



NIGERIAN BAR ASSOCIATION

NATIONAL SECRETARIAT: Plot 1102, Muhammed Buhari Way, Cadastral Zone A00, Central Business District, Abuja Nigerian Tel: +234 800 333 1111
www.nigerianbar.org.ng

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“STATE OF EMERGENCY IN RIVERS: “SUSPENSION” OR OTHERWISE SUMMARY REMOVAL OF A DEMOCRATICALLY ELECTED GOVERNOR AND OTHER ELECTED OFFICIALS IS UNCONSTITUTIONAL”

The Nigerian Bar Association (NBA) has taken due notice of the declaration of a state of emergency in Rivers State by President Bola Ahmed Tinubu, as contained in his address to the nation today, 18th March 2025. This declaration according to the President is due to the prevailing political tension in the state and due to the “vandalization of pipelines between yesterday and today.” This development has far-reaching constitutional and democratic implications, particularly in light of the provisions of Section 305 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which governs the procedure for the proclamation of a state of emergency and which the President purported to have relied upon.

Section 305 of the Constitution indeed vests the President with the power to declare a state of emergency, the Section stipulates strict conditions and procedural safeguards that must be followed to ensure that such extraordinary measures do not infringe on democratic governance and fundamental human rights.

The NBA is gravely concerned about the purported suspension by the President of the Governor of Rivers State, the Deputy Governor, and the Members of the Rivers State House of Assembly for six months.

The 1999 Constitution does not grant the President the power to remove an elected governor, deputy governor, or members of a state’s legislature under the guise of a state of emergency. Rather, the Constitution provides clear procedures for the removal of a governor and deputy governor as per Section 188. Similarly, the removal of members of the House of Assembly and dissolution of parliament is governed by constitutional provisions and electoral laws, none of which appear to have been adhered to in the present circumstances.

A declaration of emergency does not automatically dissolve or suspend elected state governments. 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.

The NBA firmly asserts that the situation in Rivers State, though politically tense, does not meet the constitutional threshold for the removal of elected officials.

NATIONAL OFFICERS:

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For a state of emergency to be declared, Section 305(3) of the Constitution outlines specific conditions, including:

1. War or external aggression against Nigeria.
2. Imminent danger of invasion or war
3. A breakdown of public order and safety to such an extent that ordinary legal measures are insufficient.
4. A clear danger to Nigeria's existence.
5. Occurrence of any disaster or natural calamity affecting a state or a part of it.
6. Such other public danger that constitutes a threat to the Federation.

The NBA questions whether the political crisis in Rivers State has reached the level of a complete breakdown of law and order warranting the removal of the Governor and his administration. Political disagreements, legislative conflicts, or executive-legislative tensions do not constitute a justification for emergency rule. Such conflicts should be resolved through legal and constitutional mechanisms, including the judiciary, rather than executive fiat.

The purported removal of Governor Fubara, his deputy, and members of the Rivers State House of Assembly is therefore unconstitutional, unlawful, and a dangerous affront to our nation's democracy.

Furthermore, subsection (2) of Section 305 provides that:

“A Proclamation issued by the President under this section shall cease to have effect—

- (a) if it is not approved by a resolution of the National Assembly within two days when the National Assembly is in session; or*
- (b) if the National Assembly is not in session, within ten days after it reconvenes.”*

These provisions provide that a state of emergency declared by the President does not assume automatic validity. It requires legislative ratification within a defined timeframe to remain in effect. The NBA, therefore, emphasizes that unless the National Assembly duly approves the proclamation, the declaration of a state of emergency in Rivers State remains constitutionally inchoate and ineffective.

In light of the foregoing, the Nigerian Bar Association:

- Affirms that the President does not have the constitutional power to remove an elected governor under a state of emergency. Any such action is an unconstitutional encroachment on democratic governance and the autonomy of state governments.
- Calls on the National Assembly to reject any unconstitutional attempt to ratify the removal of the Rivers State Governor and other elected officials. The approval of a state of emergency must be based on strict constitutional grounds, not political expediency.

- Warns that suspending elected officials under emergency rule sets a dangerous precedent that undermines democracy and could be misused to unseat elected governments in the future.
- Demands that all actions taken in Rivers State strictly conform to constitutional provisions and Nigeria's democratic norms.
- Encourages all stakeholders, including the judiciary, civil society, and the international community, to closely monitor the situation in Rivers State to prevent unconstitutional governance and abuse of power.

The NBA remains committed to upholding the Constitution, defending democratic governance, and ensuring that the rule of law prevails in Nigeria. A state of emergency is an extraordinary measure that must be invoked strictly within constitutional limits. The removal of elected officials under the pretext of emergency rule is unconstitutional and unacceptable.

We call on all relevant authorities to act in accordance with the law and the best interest of the country. Nigeria's democracy must be protected at all costs, and the Constitution must be upheld as the supreme legal authority in all circumstances.



Mazi Afam Osigwe, SAN
President

