

CENTRE FOR DEMOCRACY AND DEVELOPMENT

Declaration of State of Emergency on 14th May 2013: A Preliminary Assessment

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Nigeria's President, Goodluck Jonathan, on the 14th May 2013 declared a state of emergency in Borno, Yobe and Adamawa States. He explained that he was responding to the incessant terrorist attacks and other security challenges that have recently plagued Nigeria, The declaration is in accordance with the provisions of section 305(3) (c) (d) (f) Constitution of the Federal Republic of Nigeria 1999 as amended, which states that the President shall have power to issue a state of emergency only when "there is actual breakdown of public order and public safety, there is a clear and present danger of an actual breakdown of public order and safety in the federation or any part to require extraordinary measure to restore peace and security or to avert such danger" and there is any other public danger which clearly constitutes a threat to the existence of the Federation.

The President in his speech argued amongst other issues that the terrorists have established control over several parts of the nation, destroyed state property and hoisted strange flags suggesting the exercise of alternative sovereignty in some parts of the country. No one can reasonably challenge the veracity of this position. The Proclamation is likely to be transmitted to the National Assembly today, 15th May 2013. According to the Constitution - Section 305(2) & 6(b) "The President shall transmit such copies of the gazette with details to the President of the Senate and the Speaker of the House of Representatives, each of whom shall forthwith convene a sitting to consider the situation and decide whether or not to pass a resolution approving the proclamation". The same section of the Constitution further states in subsection 6 that a proclamation issued by the President shall cease to have effect within two days when the National Assembly is in session or within ten days when it is not in session, after its publication, if there is no resolution supported by two-thirds majority of all the members of the each House of the National Assembly approving this proclamation.

Our understanding is that what is proposed with the state of emergency is only to send in more troops into the affected states and equip them with sweeping powers of arrest, detention, search etc. The utility of this remains doubtful especially within the context of the recent Baga debacle where over 200 citizens were allegedly murdered by security agents and thousands of houses were burnt and destroyed. The anti-community approach of security agencies has been consistently criticized by community leaders and elders such as the Borno Elders' Forum who have postulated that the path to resolution of the crisis is the withdrawal of security agencies from the states. In the last two weeks, we have been inundated with reports that the Baga Massacre has actually led to an expansion of the ranks of Boko Haram as more foot soldiers have been enlisted. See for example the statement "If a man gives me 20,000 naira [£80] today, then I will work with him for life. That is what I hear Boko Haram is doing. What else is there for us to earn money here?" (<http://www.guardian.co.uk/world/2013/may/09/nigeria-war-boko-haram-new-ground->

zero). The opinion of informed citizens is that security forces continue with their approach of massive violations of human rights and non-adherence to the principles of the rule of law enshrined in their rules of engagement. Nigeria, it will be recalled, committed to the Geneva Declaration 2006 on achieving measurable reductions in armed violence by 2015 but we are not on course to achieve it and a rethink of our approach is imperative.

We do not yet know how the declaration of the State of Emergency by President Jonathan would impact on the administrative system of the states concerned. According to the President: “the Governors and other political office holders in the affected states will continue to discharge their constitutional responsibilities. We recall that in December 2011, state of emergency was declared for fifteen local governments and in practice, what happened was that the statutory allocations for these local governments were withheld during the imposition of the emergency rule further crippling the day to day activities of the LGAs, families of its staff and even the security situation. Emergency rule did not lead to an improvement of the security situation in the said local governments. Are we going to have a situation in which the statutory allocations to the affected states are simply handed over to JTF commanders while the State Governors are left without resources to govern?

The Centre for Democracy and Development is concerned that insurgents have been killing innocent Nigerians and escalating the state of insecurity in the country. The State therefore has a responsibility to take steps to re-establish public safety. Be that as it may, the path towards public safety cannot be an expansion of violations of the rights of Nigerians. We believe that the human rights of citizens should not be secondary to the provision of security. Public safety and human rights should be promoted in tandem.

It is also important to place on the agenda the need for a critical evaluation of the legal regime governing the declaration of emergency rule in Nigeria. We must reflect on the appropriate conditions under which emergency rule is declared to prevent what has sometimes been interpreted as the selective imposition of emergency rule. There is a need to evaluate sections 305(4) as amended prescribing that the governor of a state requests the president to declare a state of emergency where there is a breakdown of law and order and it should only be when the Governor refuses that the President should act.

The Centre for Democracy and Development believes that the country needs to win the war against terrorism. This would require addressing the root causes of the menace, primarily poverty, unemployment and bringing to book perpetrators/violators of human rights, particularly security agents accused of extra judicial killings. It is this approach that will instill confidence in the nation’s security architecture. Secondly, special attention should be placed on training and retraining of our security agencies on human rights and counter terrorism. Our security agencies need to improve their information sharing and government should invest in providing equipment and logistical support. Thirdly, our security agencies should collaborate more with the local communities rather than antagonizing them.

We acknowledge that the scale of violence today is unprecedented since the Biafran civil war. The containment strategy we adopt should therefore seek a path that will lead to an early resolution. It is on this basis that we call on the National Assembly to reflect seriously on the request that will come before them and above all to spell out conditionalities for an anti-terrorism strategy that is respectful of the human rights of citizens and communities.