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EMERGENCY POWERS UNDER THE 1999 CONSTITUTION: THE CASE STUDY OF PLATEAU STATE

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> "..... *By virtue of Section 305 of the Constitution of the Federal Republic of Nigeria 1999, I hereby declare a state of emergency in Plateau State. This declaration has been published in a Federal Gazette ....*"[2]

The above statement summed up the decision of the Federal Government under President Olusegun Obasanjo on the long running ethnic / religious conflict in Plateau State. Emergency rule as an exception to constitutional order may perhaps predate even the advent of written constitutions as a charter of government. From time immemorial state as a fictional body, epitomized by its leadership, had established the framework of its relationship with the citizens including in extraordinary circumstances which emergency situation portends. In the course of history various legislation, regulations, instruments and in many cases draconian measures were used by the state to achieve the objectives of addressing unusual situation or circumstances. The question which remained was the exact circumstances and nature which this awesome power of the state could be legally and beneficially evoked without harming the fundamental interest of the people e.g fundamental rights and other constitutional limitations.

It is intended to examine the various constitutional principles and provisions, including judicial decisions which governs or / and regulates the declaration of state of emergency under the 1999 Constitution. Furthermore, the examination of the issues will be made in the context of constitutional requirements against the background of the Plateau state experience in so far as the information available allow. It must be pointed out that the bulk or the entire materials of the events of what happened in Plateau State was based on Newspapers Report and Magazines. Emergency rule in Nigeria is not new and it may be necessary to briefly examine the historical background of emergency rule in Nigeria before venturing into the substantive issues.

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[2] Presidential Broadcast to the Nation on 18th December,2004.see NEWSWATCH MAGAZINE March 31,2004 pp18-19

HISTORICAL BACKGROUND OF EMERGENCY RULE IN NIGERIA

The declaration of State of Emergency in Plateau State on the 18th May 2004 was the third in the annals of Nigeria's political experience.[3] While declaration of emergency in the country is not new, one must however concede that the reasons behind each of the declaration was different. The first declaration of emergency was in 1962 under the 1960 Nigerian Constitution.

Section 54(1) [4]of the 1960 constitution provides for special powers of Parliament in relation to emergencies. Parliament may at any time make any such laws for Nigeria or any part thereof with respect to matters *not included in the Legislative List as may appear to Parliament to be necessary or expedient for the purpose of maintaining or securing peace, order and good government during any period of emergency* .[5](emphasis supplied)

The literal interpretation of this proviso was to lift all restrictions on the Federal (Parliament) Legislature during emergency period as defined by Section 54 sub section3 of the Constitution. It is pertinent to observe that this definition was so imprecise as to create room for abuses, apart from the "war situation", the two other subsections (b) and (c) vested in parliament the power to determine what constitute an emergency. Following the political crisis of the Action Group which led to serious political violence in the Western Region, the Federal Parliament declared a state of emergency in the Region on the allegation of breakdown of law and order. The Regional Government was sacked and an Administrator with extraordinary powers was appointed[6] The threat to the breakdown of law and order was said , "to endanger the continuance of the Federal Government of Nigeria". [7] The Emergency Powers Act 1961 was passed and brought into force. The Emergency Powers (Jurisdiction) Act vested in the Supreme Court the exclusive jurisdiction,"..... *with respect to any question as to the validity of the Emergency Powers Act, any Regulation, Order or other*

[3] The first was in May 1962,. The 1962 declaration of Emergency in Western Region by Balewa Government was clearly precipitated by the political crisis of Action group which spilled over to the government of the Region. The second was General Gowon's declaration of Emergency in the country of May 1967 on the outbreak of the Nigeria's civil war. This was essentially to enable him to deal with the exigencies of war.

[4] 1960 Constitution which is similar to Section 70 of the 1963 Republican Constitution

[5] Subsection 3 defined "period of emergency" to mean "any period during which (a) the federation is at war (b) there is in force a resolution passed by each House of Parliament declaring that a state of emergency exist (c) There is a force of revolution of each have of Parliament supported by the vote of not less than 2/3s of all the members of the House of Parliament supported by the vote of not less than 2/3s of all the members of the House declaring that democratic institutions in Nigeria are threatened by subversion "

[6] Some writers were in disagreement because , in their view, there was no reason to declare an emergency in the Region. See Akinyemi et el (infra) pp 63

[7] See Section 56 of the 1963 Constitution

instruments having effect by virtue of that Act or of anything done or omitted in pursuance of that Act or any such instrument....".

A number of cases were adjudicated by the Supreme Court in exercise of this jurisdiction and it is intended to briefly consider few of them. In *WILLIAMS V MAJEKODUNMI*[8] the plaintiff challenged the entire *Emergency Powers Act 1961* for being unconstitutional null and void. That the Restriction Order served on him under the Act by the Administrator restricting his movement violate his constitutional rights to freedom of movement. The Supreme Court upheld the validity of the Emergency Powers Act while setting aside the Restriction Order.

In *ADEGBENRO V ATTORNEY GENERAL OF THE FEDERATION*[9] Argument was advanced that there was no basis for declaring a state of emergency in Western Region. The Court rejected this argument and held that.

> "We have examined all the Enactments and it is of the utmost importance to note that of each of these enactments cannot be said to have gone beyond the significance of the necessity of the occasion, which brought them about. In other words, the Supreme Court was satisfied that grounds existed for the declaration of emergency within section 65(2) of the Constitution "

Furthermore, one of the arguments advanced by the plaintiff in *WILLIAMS V MAJEKODUNMI*[10] that there were no any threat to breakdown of law and order to warrant a declaration of emergency in the Region. The Supreme Court rightly rejected the augment and held that it is for the Parliament and not for the Courts to decide whether a state of emergency exist or not.

In this regard the Court interpreted section 65(3) of the Constitution and viewed the issue of emergency as a political doctrine. In other words the Court considered the declaration of state of emergency to be entirely governed by the doctrine of political question. What is political question? Finketstein, a respected writer define " a political question", thus

> " There are certain cases which are completely without sphere of judicial interference. They are called for historical reasons 'political questions'. What are these political questions? And to what

[8] No. 2 (1962) 1 ALL NCR 328 the court refused to consider the question of whether a declaration of a state emergency has been made mala fide.

[9] (1962) 1 ALL NLR 338

[10] No. 3 (1962) 1 ALL NLR 413

> matters does the term apply? It applies to all matters of which the court; at a given time will be of the opinion that it is impolitic or inexpedient to take jurisdiction. Sometimes this idea of inexpedient to take jurisdiction will result from fear of the vastness of the consequence that a decision on merit might entail. Sometimes it will result from the feeling that matter is 'too high' for the Court. But always there will be weighing consideration in the scale of political wisdom."[11]

The doctrine found judicial acceptance by the United States Supreme Court in the case of ***COLEMAN V MILLER***[11] Hughes J. define what the doctrine means and the scope of its application when he held that;

> " In determining whether a question fall within that category (political question) the appropriateness under our system of government of attributing finality to the action of political department and also the lack of satisfactory criteria for a judicial determination are dominant considerations."[12]

Finally one must point out that the provisions of emergency powers under the 1999 Constitution is slightly different from that of the 1963 Constitution. Perhaps this is because the two constitutions are completely different i.e the 1963 being parliamentary while the 1979 and 1999 Constitution were Presidential. While there was no declaration of emergency between 1979 – 1984 during the life span of that constitution, the power and procedure for the declaration of the state of emergency under the 1979 Constitution was provided under Section 265 Sub section (1) - (4). This provision must however be read alongside Section 11 sub section 3 of the 1979 Constitution. Section 265 of the

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[11] 307 US433 at 454 cf BAKER V CARR 369 vs 186 (1962) Particularly Brenna, J. at 217. The Courts in Nigeria has in fact accept the doctrine as shown by the supreme court decision in AWOLOWO V SHAGARI (1979) where the Court after interpreting 2/3 of 19 of the votes cast in the state at the 1979 Presidential Elections cautioned that the decision must not be used as a basis of precedence decision . Similar caution and decision was reached by the Court of Appeal in BUHARI V OBASANJO(2004) where the Court of Appeal found that the 2003 Presidential Elections was rigged, there were intimidation, violence etc. but nonetheless failed and nullify the election.

[12]For a detailed analysis of this doctrine see Jamo, N. M. Comparative Analysis of Legislative Power under the 1979 Nigerian Constitution and the United States Constitution of 1787, an unpublished A.B.U LL.M thesis 1990, pp.173-179

1979 constitution is substantially similar to section 305 0f the 1999 Constitution the central focus of this examination.

EMERGENCY POWERS UNDER THE 1999 CONSTITUTION

To fully appreciate the nature and scope of emergency powers a number of seemingly unrelated provisions of the Constitution must be examine. Section 305(1) of the 1999 Constitution vested in the President, vide an instrument published in an Official Gazette, the power *to issue proclamation of a state of emergency in the Federation or any part thereof.* Sub-section3 of section 305 enumerate in extensive terms number of situations that constitutes " an emergency". These *inter alia* include,

(a) hen the federation is at war

(b) e Federation is in imminent danger of invasion or involvement of r

(c) when there is an actual breakdown of law and order in the federation or any part thereof 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 measure 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 constitute a threat to the existence of the Federation or the President receives a request in accordance with subsection 4[13]

From the above it is clear that the constitutional latitude for declaration of emergency was broad enough to cover any type of threat or perceive threat and it is entirely at the discretion of the President to determine what "threat" will necessitates a declaration of emergency. This wide discretion vested in the President must have certainly informed the decisions of the Courts to be cautious in adjudicating any matter relating to the declaration of emergency.[14] The constitutional basis for declaring a state of emergency is an impending doom to

[13]Nwabueze define, " emergency " to mean, " some events, usually of a violent nature endangering or threatening public order or public safety".

[14]The 5th republic French Constitution which vested in the President the powers to dissolve the National Assembly and rule by decree define emergency as, " clear and present danger threatening the institution or independence of a nation, the integrity of its territory, or the carrying out of the international undertaking or any other situation when regular functioning of governmental authority is interrupted " Cf: Part XVII Article 352 Section 1 Indian Constitution.

public order or the threat to orderly existence of the society. This raises the question of public order, public safety, public security of society or nation which will be considered later.

To interpret or determine the scope of the powers of the President to declare a state of emergency, section 305(1) must be read alongside section 5(1)(b) of the 1999 Constitution. Section 5(1) (b) section expressed the scope of the Executive Powers of the President to "...extend to the execution and maintenance of the Constitution, all laws made by the National Assembly " This power is of vast potency and potentiality because what is to be executed and maintained is not just abstract concept on a parchment. The Constitution must be viewed as a living charter by which a government with full amplitude of instrumentalities, powers and rights, it is created for the administration of the public affairs. The government created presupposes a community of people of differing individual interests but bound together by a common desire of security and stability of society as a nation. The maintenance of the constitution implies powers to preserve, protect and defend it.[15] This power must be construed as the power to protect the government, its agencies, functionaries and its properties. Impliedly the continued existence of the Constitution is *SINE QUA NON* to the exercise of the powers granted under it. The President has a basic legal and constitutional obligation, whether or not the oath demands it, within the purview of his executive authority to protect and maintain it.

In the Australian case of ***R V HUSH EX PARTE DEVANNY,*** Rich, J. held that,

> The survival of the Constitution appears to me to be a matter most incidentals to the execution of the powers under it.[16]

Every state is usually vested by the constitution with special powers to arm itself, employ that power under special circumstances to ensure it continues existence and protection. It is a settled legal principle that constitutionalism is limited by the exigencies of emergency since emergency portends a state of danger to public safety and public order and the constitutional framework may be insufficient to deal with the matter. "The preservation of the state", observed Nwabueze, " is an imperative necessity, which should override the necessity for limited government..".[17]

This principle of self preservation was judicially recognised by the United States Supreme Court in the case of ***CHAE CHAN PING V UNITED***

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[15]See Seventh Schedule to the 1999 Constitution which provides for the different oaths for elected officials.

[16](1933) 48CLR 487

[17] Constitutionalism in Emergent Sates p. 174

STATES [18] where it observed that "....to preserve its independence and give security against foreign aggression and encroachment is the highest duty of every nation and to attain these ends nearly all other considerations are to be subordinated.." The duty of the President to preserve the government and the nation must clearly imply certain measure of power to act in such situation of extreme danger or emergency to the state or to the nation until the legislature intervenes with appropriate legislation.

The extent of the executive power to be asserted depends however on actual situation, the nature, eminence and seriousness whether it is industrial action affecting essential services and supplies, wide spread rioting, in resurrection, armed rebellion, aggression from outside or other public danger. This principle is known as *SALUS POPULI EST SUPREMA LEX.*[19] By the supreme law of necessity organs of the state are entitled on the face of grave danger to take appropriate actions even in deviation from the expressed provisions of the Constitution in order to safeguard law and order and preserve state and society.[200a] This doctrine does not operate outside the law but is implied as an integral part of it.

NATURE AND SCOPE OF EMERGENCY POWERS UNDER THE 1999 CONSTITUTION

In view of the abuses which emergency powers have been subjected to in a number of jurisdiction at the expense of constitutionalism, the 1999 Constitution not only restricted the grounds upon which such power could be exercise but also vested in the National Assembly the supervisory control whenever it was declared. These supervisory control could be broadly divided into two categories.

1. The power of the National Assembly under section 305(6) (b), (c) and (d) which essentially vested the power by a vote of 2/3 majority to endorse

[18] (1946) 130 US 181 cf PAKISTAN V SHAH, the Supreme Court of Pakistan observed that, " it is a doctrine of law that in an emergency imperiling public security, the safety of the state and the nation is the supreme law ..." cf R V KIDMAN (195) 20 CLR425 at 444 Isaac, J. Observed that, "the commonwealth carries with it all necessary powers to protect itself " AUSTRALIAN COMMUNIST PARTY V THE COMMON WEALTH (1950/51) 43CLR 1 at 141 "... The defense powers in Australia extend to legislation for the protection of government against subversive and treasonable activities ,,,,"

[19] See YOUNGTOWN SHEET TUBE Co. V SAWYER, 342 US 579 Sct 691

[20] Nwabueze rightly submitted that the " expression public safety, defence or public order as used in the Constitution touched upon aspects of public security, though they are by no means mutually exclusive. The term was used as a compendious expression to all three or any of them depending on the context "

the proclamation of emergency in the federation or any part thereof. Cumulative reading and interpretation of the subsection established the power of the National Assembly to retain the ultimate control of the emergency powers.

2. The power of the National Assembly on defence and public order and its implied power to "make a law which is reasonably justifiable in a democratic society....." to restrict the provisions of Chapter IV under section 45(2) of the Constitution. The combine effects of these two sections is to vest in the National Assembly the power to make laws, in times of emergency or otherwise, which is reasonably justifiable in a democratic society ... in the interest of public order, public safety[21] and public defence"[22 1a] Under section 11 of the Constitution there are two arms to the power.

a. Maintenance and securing public[23] order
b. Maintenance and securing of essential supplies.

The President could declare an emergency under section 305 subject to the provisions of subsection 4 of the 1999 Constitution. Such declaration must be approved "immediately" by a 2/3 majority Resolution of the National Assembly. The word "immediately" does not conceive of any delay and must be interpreted literary. This is to ensure that no of period or time was allowed for the President to enforce the declaration whose utility or desirability has not been ascertained or sanctioned by the National Assembly. The urgency with which such approval was required is explicit under subsection 6 of section 305 which define it as".... two days if the National Assembly was in session or 10 days if it is not in session.....". Where the required resolution was not passed within the stipulated time or the declaration failed to secure the 2/3 majority endorsement, such declaration lapsed or shall cease to have effect.

Literary construed section 305 subsection 6 (c) established that the ultimate control of emergency powers lies in the hands of the National assembly

[21] Zambian, Kenyan and Malawian constitution define public safety as safety of power and property, the maintenance of supplies and essential services to the life of the community, the prevention of expression of violence, intimidation, disorder and crime, the prevention and suppression of mutiny, rebellion and concerted defence of an disobedience to the laws and lawful authority and maintenance of the administration of justice

[22] 1a Item 17 of the Exclusive legislative list includes "Defence" as a subject matter. The scope of defense former includes, but not limited, to legislation for the protection of the constitution against its overthrow by either external forces or internal subversives and treasonable elements. This must be read alongside item 67 as part of the incidental and supplemental powers of the National Assembly

[23] The term "public" was defined as "referring not only to all persons within Nigeria, but also to persons inhabiting or using any particular or any number of such persons and also to such indeterminate persons as may happened to be affected by the conduct with respect to which such expression is used".See Criminal Code CAP 42 Laws Of the Federation of Nigeria 1990

and not the President. It is interesting to note that the resolution revoking a proclamation requires a simply majority not the 2/3 required for the declaration. The reduction of the vote requirement is to make it easier to revoke the emergency, which is an exception to the principle of democracy and constitutionalism. The National Assembly's power under section 4 ".....to make law for peace, order and good government ...." was the anchor upon which all important powers were predicated. Lets us now consider the background to the crisis in Plateau State.

BACKGROUND TO THE PLATEAU STATE ETHNO-RELIGIOUS CONFLICT

The origin of the conflict in Plateau State may never be known but the crisis however no doubt started sometimes in the year 2001. A *caveat* must be sounded here that there is a dearth of published materials on the crisis making it difficult to find uncontrovertable source of information. In consequence reliance has to be place on press publications with all their imperfections, prejudices and unreliability. The central focus here is the examination of the nature and forces or events that fueled the problem into conflagration which forced the hands of the President to declare a state of emergency. The text of the Presidential Broadcast to the Nation of May 18, 2004 clearly spelt out the reasons and basis, both legal and constitutional, for the declaration of the state of emergency.

It appeared that the press, more than any other institution, contributed very seriously to inflaming (in some cases even instigating) passion and emotions of the different ethnic and religious groups in the state. For instance, the zeal and haste with which they were prepared to report indiscreet statements of political leaders of Plateau State was legendary. For instance, the Governor and Chief Executive of the State, Joshua Chibi Dariye,.was quoted as saying that,

> ".....Because they (Hausas) know that Plateau is a miniature Nigeria, they couldn't capture Plateau by Jihad. So let us use political uprising, let us use religion. And our people say they cannot be conquered. There are just few Hausa Settlers in Plateau and they are championing a cause. We must condemned the attitude."[24]

[24] See DAILY TRUST NEWSPAPERS, Friday Column of May 21, 2004 quoted by Paul Mamza P.40

In an earlier interview granted to the DAILY CHAMPION NEWSPAPERS, Dariye described the Hausas in Jos as, "not only tenants" but also "very unruly". " If your tenant is unruly, you serve him a quit notice". He threatened , "....to deploy available state machinery to deal with the Hausas ", because according to him, "this unruly group must know that we are no longer willing to tolerate the rubbish they gave us..... the days of 'over tolerance' are gone forever".[25]

From this serious remarks or statements made by the elected Chief Executive of a State occupying a constitutional office against a segment of law abiding Nigerians of particular ethnic group domicile in his state. It is clear that the political leadership in Plateau state directly / indirectly instigated the crisis, the basis being not only ethnic (against the Hausas) but also religious (against Muslims). In response to these inflammatory statements from the state political leadership, "a militia", reminiscences of the Crusade of medieval times or akin to the recent experiences in the Balkans and Rwanda, picked up the gauntlet and started killing innocent Nigerian citizens in the manner of the well known universally reprehensible policy of "ethnic cleansing" promoted by the political leaders of Plateau state. They only crime of these victims was because they belong to a particular linguistic and /or religious stock. This action was a gross violation of section 42(2) of the Constitution which provides that, "...No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth...." and section 41(2) which also provides that, "Every citizen of Nigeria is entitled to move freely throughout Nigeria *and to reside in any part thereof.....* " (Emphasis supplied).

Since 2001 until 2004 the problem of ethnic and religious conflict in the state persisted with untold loss of lives and property particularly in *Yelwa Shandam at Shemdam* Local Government. The loss and damage from the crisis are still being counted as at today .The nature of the killings and mayhem led the ***Ja'amatul Nasil Islam*** (an Umbrella Muslim Organization) to alleged "systematic genocide" in Plateau State. In a single renewed flare up 350 people were said to have been killed.[26] The organization therefore called on the Federal Government to set up a judicial probe panel. [27] The Hausa community in the

[25] Daily Trust March 30, 2004: North New Ordeal: Killing in the name of God He was equally alleged in the same interview to define JOS (The Capital City of Plateau) as "Jesus Our Saviour".

[26] DAILY TRUST, May 5, 2004 Front Page

[27] An Earlier Committee was set up by the Federal Government with the Emir of Zazzau as Chairman did not seem to make any impact of either solving the problem or preventing further bloodshed. According to a census carried out by a Committee set up by the Administrator of the State conducted a census exercise for three months and found that 54,000 people loss their lives

state alleged not only " genocide" but also their " systematic marginalization" in the entire governmental process of Plateau State and advanced uncontradicted statistics to buttress their claim.[28] It is against this delicate and dangerous background that the President declared a state of emergency based on very serious charges against the political leadership of the state.

LEGAL AND CONSTITUTIONAL BASIS OF THE DECLARATION OF EMERGENCY IN PLATEAU STATE

The President correctly analyzed the political situation in Plateau State in his May 28, 2004 broadcast thus,

> "...The situation in Plateau State, to say the least, constitute a challenge to our democracy, negates the norms of rational human interaction, contradicts the tenets of civil society, and dissolves the opportunities for peace, stability, co-existence and social justice ... it constitutes *a grave threat to law and order and a great danger to security in Plateau state and the neighbouring state of Bauchi, Nasarawa, Taraba and Benue. It is therefore a great threat to the security and unity of Nigeria ....*".

The threat to law and order and possible spill over effects of the problem into neighboring states raised by the President clearly falls within the contemplation of Section 305 (3)(c)(d) and (f) of the Constitution. The situation becomes more volatile because of the failure, after 3 years of killings and destruction of property worth hundreds of millions of Naira, of the Governor to invite the President to declare a state of emergency in accordance with section 305(4) of the Constitution. To support this assertion, the President further maintained that,

> ".....As at today there is nothing on ground and no evidence whatsoever to show that the state governor has the *interest, desire, commitment,*

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and about 260,000 people rendered homeless and displaced – scattered between other contigious states and the southern part of the state. For details see Daily Trust of June 30, 2004

[28] They claimed that only two (2) out of 19 Commissioners is a Moslem, only one (1) out of 23 Permanent Secretary, two (2)out of the 17 Local Government Chairmen, four (4) out of 24 members of the Sate House of Assembly. See DAILY TRUST BACK PAGE 28TH March, 2004. While one may concede that there was nothing the government could do about elective offices since the choice is left for the people. The government is supposed to correct this imbalance in its key appointments in accordance with section 14(4) of the Constitution

credibility and capacity to promote reconciliation, rehabilitation, forgiveness, peace, harmony and stability ...."(Italics supplied)

It is my considered view that the President was hardly left with any option but for him to declare a state of emergency in the state. The threat to the unity of the country mentioned by the President was put to the fore when he observed that,

".....the killings, looting and wanton destruction of property in Kano are the direct result of the mismanaged affair of Plateau state ...if allowed , the crisis will engulf the entire nation ...."

In characteristics of Nigerian fashion, quite a number of people, for what in my view consider as "political reasons" failed to see or at very least refused to see the looming danger which necessitated the declaration. For instance a respected Senior Advocate of Nigeria Mr G.O..K. Ajayi argued that,

'.....What Obasanjo has done is a very dangerous thing that may at any point destabilize the affairs of the state. It is not reasonable enough for the president of any country to declare a state of emergency on a state when the situation on ground does not call for such an unprogressive action".[29]

The basis for such a sweeping opinion , with due respect to the learned senior, is very unclear as he failed to furnish us with a scientific basis of the view. In a similar vein, Colonel Abubakar D. Umar (rtd), a former Governor of Kaduna State , echoed the same sentiment in the following words. ".....I am of the opinion that the declaration of state of emergency in Plateau State is rash. It will not achieve the desired result of stabilizing the state ..."[30]

A former Head of State and a respected elder statement General Yakubu Gowon (rtd) cautiously express the opinion that, "...you declare a state of emergency ... when the problem continues, and I think relative peace had started returning to the area ... However the Federal Government would have its reasons ..." Similarly Chief Gani Fawehinmi, (SAN)criticized the declaration thus,

".....He (Obasanjo) has flouted the Constitution of Nigeria again in a most fundamental manner. You cannot impose a state of emergency because

[29] As quoted by NEWSWATCH MAGAZINE of May 31, 2004 p.19-20

[30] Ibid cf. Alhaji Abdulkadir Balarabe Musa, former Governor Kaduna State and Chairman of the Conference of Nigeria's Political Parties rejected the declaration on the ground that the President does not require a declaration of a state of emergency to solve the problem because he directly control all the security agencies of the Nation.

there is violence in Yelwa, which is just part of Shendam Local Government, one of the local governments in the area ..."

With due respect it appears that the learned SAN did not appreciate the totality of the reasons advanced by the President for the declaration and the serious charges labeled against the political leadership of the state. The National President , Christian Association of Nigeria Dr Peter Akinola, regarded the declaration "as unfair and against Christians". He maintained that, "....for the sake of equality, we are demanding that a state of emergency be declared in Kano state immediately....". It is difficult to understand this reasoning because what happened in Kano, while not justifiable, was a reaction and /or direct consequences of the Plateau state conflict. One wonders what will be the opinion of the Clergyman if the President is a Muslim and the state engulfed in the crisis has a Christian Governor or that the President and the Governor belong to different political parties. Regrettably this is the classical attitude of some Nigerian religious leaders who, when confronted with serious issues, will trivialize them in order to achieve certain narrow and short term selfish interests.

In all the wilderness of these criticisms, two prominent Nigerians, both of them senior members of the Bar endorsed the declaration. The first is Dr. Hamed Kusamotu, who quite rightly asserted that, ".....what the President ... has done was constitutionally right. He only made a proclamation of a state of emergency in plateau state and not declaration of a state of emergency ...." Richard Akinjide, (SAN) and a one time Attorney General of the Federation, correctly put the point thus, ".....what happened in Plateau State was not unique at all because similar things had happened in the old western region and the same thing happened in India several times....." With due respect to the learned senior it is difficult , if not impossible, to draw a fine line in meaning and context relative to emergency, between "declaration and proclamation" let alone know the difference, if any, between them.

LEGAL CONSEQUENCES OF EMERGENCY DECLARATION

In his broadcast the President having declared the state of emergency in the state claimed that, "....the declaration has been published in a Federal Gazette[31] as at today...." The sticking point here is that prior to the broadcast there was no evidence of such publication. Gazettes being public document and the legal instrument of putting laws into effect, it is strange that no one had seen such publications priory to the broadcast except the President. The President further informed Nigerians that the Federal Gazette containing the declaration was forwarded to the National Assembly in accordance with section

[31] This is in compliance with section 305(1) of the 1999 constitution

305(2) of the Constitution. Each House of the National Assembly separately convened , considered the proclamation on the 19th May, 2005, and passed it with overwhelming vote.[32]

One of the greatest consequences of the declaration of emergency in Plateau State was the "suspension" of the Governor and his Deputy, for an initial period of six months.[33] Equally the Plateau State House of Assembly was suspended as formal legislative body of the state with "immediate effect".[34] The "immediate effect" order, it is respectfully submitted, is unconstitutional, illegal, null and void for the following reasons. Firstly it is clear that the President has already started enforcing the fundamental aspects of the emergency law without first obtaining the necessary approval of the National Assembly as required by the Constitution. In addition the Executive and the Legislature were the created by the Constitution and not by the President, therefore they cannot be "dissolve or suspended" by a mere executive fiat most especially because the Constitution is completely silent on their fate after valid and lawful emergency declaration.

The President appointed General Chris Ali (rtd) as an Administrator to manage the affairs of Plateau State so that it will allow for, "the expeditious actions needed to put the state back into situation of peace, harmony, security for all, and maintenance of law and order throughout the state ..." It is conceded that while the administrator is needed after the declaration such appointment, must as a matter of constitutional procedure ,be done only after the requisite resolution was passed by the National Assembly. The President's action amount to putting the cat before the horse and confronting the National Assembly with a *fiat accompli.*

The President expressed the hope that,"... the administrator may not need new laws to administer the state, but if he does, it will be in the form of regulations which he will submit to the President for consideration by the Federal Executive Council and promulgated by the President for the state ..." In consonance with this, the President submitted to the National Assembly (in a letter dated May 21,2004) an eight points Emergency Powers Regulations for endorsement to be applied to the Plateau State.[35] It is submitted that the

[32] House of Representatives voted 261 in support and 30 against while the Senate vote 90 in support and 5 against.

[33] Six months is the minimum period prescribed by the constitution under section 305(6)(c) renewable at the expiration by a resolution of the National Assembly.

[34] This phase no doubt a ring of military order or decree reminiscences of Nigeria's military rule

[35] Emergency powers (General Regulations) 2004, Emergency Powers (Processing and Meetings etc), Regulations 2004. Emergency Powers (Control of Arms and Explosives) Regulation 2004, Emergency Powers (Detention of Persons) Regulations 2004, Emergency Powers (Restrictions Order) Regulations 2004, Emergency Powers (Protected Places) Regulations 2004. the bill was unanimously passed. See DAILY TRUST May 28, 2004 for details

appointment of an Administrator at the same time the declaration was made was wrong but it presuppose that the declaration was already in operation or being enforced. The pertinent question is: how could that square up with a situation where the National Assembly failed to endorse the declaration? The answer to the question can at best be imagined.

The Administrator administered the state for six months and during that period executed a number of measures designed to restore confidence, peace and stability in the state which were implemented with partial success. The question whether peace in the state has been sufficiently restored to warrant lifting the emergency at the expiration of the six months remain to be seen. Another important issue was the legal and constitutional status of the suspended political leaders.

CONCLUSION

Towards the expiration of the initial six months period of the emergency period, different forces advocated for different solution for the state. The first school of thought call for the termination of the state of emergency ".....now that peace has been restored in Plateau State....".Some of the chief exponents of this school went as far as issuing a veiled threat to the federal government if emergency rule was not lifted in Plateau State. For instance, leading a delegation of Plateau State elders to the President and speaking \ on the issue of lifting the state of emergency and restoring Joshua Dariye as the Governor of the State, Chief Solomon D. Lar threatened that, ".....Any arrangement that does not restore Dariye and all other political structures is unacceptable to us and the people of Plateau State ..."[36]

The second school of thought canvassed for the extension of the emergency rule in their opinion, ".... the central issues to the dispute i.e. the settlers/indigene syndrome has neither been resolved nor properly addressed..... although relative peace has been achieved but the problem may flare up at anytime. Thereafter, especially with the all important issue still hanging and unresolved. It is my considered opinion that the issue of whether peace has returned to the state not to warrant the lifting of the emergency is a political decision which laymen are ill equip to make. It is respectfully submitted that the idea of restoring the previously elected leadership earlier on suspended is legally and constitutionally wrong for reasons;

Firstly, while the constitution did not provide for such suspension , however once the elected structures were suspended it is deemed to be their death sentence. The only perspective that makes sense is to conduct fresh

[36] See Daily Trust 20th July, 2004

elections to fill the vacancies created prior to the lifting of the state of emergency. Where the structures were restored how do you now calculate the tenure of 4 years for the elected official? Does it include the period of emergency or exclude the period? Secondly, if the suspension was considered against the serious charges by the President against the elected officials there was no scientific evidence on the ground to show that they purge themselves of the problem. For instance the President charged that,

> "... opportunities for building networks and of establishing dialogue across primordial lines had been recklessly squandered by *a weak and incompetent political leadership* which had allowed discontent to fester into deep hatred manifesting in bitterness rage and destruction ... and cognizant of the failure, inability and incompetence of the Governor to maintain security of life and property in the state. Generally ... some of his utterance, his lackadaisical attitude and seeming uneven handedness on the salient and contending issue present him not just part of the problem, but also an instigator and a threat to peace ....."

Finally the President roundly condemned the plateau state political leadership in the following terms,

> ".....What has become clear is that the constitutional authority in Plateau State is incapable of maintaining law and order, giving confidence to the people, managing religion, ethnic and social pluralism and protecting lives and property of all citizens and determinedly unwilling to do so..."

Against the background of these serious charges , one can venture to say that the Governor of Plateau State has violated his oath of office to even warrant impeachment if he was still in office. Having been swept out of office by the emergency ,it is wrong to restore him and the same officials to power because there is no evidence that he has become a better person and or at least will be impartial in approaching matters of governance. It is submitted that the decision of the Federal Government to restore Dariye and the Plateau State House of Assembly to power is rather political and not necessarily legal or constitutional.

Whether the long term goal of restoring permanent peace between the so called indigines and settlers in the state will be realise only time will tell.