



Deconstructing the Doctrine of State of Emergency in Nigeria: A Human Security Perspective

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Abstract: This article aims at deconstructing the notion of ‘State of Emergency’ as it is conceptualized within the Nigerian context. Though a federal state, under Section 305 of the 1999 Constitution of the Federal Republic of Nigeria as amended, only the President is empowered to declare a ‘State of Emergency’ in the country or any part of it with the exclusion of the States and Local Governments. Though Section 5(2)(a) vests in the Governor the executive powers of his state, he is not empowered to exercise emergency powers rather Section 305 (4) requires him to request the President to proclaim same in the event that any of the situations specified in subsection (3) (c), (d) and (e) of the same section. Meanwhile, Section 2 (2) of the same Constitution describes Nigeria as a federation consisting of states and a federal capital territory. Besides, Sub-section (3) describes the conditions that warrant such a proclamation to include war, looming threat of invasion, collapse of public order and safety, incidence of natural disaster as well as any other danger that undermine the existence of the federation while ignoring the threats to human security that equally undercut the sovereignty, territorial integrity and independence of the country. Drawing from comparative analysis of qualitative data collected through secondary sources and appropriating of the theoretical paradigm of human security, this paper argues that the theory and practice of state of emergency in Nigeria is too reductionist and unitary in jurisdiction. The paper therefore recommends an expanded application of the doctrine of State of Emergency in terms of scope and jurisdiction to include threats to human security as well as the exercise of emergency powers by the three tiers of government that make up the federation.

Keywords: Federal State, Human Security, Jurisdiction, Nigeria, Emergency Rule

Introduction

I assume unhesitatingly the leadership of this great army of our people dedicated to a disciplined attack upon our common problems.... I am prepared under my constitutional duty to recommend the measures that a stricken nation in the midst of a stricken world may require.... But in the event that the Congress shall fail to take (the necessary measures) and in the event that the national emergency is still critical, I shall not evade the clear course of duty that will then confront me. I shall ask the Congress for the one remaining instrument to meet the crisis - broad Executive power to wage war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe (Roosevelt, 1933 cited in Agamben, 2004, pp 11-22)

From the classical political theorists including eighteenth Century English philosopher, John Locke, the exercise of emergency powers had long been a subject of immense concern (Relyea, 2007). Though popular for his advocacy of a government of laws and not of men, however, John Locke opined that circumstances may arise when the executive must exert a wide discretion in meeting special exigencies or emergencies for which the legislative power provided no relief or existing law granted no necessary remedy (Relyea, 2007). When confronted by threats to their existence, states resort to emergency regimes (which include state of emergency, state of exception, state of siege and martial rule) which permit them to legally suspend the law and violate human rights (Kamga, 2015).

In Nigeria, under Section 305 (1) of the 1999 Constitution as amended, only the President is empowered to declare a state of emergency in the Federation or any part thereof. Meanwhile, Section 2 (2) of the same Constitution describes Nigeria as a federation consisting of states and a Federal Capital Territory arising from which, Section 5 (2) (a) vests in the Governor of a State the executive powers of that state while Section 176 (2) describes the Governor as the Chief Executive of his state which invariably makes him the Chief Security Officer of that state underscoring the formal division of governmental powers among the component units that make up the federation. This notwithstanding, the Governor is not empowered by the same constitution to declare a state of emergency within his domain rather Section 305 (4) stipulates that 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 the same section and such a situation does not extend beyond the boundaries of the state.

Subsection (3) identifies the conditions that can warrant such a proclamation to include when: the Federation is at war, the Federation is in imminent danger of invasion or involvement in a state of war, there is actual breakdown of public order and public safety in the Federation or any part thereof requiring extra ordinary measures to avert such

danger, there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity affecting the community or a section of the community in the Federation, there is any other public danger which clearly constitutes a threat to the existence of the Federation or the President receives a request to do so in accordance with the provisions of subsection (4) of the constitution and in extreme situation where the Governor fails to make the request as provided for in subsection (5) (The Guardian Newspaper, 2004; Lawyers Alert, 2013).

The aforementioned conditions are preoccupied with the traditional belief that a state of emergency is declared in response to circumstances threatening the state's existence such as natural cataclysms, invasions and general insurrections (Kagma, 2015). Besides, they fail to consider the federal structure in the country with formal division of powers among the component units. However, exceptional situations that call for a state of emergency transcend threats to the sovereignty, territorial integrity and political independence of a state to include those conditions that pose serious threat to human existence and by extension the survival of the state. Threats to the survival, livelihood and dignity of individuals and communities which are fundamental to national security should equally fall within the parameter of what constitute a state of emergency.

The above scenarios have raised two pertinent analytical issues bothering on scope and jurisdiction: what should be the scope in terms of the situations that could precipitate the declaration of a state of emergency? Secondly, which authority (s) in terms of tier (s) of

government within the Nigerian state should have jurisdiction to proclaim a state of emergency in Nigeria? This study is significant in two ways. Firstly, the paper appears to be one of the foremost attempts at employing a people-centred, context-specific, comprehensive, multi-sectoral and prevention-oriented paradigm (human security approach) at interrogating the notion of state of emergency both in theory and practice within the Nigerian context as there is quite insignificant number of studies in extant literature on this particular aspect of Nigerian government and politics. Secondly, its policy implications are overly remarkable considering the escalating wave of humanitarian emergencies in Nigeria (the highest ever since the civil war ended in 1970) that have not only threatened the survival of the country but also challenged the capacities of government at all levels in discharging their responsibilities to the citizens.

Historicizing the Doctrine of State of Emergency in Nigeria

Historically, the idea of state of emergency could be traced to Rome when a dictator who was a temporary officer was appointed to provide ad-hoc leadership in a national emergency (tumultus) by repulsing attacks from abroad or quelling internal rebellion (Fatile and Ejalonibu, 2014). However, it was not until the 18th and 19th Centuries that European Constitutions cautiously started to elaborate the notion of a constitutional state of emergency though they characteristically left the essential information to separate legislation (Sheppelle, n.d. as cited in Sheeran, 2013). To properly situate the evolution of a state of emergency in Nigeria, it is imperative to look at the country's

colonial heritage. Following the scramble for Africa by European powers between 1884-85, Berlin Conference was organized to partition Africa among the contending colonial forces. In that rush to partition the continent into spheres of influence, the diverse political cultures, language or social organization of the indigenous Africans were not taking into consideration (Ocheje, 1999). The implication of this is that in all the colonized territories, colonial officials were granted extensive administrative power with little or no institutional checks making the colonial administration extremely centralized, bureaucratic and pseudo-military (Ocheje, 1999).

Owing to the belief that good government was not dependent on institutional limitations but rather on the wisdom of men, the unfolding scenario in the British colonial administration was reminiscent of the state of emergency as can be seen for instance in the Orders-in-Council that empowered Commissioners to promulgate ordinances for the administration of justice, revenue generation, and generally for the peace, good order and good government of all persons in the colonies (Seidman, 1970 as cited in Ocheje, 1999). The fallout from this institutionalized alienation between the colonial state and the aborigines is that when self rule was finally granted to Nigeria in 1960, some of the laws were passed on the country; a good example is the administrative law where bureaucrats and other state officials enjoy very broad discretionary powers in their dealings with the people and often times, due process was relegated to the background in criminal law and procedure which permit

preventive detention and extensive but hardly supervised police powers and in constitutional provisions which grant emergency powers (Ocheje, 1999).

Based on this orientation, upon the exit of the British colonialists from Nigeria, all the constitutions from the 1960 independence constitution to the current 1999 constitution as amended made provisions for the exercise of emergency powers. In 1962, the then Prime Minister of Nigeria, Tafawa Balewa, citing lack of properly constituted government in western Nigeria and the need to maintain peace, order and tranquillity throughout all parts of the federation in the face of the political turmoil that engulfed the Action Group (AG), declared the first state of emergency in the Western region pursuant to Emergency Powers Act of 1961 (Teniola, 2017). As a fallout of this, series of Emergency Powers Regulations were promulgated by the Governor General comprising Emergency Powers (General) Regulations, 1962 (LN No 54 of 1962); the Emergency Powers (Detention of Persons) Regulations, 1962 (LN No.64 of 1962); the Emergency Powers (Restriction of Orders) Regulations, 1962 (LN No.65 of 1962) (Udoma 1994 as cited in Fatile and Ejalonibu, 2014).

Also, in an effort to de-escalate the ethnic tension that enveloped Nigeria in the aftermath of the counter coup of July 27, 1966 that led to the assassination of the then Head of State and Supreme Commander, General Aguiyi Ironsi, the military administrator of western region, Brigadier General Adekunle Fajuyi and many others, the former Head of State, General Yakubu Gowon, declared a state of emergency on May 27, 1967 and carved out twelve states from the four regions

(Encyclopedia Britannica, 2014). Similarly, on May 18, 2004, following sectarian violence between Muslim and Christian communities in Plateau State that started since September 2001 and claimed as many as 2,000 lives, former President Olusegun Obasanjo, citing Section 305 of the 1999 Constitution of the Federal Republic of Nigeria, imposed a state of emergency on Plateau State, suspending the Governor and State House of Assembly (Aluko, 2004). Also, following the conflict between the executive and legislature in Ekiti State, former President Olusegun Obasanjo, declared a state of emergency in that state on October, 2006 in order to ensure that peace and orderliness returned to the Ekiti State (Alemika, 2013 as cited in Fatile and Ejalonibu, 2014).

History repeated itself on December 31, 2011 when former President, Goodluck Jonathan declared a state of emergency in 15 local government areas spread across 4 northern states of Borno, Niger, Plateau and Yobe following a series of bombings by the dreaded Islamic Sect, Boko Haram (Onuah and Cocks, 2011). Finally, as a result of series of attacks that climaxed to the forceful seizure and occupation of territories in parts of north-eastern Nigeria by Boko Haram, the administration of Goodluck Jonathan on May 14, 2013, declared a state of emergency in three north-eastern states of Adamawa, Borno and Yobe which was extended twice at the expiration of the first duration of six months (Ekujumi, 2013).

Exploring the Basic Concepts

Two fundamental concepts form the conceptual thrust of this discourse, namely state of emergency and human security. This segment explores these

concepts with a view to clarifying and situating their meanings for the purpose of shared understanding.

State of Emergency

According to Lord Dunedin in *Bhagat Singh vs King Emperor*, “a state of emergency is something that does not permit of any exact definition but connotes a state of matters calling for drastic action” (Dunedin, n.d. as cited in *Laws of Bangladesh*, 2012). On his part, Stephen Marks (Marks, n.d. as cited in *Laws of Bangladesh*, 2012), defines emergency as a situation which results from a temporary condition, which places institution or the state in a precarious position, which leads the authorities to feel justified in suspending the application of certain principles. As noted by Roumy, (2006 as cited in Kamga, 2015), the notion of a state of emergency, state of siege or state of exception as it is known in various climes is not only pervasive but also rooted in the past having derived its doctrinal foundation from canonical maxim *necessitas non habet legem* which when translated in English language means that necessity knows no law or necessity creates its own law.

Though prevalent but varies from country to country and from situation to situation, the rationale behind the idea as Kamga (2015) noted is to serve as a soothing measure to remedy the inadequacy and deficiency of the law as well as provide a contingent solution geared towards addressing a particular emergency. Two key separate but compatible elements of a state of emergency have been identified: a legal framework consisting of the constitutional and legislative bases for the state of emergency and an operational framework involving the organizational structure and strategic

plans for dealing with the state of emergency (Law and Powers, 2005).

Human Security

The human security paradigm which was introduced in the 1994 global Human Development Report (HDR) is defined as people's safety from chronic threats and protection from sudden hurtful disruptions in the patterns of daily life (Dorn, 2017). The key components of human security as contained in the 1994 HDR are 'freedom from fear' and 'freedom from want' (UNDP, 2013). At the centre of human security approach is the survival, livelihood and dignity of human populations. The basic features of the human security paradigm are: people-oriented (focus on the individual as the centre of analysis), multi-sectoral (widened understanding of threats and causes of insecurity), comprehensive (all embracing approach at tackling human insecurity rather than disjointed unconnected responses), context-specific (recognition of the fact that there is variation in insecurity across different settings and proffering of solutions that address particular situations they seek to address) and finally prevention oriented (focus on the root causes of a particular threat, ways of mitigating the impact and where possible prevent the occurrence of current and future threats) (United Nations, 2014).

Human security has seven distinct but related dimensions: economic security, food security, health security, environmental security, personal security, community security and political security. Economic security includes insured basic income and employment as well as access to such social safety net; food security deals with access to basic nutrition and food

supply; health security encompasses access to safe water, living in a safe environment, access to health services, prevention of diseases as well as basic knowledge of how to live a healthy life; environmental security addresses issues such as prevention of pollution, guide against deforestation, conservation of irrigated land, prevention of natural disasters such as droughts, floods, cyclones, earthquakes etcetera; community security deals on the preservation of commonly held values, abolishment of ethnic discrimination, prevention of ethnic conflicts and the protection of indigenous people and lastly, political security that aims at protecting human rights and well-being of all peoples as well as protection of the populace against state repression (UNDP, 2013).

Deconstructing the doctrine of State of Emergency in Nigeria: A Human Security Perspective

Since independence in 1960, all the constitutions enacted by the country clearly define state of emergency from the perspective of threats to the country's sovereignty, territorial integrity and political independence. Consequently, Section 305 of the 1999 Constitution as amended empowers the President to issue a proclamation of state of emergency in the federation or any part thereof. Sub Section (3) stipulates that the President shall have power to issue a Proclamation of 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 or any part thereof to such extent as to require extraordinary measures to restore peace and security; (d) there is a clear and

present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger; (e) there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation; (f) there is any other public danger which clearly constitutes a threat to the existence of the Federation; or (g) the President receives a request to do so in accordance with the provisions of subsection (4) of this section. The above provisions suggest that emphasis has been more on the threats affecting the territorial integrity of the country.

However, from that 1962 when the first emergency rule was proclaimed till date, there have been several threats to human security within the federation that ordinarily should lead to the declaration of a state of emergency. Looking at the seven components of human security as highlighted in the segment on conceptual issues above, incidents of persistent poverty and unemployment (economic security threats); hunger and famine (food security threats); deadly infectious diseases, unsafe food, malnutrition, lack of access to basic health care (health security threats); environmental degradation, resource depletion, natural disasters and pollution (environmental security threats); physical violence, crime, terrorism, domestic violence as well as child labour (personal security threats); inter-ethnic, religious and other identity based tensions (community security threats); political repression as well as human rights abuses (political security threats) (UN, 2009) have become symptomatic of the country's national life. Yet, these humanitarian

crises have not led to the proclamation of a state of emergency. Suffice it to say that often times in Nigeria, the government comes up with statements suggesting that it has declared a state of emergency in certain sectors of the country's national life (statements such as the federal government has declared a state of emergency on education, hunger, health, economy among others), however, such pronouncements are mere rhetoric as they do not translate to a proclamation of a state of emergency because as Ozbudun & Turhan (1995) observed, for a declaration to constitute an emergency rule, the law must grant extraordinary powers and as such, any proclamation of a state of emergency that is not supported by the grant of extraordinary powers does not amount to an emergency rule in the ordinary sense of the word.

On the threats to economic security, poverty is so widespread and persistent in Nigeria that the latest poverty report by the National Bureau of Statistics (NBS) indicates that about 112 million Nigerians (that is 67.1 per cent) of the entire population of 162 million live below poverty level (Ahiuma-Young, 2016). The situation is so critical that the International Labour Organization (ILO) has estimated that nothing less than \$10 trillion will be required to eradicate poverty in Nigeria and other developing countries from 2016 – 2030 (Ahiuma-Young, 2016). Also, the NBS observed that 29 million Nigerians are jobless as the unemployment rate in Nigeria rose from 13.9 per cent in the 3rd Quarter of 2016 to 14.2 per cent in the 4th Quarter of the same year (Vanguard Newspaper, 2017; National Bureau of Statistics, 2017). Meanwhile the Bureau has projected an increase in the unemployment rate in the 4th

Quarter of 2017 as a result of the economic recession experienced in the country (Danjuma, 2017).

As disturbing as these revelations are, the Nigerian government has not deemed it necessary to take extraordinary measures to address these economic challenges. However, as far back as October 1923, as a result of the depreciating value of German Mark, the government invoked Article 4 of the Constitution to declare a state of exception to be able to cope with the fall of the currency; thus, corroborating the inclination in modern times to conflate politico-military and economic crisis (Attell, 2004). Also in 1933, in order to cope with the “Great Depression”, extraordinary and unlimited powers (through a series of Statutes culminating in the National Recovery Act of June 16, 1933) were delegated to US President, Franklin Roosevelt to regulate and control every aspect of the economic life of the country (Attell, 2004). In recent times, amidst biting economic crisis, President Nicholas Maduro of Venezuela, issued a decree that assigned extra powers to him to tackle the country’s economic challenges (Hutt, 2016). The basic need of man (food) is not left out. Comparing agricultural research ratings of countries such as Brazil, India, and China among others, international experts noted that while those countries are moving upward, Nigeria is sliding downward on yearly basis with attendant increase in food insecurity in the land heralding danger of malnutrition and famine (Umoru, 2017). Conversely, in Malawi, arising from worsening food shortages occasioned by drought which has subjected about 2.8 million people (close to 20 per cent of the total

population) to food insecurity, the President, Peter Mutharika, declared a state of national disaster to address the problem (Aljazeera, 2016).

Health services are also facing serious threats. In the entire northeast, 6.9 million people are living in areas with inadequate health services including more than 68 per cent of the 1.8 million Internally Displaced Persons (IDPs) living in host communities across Adamawa, Borno and Yobe states (United Nations High Commissioner for Refugees, 2017). Also disturbing is the fact that interventionist programmes are being hampered by lack of qualified staff and essential medicines as well as the destruction of health facilities. Report from World Health Organization (WHO) shows that at least one third of more than 700 health facilities in Borno State have been utterly ruined while one third of the remaining facilities are not functioning at all (Ogundipe and Olawale, 2016). According to the report, 35 per cent of the 743 health facilities in Borno State are completely destroyed, another 25 per cent partially damaged and only 34 per cent are intact (VOA News, 2016). 31 per cent of the 481 health facilities that have not been damaged are not functioning for lack of access due to insecurity while almost 60 per cent of the facilities have no access to safe water; 35 per cent have no access to any water at all and 3 out of 4 (73 per cent) facilities lack enough chlorine stocks to decontaminate the water used in the facility ((Ogundipe and Olawale, 2016). In Slovakia however, following the resignation of 2,400 doctors that rejected pay rise offer of £300, the Interim Prime Minister, Iveta Radicova, declared a state of emergency on November 28, 2011 at 15 state-run hospitals (Vilikovska, 2011; Boyd, 2011).

On environmental threats, Nigeria is reported to have one of the most environmental records in the world (Tasihi, 2010). In the Niger Delta region for instance, as a result of oil exploration and exploitation by the oil companies, there is an alarming rate of environmental degradation. According to the Director, Health of Mother Earth Foundation, Mr Nnimmo Bassey, since more attention is given to oil exploitation with less on maintenance, the soil, foods and ecosystem have been contaminated (Enietan-Matthews, 2015). Similarly, in the northern part of the country, an environmentalist, Desmond Majekodunmi has estimated that hundreds of thousands of people will become environmental refugees arising from climate change and unabated deforestation that have caused desert encroachment (Onoh, 2014). Furthermore, more than half of Nigeria's primary forests is lost to deforestation while erosion due to flood is occurring at an increasing and alarming rate (Tasihi, 2010). Compared to what is obtainable in some other countries, Nigeria has not taken extraordinary measures to address these threats. For instance, former US President, George Bush, placed two American states of Mississippi and Louisiana under emergency rule following the Hurricane Katrina threat in 2005 (Hutt, 2016). Also, a state of emergency was declared in Japan in 2011 due to the massive tsunami that affected the three nuclear reactors housed by the Fukushima power plant (Hutt, 2016).

Threats against persons and their belongings are quite prevalent. Crimes such as murder, manslaughter, infanticide, concealment of birth, rape and other physical abuses against

human beings are widespread while those against human belongings such as stealing, receiving stolen properties, obtaining property by false pretence, robbery, burglary and house breaking are common (National Bureau of Statistics, 2017). According to the crime statistics for year 2016 released by the NBS, out of a total of 125,790 cases reported, offence against property recorded the highest with 65,397 cases reported followed by offence against persons which stood at 45,554 reported cases (National Bureau of Statistics, 2017). Conversely, in Trinidad and Tobago, arising from the killing of 11 people in a couple of days, the Prime Minister, Kamla Persad-Bissessar declared emergency rule for 15 days on August 21, 2011 to halt the violent activities of rampaging thugs bent on unleashing havoc on the country (BBC News, 2011).

Community security threats are not left out. With its multi-ethnic nature, Nigeria has been experiencing inter-ethnic, religious and other identity based tensions. In the conflict prone "Middle Belt" region for instance, impunity for cycles of uninhibited and unpunished violence between nomadic Fulani pastoralists and farming communities has promoted its spread to other areas. In February, 2016, for two weeks, in retribution for the killing of their cattle, armed herdsmen attacked 11 communities in Benue killing many people; the case is not different in Ukpabi Nimbo of Enugu state where similar attacks on April 25, 2016 left 12 people dead while Korum Orawua and Gidan Bature communities in Taraba state were not spared as violent attacks of May 7, 2016 led to the death of 6 people (Human Rights Watch, 2017). However, in Myanmar, sectarian

violence between Buddhists and ethnic Rohingya Muslims in the town of Meiktila in central Myanmar that displaced over 8,000 people, destroyed more than 1,000 homes and buildings, including mosques and left over 40 people dead, prompted the proclamation of a state of emergency on March 22, 2013 (Reliefweb, 2013). Also, on March 5, 2007, a state of emergency was declared in Vanuatu after clashes on March 3, 2007 at the capital Port Vila between Islanders from Ambrym and Tanna resulted in three deaths and destruction of property (The Economist Intelligence Unit, 2007; BBC News, 2017).

Lastly, repressive activities of the government and human rights abuses constitute the major threats to political security among Nigerians. A report by the Amnesty International describes the human rights situation in Nigeria as “pretty shocking”. The human rights organization notes that women, men and children live in continuous fear of murder and abduction by Boko Haram and of arbitrary arrest, unlawful detention, torture and even executions at the hands of security forces (Obi, 2015). However, it is worthy to note that arising from Chinese intervention in the Korean war that lasted between 1950-1953, former US President, Harry Truman, declared a state of emergency by beckoning on the American people to help construct an “arsenal of freedom” over threats to Americans by what he proclaimed “Communist Imperialism” (History.com, 2009).

The pertinent question however is whether these threats to human security can justifiably constitute emergency that necessitates the proclamation of a state of emergency? For constitutional theorists certain limitations abound with

reference to circumstances that can lead to the declaration of state of emergency. In their view, while international law has a role to play in establishing the propriety and or otherwise of invoking emergency powers, they further argue that emergency powers mainly apply to procedures rather than individual rights and that a balancing test (proportionality test) is applicable and finally that emergency powers can only be invoked in extreme circumstances (Helgadottir, 2012). Though a country’s constitution or legislation normally describes the circumstances that can give rise to a state of emergency, identifies the procedures to be followed, and specifies limits on the emergency powers that may be invoked or the rights that can be suspended, however, important international treaties provide guidelines regulating emergency situations (Oraa, 1992 as cited McGoldrick, 2004, Law and Powers, 2005). For instance, The European Convention of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) - stipulate that states are to observe the following principles in the proclamation of a state of emergency (Law and Powers, 2005, p.2):

- temporality: this refers to the exceptional nature of the declaration of a state of emergency;
- exceptional threat: the crisis must present a real, current or at least an imminent danger to the community;
- declaration: the state of emergency must be announced publicly; this informs citizens of the legal situation and reduces the possibility of a de facto state of emergency, that is, a situation whereby the state restricts human rights without officially proclaiming a state of emergency;

- communication: notification of the measures taken must be made to other states and relevant treaty-monitoring bodies; for example, if a state is to derogate from its obligations under the ECHR or ICCPR then it must inform the Secretary General of respectively the Council of Europe or the UN of its derogation, the measures it has taken and the reasons therefore, as well as the termination of the derogation;
- proportionality: the measures taken to counter the crisis must be proportional to the gravity of the emergency situation; this applies to the area of application, their material content and their duration;
- legality: human rights and fundamental freedoms during a state of emergency must respect the limits provided for by the relevant instruments of international and national law; furthermore, a state of emergency does not imply a temporary suspension of the rule of law, nor does it authorise those in power to act in disregard of the principle of legality, by which they are bound at all times;
- intangibility: this concerns the fundamental rights from which there can be no derogation, even during times of emergency.

Though different states may be subject to different international obligations with respect to emergencies (Oraa, 1992 as cited in McGoldrick, 2004), however, let us focus on the more universal international provision on public emergency as provided in the ICCPR. Pursuant to Article 4 of ICCPR, states parties to the present Covenant may take measures derogating from their obligations under the Covenant when there is public

emergency that threatens the life of the nation and the existence of which is officially proclaimed (United Nations, 1976). According to the ICCPR, a threat to the life of the nation includes: a threat that affects the whole of the population and either the whole or part of the territory of the state and one which threatens physical integrity of the population, the political independence or the territorial integrity of the state or the existence or basic functioning of institutions indispensable to ensure and project the rights recognized in the Covenant (Helgadottir, 2012).

What then constitutes these exceptional circumstances? Are they limited to only military and territorial threats? According to the 18th Century English philosopher, John Locke, the prerogative of exercising emergency powers which is not limited to wartime or even to situations of great urgency, is justified if it is exercised for public good (Cook, 1947 as cited in Relyea, 2007). The implication of this is that the rationale for the proclamation of a state of emergency can arise from diverse situations such as armed action against the state by both internal and external forces, natural calamity, civil unrest, an epidemic, a financial or economic crisis or a general strike (Law and Powers, 2005). Also, Criddle and Fox-Decent (2012 as cited in Fatile & Ejalonibu, 2014) corroborated this view when they averred that governments all over the world have over the past Centuries, declared states of emergency in reaction to a multiplicity of real and perceived crises, including not only the threats of foreign military intervention and insurrection but also political unrest, general civil unrest, criminal or terrorist violence, labour strikes, economic emergencies, the collapse of public

institutions, the spread of communicable diseases and natural disasters.

Having x-rayed the exceptional circumstances that can lead to the declaration of a state of emergency, another challenge is that more often than not dictators hide under the cover of public emergency to repress and deny fundamental rights of the populace. For instance, in the 1970s (during the Cold War), there was an international state of emergencies “epidemic” witnessed in countries like Argentina, Brazil, Chile, Egypt, India, Ireland, Malaysia and Pakistan as a result of political unrest whereby those who disagreed with their governments were regarded as dissidents, agents of international enemy and threats to national security; a development that led to idea of “national security doctrine” (broadly defined to encompass the capacity of the state to defend against external and internal aggression and insurgency) which provided political and ideological grounds for dictatorships to deal brutally with opponents of the regime (Abiola, 2011). In a country like Nigeria with adverse records on human rights, what is the guarantee that widening the scope of issues that can justify the proclamation of a state of emergency will not worsen the situation?

Worried by the above scenario, in the Spring (from April 30 to May 4) of 1984, the American Association for the International Commission of Jurists (AAICJ) initiated a colloquium co-sponsored by the International Commission of Jurists (ICJ), the Urban Morgan Institute of Human Rights and the International Institute of Higher Studies in Criminal Sciences,

comprising 31 distinguished experts, with the aim of examining the limitation and derogation provisions in ICCPR, with a view to identifying their legitimate objectives, the general principles of interpretation which govern their imposition and application as well as some of the main features of the grounds for limitation and derogation (Abiola, 2011; ICJ, 1985). The outcome of this gathering was the adoption of Siracusa Principles on the limitation and derogation provisions in the ICCPR. Cognizant of the fact that there is always a gap between the existence of rules and implementation with a view to ensuring compliance, the ICCPR has set in motion two systems of monitoring: one is that states parties are required to submit periodic written reports to be examined by the Human Rights Committee (HRC) (an independent body of experts that monitors implementation of the ICCPR by its parties) on their implementation of the ICCPR rights, including the effect emergency powers on such rights (Boerefijn, 1999 as cited in McGoldrick, 2004); two, is a system that permits individual petitions under the First Optional Protocol to the ICCPR (OPI) (Sandy, 1998 as cited in McGoldrick, 2004).

Relying on the monitoring mechanisms, ICCPR has through the HRC examined human rights developments in so many countries. In 1995, for instance, after discovering that the conditions stipulated in the legislative and judicial systems of Estonia might not ease access to citizenship of non-Estonians residing in the country as well as voicing concern over the congested prisons and long-lasting detention of refugees, the HRC encouraged Estonia to go on with its reforms in order to

build a democratic civil society where human rights will be totally respected (United Nations, 1995). Also, in the case of Hong Kong in 1995, in the course of examining the fourth periodic report of the United Kingdom relating to Hong Kong in accordance with state party's compliance with the ICCPR, the HRC regretted that the legal system in Hong Kong violated Article 25 of the ICCPR on issues of participation of the citizens in public affairs and as such, called for respect for gender equality, strong and independent judiciary committed to human rights, bringing into force anti-sex discrimination ordinance and the establishment of equal opportunity commission (United Nations, 1995). For Nigeria, the HRC in 1996 recommended that its measures which abrogated or suspended Constitutional rights, themselves be abrogated and any future derogation comply strictly with Article 4 of the ICCPR (McGoldrick, 2004).

In 2001, concern was raised regarding article 17 of the Croatian Constitution on derogation from the human rights provisions of the constitution during emergency and the HRC sued for a suitable legislation to address the situation (United Nations, 2001). In the case of Canada, the "notwithstanding" clause in section 33 of the country's constitution was described by HRC as being incompatible with Article 4 of the ICCPR (UN Doc., n.d. as cited in McGoldrick, 2004). Gabon was not left out as it was urged to immediately adopt and incorporate all relevant provisions of Article 4 of the ICCPR into the Constitution (UN Doc., n.d. as cited in McGoldrick, 2004). In 2014 in Nepal, the HRC advocated the need for legal and practical solutions to continued impunity for the most serious

human rights abuses such as war crimes, torture and enforced disappearance as well as lack of accountability and reparation for victims (OHCHR, 2014).

On the issue of jurisdiction to declare a state of emergency, an indispensable feature of a federal state is the formal division of governmental powers and functions between the central government and the component units that make up the federation. Section 2 (2) of the 1999 Constitution of the Federal Republic of Nigeria as amended describes the country as a federation consisting of states and a federal capital territory. Section 5 (2) (a) of the same constitution vests in the Governor of a state the executive powers of the state and Section 176 (2) describes the Governor as the Chief Executive of his state. The implication of this that just as the President is the Chief Security Officer of the whole federation, the Governor is the Chief Security Officer of his state. However, under Section 305 of the Constitution, only the President is empowered to proclaim a state of emergency in the federation or any part thereof. Such a power is not extended to the Governor within his area of jurisdiction. The question begging for an answer is whether this is the practice in other federal states? Let us look at the arrangement in some countries around the globe.

In New Zealand, the Civil Defence Emergency Management Act of 2002 empowers the government and local authority the power to declare a state of emergency either over the entire country or within a specific region like the local state of emergency declared on September 4, 2010 as a result of the Canterbury earthquake (New Zealand Legislation, 2002). In Canada, the

current Emergency Act empowers both the federal government and any of the provisional governments to declare a state of emergency (Government of Canada, 2003). The US is not left out as a state governor or local mayor may declare a state of emergency within his or her jurisdiction like the one declared by Washington Governor, Jay Inslee on December 10, 2015 due to flooding and landslides caused by heavy rains (USA Today, 2015).

Conclusion

This paper has sought to deconstruct the idea of state of emergency in Nigeria using the human security approach. After comparing the theory and practice of state of emergency in Nigeria both in scope and jurisdiction with what suffices in other climes especially federal states operating presidential

democracy, the study concludes that the notion of state of emergency within the Nigerian context is not only narrow in scope but also defies the cardinal principle of a federal state whereby governmental powers are divided among the federating units with each unit having and exercising jurisdiction over matters within its domain. Deferring to the paradigmatic orientation of human security, the study therefore recommends an expanded conception of the doctrine of state of emergency in Nigeria and the grant of concurrent jurisdiction to the three tiers of government in the exercise of extraordinary powers in dealing with emergencies within their domain depending on the magnitude of the situation and the resources available.

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