on two pillars: (1) the protracted political conflict between Governor Siminalayi Fubara and the FCT Minister Nyesom Wike, which had paralysed the State House of Assembly and, on the President's account, rendered effective governance impossible; and (2) reports of pipeline vandalism in the Niger Delta in the days immediately preceding the proclamation. The Supreme Court's February 2025 judgment in the consolidated Rivers State appeals, which observed that a government cannot meaningfully exist without the three arms that constitute it, was also invoked as a constitutional validation for executive intervention.¹⁴ Each of these justifications is constitutionally inadequate. First, political disagreements between executive and legislative actors, however severe and intractable, do not, per se, constitute a breakdown of public order within the meaning of section 305(3)(c). They represent, at most, a governance crisis. The Constitution's institutional response to such crises is impeachment under section 188, not by executive suspension. To read political dysfunction as 'breakdown of public order' would effectively transform section 305 into an instrument of partisan intervention, fundamentally subverting the provision's purpose and creating a constitutional licence for federal interference in any state where intra-governmental tensions reach a visible pitch.¹⁵

Secondly, the pipeline vandalism cited by the President, while a serious security concern, did not on the available evidence represent the kind of systematic and territorial infrastructure of violence that characterised the Borno-Adamawa-Yobe emergencies. Pipeline vandalism is a regrettable feature of the Niger Delta security; it has not previously been treated as crossing the section 305(3)(c) threshold, and the President offered no evidence that it had reached that threshold on this occasion.¹⁶

Also, the February 2025 Supreme Court observation about the functional dysfunction of the Rivers State government cannot bear the constitutional weight placed upon it as a *casus belli for the suspension of the elected governor*. The court was describing a factual state of affairs in the context of consolidated appeals; it was neither authorising nor directing an emergency

¹¹Dubawa Fact Check, 'Is the State of Emergency Declaration in Rivers State Legal?' (19 March 2025) <<https://dubawa.org/is-the-state-of-emergency-declaration-in-rivers-state-legal/>> accessed 15 April 2026. The 2004 Plateau emergency is noted therein as a direct precedent.

¹²Reuben Abati, 'Supreme Court, Rivers and the State of Emergency' (The Eagle Online, 16 December 2025) <<https://theeagleonline.com.ng/supreme-court-rivers-and-state-of-emergency-by-reuben-abati/>> accessed 15 April 2026.

¹³Constitution of the Federal Republic of Nigeria 1999 (as amended), s 305(3)(c).

¹⁴Tinubu (n 2). The Supreme Court observation was made in Suit No SC/CV/101/2024 and consolidated matters, judgment delivered 28 February 2025.

¹⁵Ibrahim Bello-Kano, 'Removal of Public Officers under the 1999 Constitution: A Critical Assessment of the State of Emergency Declared in Rivers State' (2025) De Juriscope Law Journal (forthcoming), available at <<https://nigerianjournalsonline.org/index.php/DJLJ/article/view/584>> accessed 15 April 2026.

¹⁶Al Chukwuoma Okoli, 'Nigeria's Oil-Rich Rivers State Under Emergency: Sending in the Army Isn't the Answer' (The Conversation, 3 October 2025) <<https://theconversation.com/nigerias-oil-rich-rivers-state-under-emergency-sending-in-the-army-isnt-the-answer-252672>> accessed 15 April 2026.



declaration. The invocation of that observation as positive constitutional warrant reflects a category error, that is to say, judicial description of dysfunction is not an executive licence to intervene.

4.1.2 The Consequential Question: No Constitutional Power to Suspend Elected Officials

Even assuming, without conceding, that the threshold for a state of emergency was met, the suspension of elected officials remains constitutionally unsustainable as an independent proposition. The analysis must therefore distinguish between two questions that public discourse too often conflates: (1) the power to declare an emergency, and (2) the powers that flow from such a declaration. Section 305 answers the first; it does not answer the second in terms that could encompass the removal of elected officials.

The Constitution's removal mechanisms for Governors and Deputy Governors are set out in sections 180 and 188 which prescribe detailed impeachment procedure as follows: allegations must be signed by at least one-third of the State House of Assembly, investigated by an independent panel, and supported by a two-third majority vote, with the Governor afforded a right of response throughout. For members of a State House of Assembly, the relevant mechanisms are the recall procedures under sections 69 and 110, which require a petition signed by more than half of the registered voters in the relevant constituency. No provision in the Constitution empowers the President, acting pursuant to section 305 or otherwise, to bypass these mechanisms through executive suspension.¹⁷

The argument of implied powers fares no better. The doctrine of implied constitutional powers, recognised in Nigerian jurisprudence, operates to fill genuine lacunae where a gap must be filled to give effect to an express constitutional mandate. It cannot be invoked to generate powers that conflict with express constitutional provisions. To permit the implied power to override the express provision would invert the hierarchy of constitutional norms and cannot be sustained by any credible interpretive methodology.¹⁸

The procedural argument advanced by the government, that National Assembly endorsement under section 305(6) supplied the requisite democratic imprimatur, misconceives the constitutional architecture. What the National Assembly endorsed was the proclamation of a state of emergency; it did not and could not, by two-third majority vote, confer upon the President a power of removal that the Constitution has vested exclusively in other processes. The constitutional principle established in *Nafiu Rabiu v The State* is directly applicable; that is to say, where the Constitution has laid down procedures, no amount of popular endorsement can substitute for compliance with those procedures.¹⁹

5.1 THE SUPREME COURT'S DECEMBER 2025 JUDGMENT: ANALYSIS AND CRITIQUE

5.1.1. The Procedural Disposition: Jurisdiction as Sword and Shield

The Supreme Court, in a 6-1 split, struck out the suit filed by the Attorneys-General of Adamawa and ten other states on two grounds. The lead judgment of Mohammed Baba Idris JSC held, first, that the plaintiff states had not established a justiciable cause of action capable of activating the Court's original jurisdiction under section 232(1) of the Constitution. The suit did not disclose a dispute between the states and the Federation within the meaning of that provision. Also, Rivers State itself, being the directly affected state, had neither authorised nor consented to the litigation.²⁰

The jurisdictional bar was not unreasonable as an exercise of judicial self-governance. The original jurisdiction of the Supreme Court under section 232(1) is confined to disputes between the Federation and a state, or between states inter se; it does not extend to challenges to the President's treatment of a third state brought by states that are not parties to the underlying controversy. The political context, however, cast a troubling shadow over the Court's procedural disposition. By the time judgment was delivered in December 2025, the emergency had already lapsed in September and several plaintiff states had crossed from the Peoples Democratic Party to the governing All Progressives Congress. Also, the Sole Administrator had been rewarded with an ambassadorial appointment.²¹

5.1.2 The Obiter Pronouncements: A Mixed Legacy

What makes *AG Adamawa* constitutionally significant despite its procedural termination is the body of obiter dicta in the majority judgment. The Court affirmed that the President possesses power under section 305 to take 'extraordinary measures' to avert danger, and that the Constitution confers upon him a measure of discretion in determining the content of those measures. Critically, however, the Court simultaneously held that this discretion is not 'unfettered', and that any suspension of elected officials must be time-bound and directly linked to the restoration of stability.²²

¹⁷Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 69, 110, 180, 188.

¹⁸*Afolabi v Attorney General of the Federation* (1996) 1 NWLR (Pt 423) 1 (SC) on the scope of implied powers in the Nigerian constitutional context.

¹⁹*Nafiu Rabiu v The State* (1980) 8-11 SC 130 (SC) per Obaseki JSC: 'where the Constitution has laid down procedures, no amount of popular endorsement can substitute for compliance with those procedures.'

²⁰*AG Adamawa State & 10 Ors v AG Federation & Anor SC/CV/329/2025* (n 3), majority judgment per Mohammed Baba Idris JSC.

²¹*TheCable, 'Rivers Emergency, Supreme Court Ruling and Limits of Presidential Power'* (17 December 2025) <<https://www.thecable.ng/rivers-emergency-supreme-court-ruling-and-limits-of-presidential-power/>> accessed 15 April 2026.

²²*Olaniwun Ajayi LP, 'Supreme Court Clarifies Limits of Emergency Powers in Rivers State Case'* (December 2025) <<https://www.olaniwunajayi.net/blog/supreme-court-clarifies-limits-of-emergency-powers-in-rivers-state-case/>> accessed 15 April 2026.



The majority's comparative invocation of sections 352 to 360 of the Indian Constitution is analytically revealing, but ultimately cuts against its own conclusion. The Indian Constitution expressly provides that upon a proclamation of the President's Rule, the executive power of the state vests in the President of India, and the powers of the state legislature may be exercised by or under the authority of Parliament. No analogous provision exists in Nigeria's 1999 Constitution. The majority's use of the Indian constitutional precedent thus inadvertently underscores the absence - rather than the presence - of the very provision that would be required to authorise executive suspension in Nigeria.²³

5.1.3 The Dissent of Ogbuinya JSC: The Voice of Constitutional Orthodoxy

The lone dissent of Justice Ogbuinya represents, in this article's assessment, the more constitutionally defensible position. His Lordship conceded the President's power to declare a state of emergency in appropriate circumstances but denied that this power extends to the suspension of elected Governors, Deputy Governors, or members of state legislatures. His reasoning aligns with the structural argument advanced in Part IV of this article which is, that the Constitution provides mandatory and exclusive mechanisms for the removal of elected officials, and those mechanisms cannot be circumvented by executive proclamation.²⁴ The danger of characterising His Lordship's dissent as merely an academic minority view lies in the precedential potential of the majority's obiter. Obiter dicta, while not binding, shape executive behaviour and are invoked in subsequent proceedings to advance positions that would otherwise be untenable. The December 2025 judgment risks becoming the foundation for a future, more definitive assertion of presidential power to remove elected officials in any state where the federal executive declares a crisis to exist. A future litigant might argue that the 'extraordinary measures' formula endorsed by the majority, read in the light of the Court's failure to strike down the Rivers State suspension, amounts to tacit judicial approval of the practice.

6.1 COMPARATIVE CONSTITUTIONAL PERSPECTIVES

The comparative constitutional landscape illuminates, by contrast, the unusual nature of the power the President effectively claimed in Rivers State. India is instructive in this regard because the majority cited it. Articles 356 and 357 of the Indian Constitution explicitly vest in the President the power to assume the functions of the state government and to declare that the powers of the state legislature shall be exercisable by or under the authority of Parliament. This is the constitutional text that authorises the President's Rule. The landmark ruling of the Indian Supreme Court in *SR Bommai v Union of India* (1994) established robust judicial review of such proclamations, including proportionality and scrutiny. Nigeria's constitution contains no equivalence of Article 356. The Indian parallel therefore supports, rather than undermines, the argument that Nigeria's President lacks the power exercised in Rivers State.²⁵

Germany's Basic Law requires that emergency measures be strictly necessary and proportionate, and the Federal Constitutional Court has maintained that the principle of proportionality is not suspended during a state of emergency but rather governs the scope of permissible measures. The United States experience under Article II and the Insurrection Act also provides a limiting analogue: while the federal government may deploy military force in states experiencing insurrection, it does not thereby suspend or displace the state executive or legislature. The reasoning in *Youngstown Sheet & Tube Co v Sawyer* (1952), particularly Justice Jackson's tripartite framework for assessing presidential power, is instructive. It reminds constitutional courts that presidential power is at its lowest ebb when exercised in the teeth of constitutional provisions that allocate authority elsewhere.²⁶

South Africa's Constitution offers perhaps the most directly transferable model for Nigerian constitutional reform. Section 37 of the Constitution of the Republic of South Africa 1996 establishes a derogation framework that explicitly identifies which rights may be suspended during a state of emergency and which may not, providing that no derogation is permissible in respect of the rights to dignity, life, and equality, among others. A comparable provision identifying democratic accountability norms as non-derogable would considerably strengthen the constitutional architecture of section 305.

7.1 Towards Constitutional Reform: Closing the Doctrinal Gap

The constitutional ambiguity exposed by the Rivers State episode and the Supreme Court's December 2025 judgment is unlikely to resolve itself without deliberate legislative intervention. In this regard, we are suggesting four reforms.

First, section 305 should be amended to include an express provision specifying what institutional consequences may lawfully follow from a state of emergency proclamation. If the National Assembly, after deliberate constitutional reflection, determines that circumstances exist in which co-administration by federal appointees alongside and not in substitution for an elected state officials is appropriate, that must be stated in express terms, with proportionality and necessity requirements embedded in the text. The current textual silence invites precisely the kind of executive adventurism that Rivers State illustrates.²⁷

²³Constitution of India 1950, arts 352–360. See also *This Day*, 'Supreme Court, Rivers and the State of Emergency' (16 December 2025) <<https://www.thisdaylive.com/2025/12/16/supreme-court-rivers-and-the-state-of-emergency/>> accessed 15 April 2026.

²⁴AG Adamawa State & 10 Ors v AG Federation & Anor SC/CV/329/2025 (n 3), dissenting opinion of Obande Ogbuinya JSC.

²⁵Constitution of India 1950, arts 356–357; *SR Bommai v Union of India* (1994) 3 SCC 1 (Supreme Court of India). The Nigerian constitutional drafters did not replicate Article 356.

²⁶See generally Oren Gross and Fionnuala Ni Aolain, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press 2006) ch 2; *Youngstown Sheet & Tube Co v Sawyer* 343 US 579 (1952) per Jackson J (tripartite framework for assessing presidential power).

²⁷A co-administration model was advocated by several commentators following the proclamation. See *This Day* (n 23).



Also, the procedural safeguards of section 305 should be strengthened. The current two-day convening window for the National Assembly creates conditions for emergency endorsement under acute political pressure rather than deliberate constitutional scrutiny. A mandatory seven-day window, with a requirement for written reasons from both chambers, would materially strengthen the legislative oversight function that the provision is designed to perform.

Furthermore, the Constitution should expressly vest the Supreme Court with jurisdiction to conduct expedited judicial review of emergency proclamations affecting sub-national democratic institutions. The failure to deliver judgment in *AG Adamawa* until three months after the emergency had lapsed exposed the inadequacy of existing jurisdictional arrangements as a real-time check on executive conduct. Constitutionally mandated timelines such as sixty days from filing, with interim relief jurisdiction, would ensure that judicial review remains a meaningful rather than purely retrospective check on executive emergency powers.²⁸

Finally, the drafters should consider adopting a provision modelled on section 37 of the South African Constitution, which establishes a derogation framework explicitly identifying rights and constitutional positions that may not be suspended during an emergency. A comparable Nigerian provision should specify that the democratic mandate of elected officials, protected by the tenure and removal provisions of the Constitution is among the constitutional arrangements that may not be overridden by emergency proclamation, thereby rendering future suspension attempts textually and unmistakably unconstitutional.²⁹

8.1 CONCLUSION

The Rivers State, state of emergency of 2025 confronted Nigeria's constitutional order with a question that section 305, as presently drafted, does not answer which is: may the President, in proclaiming a state of emergency, suspend elected sub-national officials whose removal is governed by an exclusive constitutional code? This article has argued that the answer, on a principled reading of the constitutional text, structure, and federalist design, is emphatically no.

The proclamation of a state of emergency and the suspension of elected officials are two distinct constitutional acts. The first may find support however strained on the particular facts of Rivers State in a contextual reading of section 305(3)(c). The second finds no support anywhere in the constitutional text and is positively inconsistent with the mandatory removal mechanisms prescribed by sections 69, 110, and 188. The National Assembly's endorsement could ratify the former; it could not, by any interpretive route, supply the constitutional authority lacking for the latter.

The Supreme Court's December 2025 judgment was an opportunity to provide definitive constitutional guidance at a moment of genuine national importance. The majority's procedural disposition, while technically defensible, left the substantive question unresolved precisely when clarity was most urgently needed. The obiter endorsement of time-bound suspension powers without identifying any textual foundation for those powers in the Constitution risks entrenching an executive practice that is constitutionally groundless. Ogbuinya JSC's dissent deserves to be the starting point for the future authoritative resolution of this question.

Constitutional democracies survive their crises not because their executives find clever arguments for extraordinary powers, but because their institutions hold firm to the principle that the exception does not swallow the rule. Nigeria's Fourth Republic, now in its third decade, has accumulated sufficient constitutional experience to demand that principle from its apex court and legislature alike. The Rivers State emergency should be remembered not as a precedent for executive power, but as the catalyst for the constitutional reform that the country's federal democratic architecture urgently requires.

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