

THE IMPACT OF NIGERIA'S FEDERAL STRUCTURE ON THE STATES' RESPONSES TO COVID-19 AND THE EXPERIENCE IN ETHIOPIA

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Abstract

Nigeria discovered her index case of SARSCOV-2 (COVID-19) in March, 2020. Despite the remarkable multiple institutional designs, constitutional and statutory provisions, intense conflicts, endemic disunity, systemic struggle for dominance in the fight against COVID-19 continues unabated. This often leads to the pessimistic conclusion that the conflicts will continue to have negative impacts on the fight against COVID-19. Using doctrinal method, this paper acknowledges complementary effects of political culture and leadership on conflicts but argues that deficiency in constitutional and legal architecture generally and institutional designs of the Federal structure largely contributed to the conflicts, improper coordination and disunity in the fight against COVID-19 by the government in Nigeria. This was juxtaposed examining the experience in the federal structure of Ethiopia. The paper concludes that a properly coordinated Federal structure in Nigeria has the propensity to fight the Corona Virus or other such future epidemic. With renewed vigour for the alteration of the Constitution, effective constitutionalisation of the objectives of federalism in the constitution is an alternative to the present legal order. This paper focuses on these constitutional and institutional deficiencies and suggests the needed reforms in these spheres.

Keywords: Federalism, Covid-19, States' Responses, Nigeria, Ethiopia

INTRODUCTION

The World, since late 2019, has witnessed upsurges in COVID-19 Pandemic. Nigeria discovered her index case in March, 2020. There have been global efforts to construct a sustainable global solution to this pandemic that has brought nearly all nations of the world to their knees in terms of protection of human lives and economic survival. Central to these efforts in Nigeria is the development of a coordinated national approach to resolving the challenges posed by COVID-19. One of the efforts is to redesign the constitutional framework of federalism to reduce the

incidences of conflicts between states governments and federal government in solving the problems of corona virus. This federal structure, as well as its institutional design, has proved to be problematic, vague and vexatious.¹ Applying this present federal structure in the fight against Covid-19 has been very challenging as will be shown in the course of this study.

Nigeria has a federal arrangement in which governmental powers are shared between the Federal and the states governments. The constitution is supreme with its provisions having binding force on all authorities and persons throughout the country.² Nigeria is constitutionally regarded as one indissoluble and indivisible sovereign state³ which cannot be governed except through the provisions of the constitution.⁴ The country consists of 36 states, a Federal Capital Territory (FCT) as well as seven hundred and sixty-eight local government areas within the states and six area councils in the FCT.⁵ The FCT is treated as a state with its area councils as its local governments, and the Presidency, the National Assembly, the Federal Courts as its governmental institutions.⁶ The Federal government operates within the exclusive legislative list as well as the concurrent list while the states are limited to matters in the concurrent list and arguably the residue. The states are not allowed to exercise their executive powers in such a way as to impede or prejudice the exercise of federal executive power, or in such a way as to prejudice the existence of the Federal Republic of Nigeria or in a way as to endanger the assets of the Federal government in that state.⁷

Despite the remarkable multiple constitutional and statutory provisions, as well as institutional engineering on Federal structure, intense conflicts, endemic disunity, systemic struggle for dominance in the fight against COVID-19 continues unabated. It seems to be more of politics than the fight itself. Balancing the two main important principles of federalism i.e.

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¹ Kenneth S. Carlston, *The United Nations and World Unity*, 3(2) *Wyoming Law Journal*, 57-65 (2018).

² Section 1(1) & (3) Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as altered).

³ Section 2 CFRN, 1999.

⁴ Section 1(2) CFRN 1999. This means that the constitution is the ultimate standard by which the legal validity of laws and action must be tested: *Balarabe Musa v Independent National Electoral Commission* (2003) 11 WRN 110 at 156-157.

⁵ Section 2(2) and section 3(1)-(6), CFRN, 1999.

⁶ See sections 2(1), 3(4) and (4) and 297-304 CFRN, 1999.

⁷ See section 5(3) of the Constitution.

National Unity in diversity and states autonomy in the fight of Covid-19 is very difficult. For instance, some states like Ogun and Kano relax lock downs contrary to the presidential directives. Rivers State also arrested some agents of Federal government despite being granted permission by the Federal Government. Some states have also condemned the Federal Government for giving grants of about 5 Billion Naira to Lagos State to fight the pandemic. A state in the North Central Nigeria which also has boundary with the Federal Capital Territory, Kogi State also threatened to arrest or quarantine the staff of the Nigerian Centre for Disease Control if they come to the state for any national assignment. Others have accused the NCDC of not giving enough attention to their states in the fight against COVID-19 thereby resulting to deaths of helpless citizen. All these tend to show lack of proper coordination in the fight against COVID-19. Yet, efforts are still being made to flatten the curve of this dangerous contagious pandemic in the country. For instance, NCDC has been very active in giving awareness, contact tracing, testing and treatment of patients who test positive for corona virus.⁸

Explanations for the intractability of grand conflicts, endemic disunity, systemic and catastrophic struggle for dominance in the national polities have centred on political culture and leadership as factors behind the gap between the need to promote national unity in the fight against COVID-19 and the pervasiveness of public malfeasance in the fight against the virus. This often leads to the pessimistic conclusion that the conflicts will continue to have negative impacts on the fight against COVID-19 as the constitution and the law can do little or nothing to prevent or reduce the conflicts, pervasive disunity, general and ruinous struggle for political dominance in the fight against COVID-19.

This paper acknowledges the interactive and complementary effects of political culture and leadership on conflicts, prevalent disunity, systemic and appalling struggle for dominance in the fight against COVID-19 in Nigeria. However, the paper argues that deficiency in constitutional and legal architecture generally and institutional designs of the Federal structure largely contributed to the conflicts and disunity in the fight against COVID-19 and improper coordination between States and federal government. With renewed vigour for the alteration of the constitution, effective constitutionalisation of the objectives of federalism in the constitution is an alternative to the present legal order. This paper focuses on these constitutional and

⁸ Covid-19 Nigeria, <https://covid19.ncdc.gov.ng/>. Accessed on 25th July, 2021.

institutional deficiencies. It suggests that constitutional and institutional reforms are required in these spheres in order to mitigate the conflicts and endemic disunity between federal government and states thereby saving total collapse of the fight against COVID-19 and other future epidemic or pandemic in the nation.

Ethiopia presents an interestingly unique experience in the dealing between the federal and state governments. Nigeria and Ethiopia are comparable because both operate federalism as a system of government. Nigeria is the most populous African nation while Ethiopia is the second. Both countries have people who are fundamentally divided across religion, ethnicity, tribe and culture. They both operate constitutional democracy. Nevertheless, the Nigeria operates a presidential system while Ethiopia operates a parliamentary system of government. Although the study is not of comparative nature per se, lessons can be learnt from the experience of Ethiopia in terms of constitutional structure of the country which leads to little or no conflicts between the agencies of federal government and the state governments in this period of COVID-19.

To achieve the above, this paper adopted doctrinal methodology of legal research where primary and secondary sources of materials were subjected to thorough content analysis. This paper is also divided into five segments apart from the introduction. The first segment examines the nature of Nigeria's federalism. The second part analyses the Nigeria's Federal structure and the challenge of COVID-19. The third part analyses the experience of Federal structure in Ethiopia. The fourth segment discusses the future of Federal principle and agenda for reforms. The last part concludes and makes appropriate suggestions.

1. NATURE OF FEDERALISM

This segment will analyse the nature of federal system by examining the mode of power sharing, the notion of autonomy of each tier of government and its relationship on national cohesion as well as the principle of equality of status of government.

2.1 Methods of Power Sharing

The mode of power sharing may be in terms of listed powers and the residue.⁹ The listed power may be exclusive to the Federal government and other lists may be exclusive to the states. In some situations, there may be three sets of enumerated powers. One may be exclusive to the Federal, one exclusive to the state and another will be concurrent to both the state and the federal governments. Another situation is that enumerated powers may be exclusive to one of the tiers and have concurrent lists to be shared among the two tiers. Although the executive of a state may be permitted to execute the laws of the federal government in some situations, the sharing of executive power usually goes in the same pattern with that of the legislature.

In Nigeria, the technique of sharing power is contained in Section 4 of the Constitution. The National Assembly is empowered to make laws for the peace, order and good government of the federation or any part of it in respect of matters contained in the exclusive legislative list as contained in the Part I, Second Schedule to the Constitution. A total of Sixty-Eight (68) items are listed under the exclusive list including matters incidental to items one-sixty six as well as other matters contained in the provision of the Constitution.¹⁰ These items are too numerous and wide to be put under the exclusive list. However, the Constitution also allows the National Assembly to make laws with the state houses of Assembly in matters of concurrent list as contained in Part II of the second schedule to the constitution.¹¹ About twelve items are stated therein. Nevertheless, in case of conflict between the laws validly made by the National Assembly and the ones made by the State House of Assembly, the ones made by the National Assembly will prevail and that the State House of Assembly shall be void to the extent of its inconsistency.¹²

The execution of laws also follows the similar patterns of matters contained in the various lists. However, the executive power of the federation is vested in the President.¹³ He is empowered to maintain and execute the constitution and the Acts of the National Assembly.¹⁴ The President can also execute matters for the time being not yet legislated upon but contained in

⁹ Matters not contained in the legislative list.

¹⁰ Part I, Second Schedule to the CFRN 1999.

¹¹ Part II, Second Schedule to the CFRN 1999.

¹² Section 4(5) of the CFRN 1999.

¹³ Section 5(1)(a) of the CFRN 1999.

¹⁴ Section 5(1)(b) of the CFRN 1999.

the exclusive list or concurrent list.¹⁵ Similarly, the Governor of each state is empowered to maintain and execute the constitution in his state as well as matters contained in the concurrent list as enumerated by the Constitution.¹⁶

It can be said that simplicity can be achieved and uncertainties and conflicts between the federal and state governments can be eliminated where the constitution provides for only one list of matters exclusive to the states or federal government while leaving the residue to the other government. However, on a scale of balance, having matters also listed in the concurrent matters has benefits which seem to outweigh conflicts and uncertainties associated with concurrent provisions.

One advantage of a concurrent list is that it increases flexibilities in legislation. This is particularly true of new federations. In this circumstance, it allows the federal government to suspend the exercise of its power in an area until a time when the matter is of national importance. Yet, it does not prohibit any state which is ready from legislating in the meantime on its own volition.¹⁷ Second, it gives room for national uniformity in legislation. Here, the federal government can provide guideline and allow the states to give details or adapt the legislation or guidelines to fit their local circumstances. This is usually common in legislation relating to social services. Also, a concurrent list permits the federal government to step into what is usually an area of states' activity in order to provide remedies for mainly regressive states or for complications arising from states legislation which affect other states. Similarly, concurrent list may ease comparative federalism by inspiring joint rather than autonomous actions in these spheres. Lastly, such a list may lessen the need for complex, tiny sectors of individual functions assigned to the exclusion of one government.¹⁸

Nevertheless, the issue of concurrent object usually gives rise to the application of the doctrine of covering the field. In other words, since the laws validly made by the National Assembly is to prevail in situation of conflicts with the state's laws, where the federal government comprehensively or exhaustively makes laws on a concurrent area, the field is said to be *ipso facto* covered. The state government is then precluded from entering the covered field.

¹⁵ Section 5(2)(b) of the CFRN 1999.

¹⁶ Section 5(2)(a)(b) of the CFRN 1999.

¹⁷ Watts, *New Federations: Experiments in the Commonwealth* 174-5 (1966).

¹⁸ *Id.*

The constitutionality of this doctrine is doubtful. The reason is that since the constitution speaks in terms of conflict,¹⁹ there has to be a legislation of both governments before it can be meaningfully said that a conflict exists. There will then be basis for comparison to see whether one conflicts with the other. Moreover, the term 'inconsistency' as used by the constitution implies some incompatibility. One must be at variance with the other in their provisions. It is not adequate that two laws make different provisions without contrariety. Also, there is room for further regulations not inconsistent with the earlier provisions. It is not easy to conceive a situation where legislation will be comprehensively and exhaustively drafted in a way that will not give room for further regulation. Otherwise, principles implied in covering the field theory may defeat the very purpose of concurrent list provided for under the constitution.

1.2 Autonomy of Each Tier of Government and National Unity

Autonomy is one of the most important fundamental objectives of federalism. It presumes that each level of government has its separate existence and is independent from the control of the other. The physical and legal existence of the government apparatus is essential. This includes separate existence of legislative arms, executive arm, ministries, agencies and departments. However, this distinctiveness does not have to extend to all machinery of government. For instance, there can be one police and the courts. And as earlier stated, the executive arm of one tier may be allowed to execute the law of another. Nevertheless, autonomy implies that each government must be able to execute its will or conduct its affairs as an autonomous entity that is free from the control of the other. Thus, the common arrangement during the military era where the Head of State appointed Military administrators for various states is not a federal system.

It can be said that the 1999 Constitution provides a measure of autonomy for each tier of government. The federal and state apparatus of government are distinct from the other. Each has its own separate executive arm of government.²⁰ However, there can only be one police force for the Federation²¹ organized and administered in accordance with the Act of the National Assembly.²² The Inspector General of Police (IGP) is appointed by the President on the advice of the Nigeria Police Council (of which the President is the Chairman) from among the serving

¹⁹ Section 4(5) of the CFRN 1999.

²⁰ Sections 130-175 for the Federal Executive and 176-212 CFRN 1999.

²¹ Section 214(1) CFRN 1999.

²² Section 214(2) CFRN 1999.

police force in Nigeria.²³ The Commissioner of Police in each state is also appointed by the Police Service Commission.²⁴ The IGP is bound by the instruction of the President or Minister on his behalf.²⁵ The State Commissioner of Police may be given lawful instructions by the state governor but the obedience is subject to higher authority of the President or Minister in that behalf.²⁶ The courts are also common to both as they are courts, especially the Superior courts of records, established for the federation.²⁷

One other area in which autonomy is present is that federal government is not able to override the state in all matters. The Constitutions, as earlier stated, provide for exclusive and concurrent matters. This is to avoid undue interference. Whether federal laws will prevail in case of conflict with state laws depends on whether the federal law is validly made.²⁸ Thus, there are instances where the courts have resolved the issue of inconsistency of laws made by the federal as well as the ones made by the state government in favour of the state²⁹ and in favour of federal government.³⁰ This is clearly different from the 1951 Macpherson's Constitution which allowed the National government to override the regions in all matters.³¹

Autonomy also implies that the national government should not be able to legally remove or appoint the elected or representative organs of the state or regional government. This was the situation under the 1960 Constitution in which the national government could legally remove the representative organs of government and even temporarily takeover the administration of regional government. This is contrary to the principles of federalism which prevents a situation where national government will become instrument of total domination and so governing the local affairs of states. Under the 1999 Constitution, federal government cannot appoint the apparatus of the organs of government of a state. It is done by states themselves. It cannot also remove democratically elected representatives of the state. The procedure for removing the

²³ Section 215(1)(a) and 216 (2) CFRN 1999.

²⁴ Section 215(3) CFRN 1999.

²⁵ Section 215(3) CFRN 1999.

²⁶ Section 215(4) CFRN 1999.

²⁷ Sections 6 and 230-285 CFRN 1999.

²⁸ Section 4(5) of the CFRN 1999 uses the word 'validly' in relation to the laws made by the National Assembly.

²⁹ Attorney General of Lagos State v. Attorney General of the Federation (2003) 12 NWLR (Pt833) at 118-119.

³⁰ Attorney General of Ogun State v. Aberuagba (1985) 1 NWLR (Pt. 3) 395.

³¹ Ben. O. Nwabueze, *The Presidential Constitution*, 40-41 (Enugu and Lagos: C. Hurst and Company London with Nwamife Publishers, 1982).

governor is also by the state apparatus.³² The state legislatures also run their affairs independent of the National Assembly except in extreme situations where it is practically impossible for the state assembly to sit.³³

One other implication of autonomy is that neither the federal government nor the state government should be able to confer or impose additional duties or responsibilities on the other without the consent of the Chief executive. This important principle of federalism was enshrined in the 1963 Constitution, specifically in Sections 99 and 100 of the Constitution. These provisions precluded the President as well as the federal parliament from imposing additional duties or responsibilities on the governors of the regions of regional legislatures without the consent of the governors. In the same vein, the regional governors and legislatures were not allowed to impose additional duties or responsibilities on the nation's chief executive and parliament without the consent of the chief executive. Clearly, these provisions have been omitted from the 1979 and 1999 Constitutions. However, the effect of such omission has been held not to affect the operation of the principle. In *Attorney General of Ogun State v. the Attorney General of the Federation*,³⁴ the Supreme Court held that neither the federal nor state government can confer additional responsibility on each other. Similarly, Uwais JSC (as he then was), speaking for the Supreme Court noted that:

“As a general principle of constitutional law, it is implicit in the character of the federal constitution that neither the Federation nor the States could make laws imposing extra burden on each other. This is because legislative power in a true federation usually involves division and limitation of governmental powers.”

Thus, notwithstanding the omission of this federalism principle in the 1999 Constitution, the gap seems to be filled by the Supreme Court as neither the federal nor the state government can impose or confer additional duties, burdens or responsibilities on the other without the consent of the chief executive.

Moreover, autonomy also implies that each state should have its own constitution. This is because a government may sometimes presuppose that states should have their constitutions.

³² See sections 188 and 189 of CFRN 1999.

³³ Section 11 CFRN 1999.

³⁴ (2002) 18 NWLR (Pt.798) 232.

This was the opinion of the Judicial Committee of the Privy Council when it held that: the natural and literal interpretation of the word (i.e. federal) confines its application to cases in which these states, while agreeing on a measure of delegation, yet in the main continue to preserve their original constitutions.”³⁵ This was the system of constitution adopted by Australia when it federated in 1900. This is even the USA constitutional form from which modern federation copied. The Privy Council also noted that the loose definition of federalism still admits that such state should have their constitutions.

However, the situation in Nigeria is unique. It shows that, like many later federations, it is possible for a government formerly under a unitary system to form a federal system by devolving some of its power to two or more independent state governments. In noting the uniqueness, the 1951 Nigerian Constitution Drafting Committee said: The federal governments of USA, Canada, and Australia have been built on the basis of separate states surrendering to a federal government some of their powers for the benefit of all. The reverse process on which we are engaged-that of the creation of a federal government by devolution- is a political experiment for which...there is no precedent to guide us and we are very conscious of the dangers inherent in such an experiment.³⁶ Thus, it is not necessary to have a separate constitution in a federal system which devolved from a unitary state. This was why the 1951-54 Constitution which established a federal system did not have separate constitutions for the regions. It was one constitution for the nation. It was the 1960 Constitution that introduced new constitutional forms established separate constitutions for the federal and each region. This was contained in the schedules annexed to the independence order in council. Each thus had a common source of authority, with the federal Parliament given the power to repeal the 1960 Constitution. This paved way for the Republican Constitution of 1963. Nevertheless, the 1979 and 1999 Constitutions reverted to the 1951-45 form of constitution by having a single constitution for the federation.

Furthermore, autonomy also implies that in sharing governmental powers, the preponderance of power should not tilted in such a way as to enable the federal or state government so powerful as to impose its will on the other in areas of operation of the other. In

³⁵Attorney General v. Colonial Sugar Refining Co.Ltd (1914 AC 237) at 253.

³⁶ Committee’s Report (1951) 3.

other words, in matters of local concern which is constitutionally meant for the state, the federal government should not be able to impose its will on the state. Similarly, in matters of general concern, such as foreign affairs, which are within the exclusive preserve of the federal government, a state should not be so powerful as to be able to impose its will on the federal government. There has to be some fine and fair balance of power in this regard. In areas of its operation, each should have meaningful autonomy so as to support the mechanism of a functioning government. This seems to carry with it some measure of equality.

1.3 Equality of Status as a Government though not Equal Weight

It must be stated from the onset that to conceive the idea of federalism to mean a two equal and competing sovereignties clearly gives a disingenuous image.³⁷ Yet, the government is truly equal in status but not necessarily in weight.³⁸ This is particularly the position in almost all ramifications in foreign affairs such as conduct of peaceful diplomacy, war, currency, citizenship. This is entirely within the province of federal government. In this regard, the federation is one indivisible political entity and not dual sovereignty. In the same token, in terms of territorial spheres of activity or operation, the federal government is bigger than a state government. The power of federal government extends to the whole nation while that of the state is restricted. Equality does not also mean that the number of resources allocated must be equal nor matters assigned in the list must be equal. Federalism admits some form of inequality (which may be seen as equity) in powers and resources between federal and the state so long it does not render the other impotent in the discharge of its constitutional responsibilities.

Thus, there is a need to inexorably recognise the leadership and direction of the federal government in the union of federalism. The federal must be dominant to provide necessary direction and leadership. Since the nation's economy is integrated and single, the federal government should be able to regulate the impact of state actions on the society and national economy. National federalism is better in the description of the federal arrangement than dual federalism which seeks to give a misleading picture of rivalry or jealousy between state and federal governments. The two should cooperate to develop the nation in terms of security and

³⁷ B. O. Nwabueze, *The Presidential Constitution*, (Enugu and Lagos: C. Hurst and Company London with Nwamife Publishers, 1982), at 41.

³⁸ *Ibid.*

welfare of the people which is the primary purpose of government. This will avoid a situation where one tries to frustrate, confront or unduly compete with the other in the discharge of their duties.

However, as between state governments, the states are equal in status and the same in powers. Again, federal arrangements are between the federal government on one hand and the states on the other hand. It is not between federal government and separate or individual or each state government. No state can be given special position in the union. This will not allow each state to interact freely with each other as equal partners in the development of the nation. It destroys the needed equilibrium that should exist between the states due to superiority and arrogant disposition that may be shown to the other. Nevertheless, in terms of populations and spheres of operation or resource allocation, the constitution does not require equality. Yet, this seeming inequality should not be allowed to create great imbalance among states.

Great imbalance among the states is dangerous. Mill noted that if there is “any one state so much more powerful than the rest as to be capable of vying in strength with many of them combined...it will insist on being master of the joint deliberations: if there be two, they will be irresistible when they agree, and whenever they differ, everything will be decided by a struggle for ascendancy between the rivals.”³⁹ Sir Kenneth also opined that “ some sort of reasonable balance between the units in area, population and wealth which will insure that all the units can maintain their independence within the sphere allotted to them and that no one can dominate the others.”⁴⁰

The position under the 1999 Constitution is that states have equal powers. There is no dichotomy among the state in terms of status and weight.⁴¹ However, in terms of population and land mass, the states are not equal.⁴² States are also not equal in terms of revenue allocation to the states.⁴³ The sharing formula differs significantly. Some receive allocation on the basis of 13

³⁹ Kenneth Wheare, *Federal Government*, 50-55 (4th Edn), quoting from Mill *from representative Government*, Everyman edn. 367-368.

⁴⁰ *Ibid.*

⁴¹ Sections 3, 90-129; 176-212 of the CFRN 1999.

⁴² Section 3(2), Part I of the First Schedule to the Constitution.

⁴³ For example, the Internally Generated Revenue (IGR) of Lagos State alone is far more than some ten (10) States in some parts of the Country.

percent derivation.⁴⁴ In terms of representation at the National Assembly, the seats of the House of Representatives are based on population while that of the Senate is based on equal representation in terms of three senators per state.⁴⁵ By the same token, the federal government's areas of operation are larger than the states. This covers the whole country but states are limited to their various states.⁴⁶ The enumerated powers also seem to tilt too much in favour of the federal government.⁴⁷ Even in the so called concurrent list, the federal government also plays a significant role. This appears of the reason why many have called for the restructuring of the country.⁴⁸

2. FEDERAL STRUCTURE AND THE CHALLENGE OF COVID-19

This section analyses how the present Federal structure has impacted on the fight against COVID-19 and the question of constitutionalism.

2.1 Relaxation of Federal government's Lock down by states in the heat of COVID-19

As earlier stated, states have some measure of autonomy under the federal arrangement. This autonomy principle is well respected in some states in response to this COVID-19 Pandemic. Others have treated this autonomy with abuse and in flagrant violation of the provisions of the constitution. This is particularly prevalent in this area of lockdown order as handed down by the president. It will be recalled that states are not allowed to exercise their executive powers in such a way as to impede or prejudice the exercise of the executive powers of the federation. Undoubtedly, the Constitution,⁴⁹ some extant laws⁵⁰ and international treaties⁵¹ to which Nigeria is a signatory empower the President and the governors to lock down states in order to prevent the spread of COVID-19 in the country.

⁴⁴ Section 162 of the CFRN 1999.

⁴⁵ Sections 48 and 49 of the CFRN 1999.

⁴⁶ Section 2 of the CFRN 1999.

⁴⁷ Second Schedule to the Constitution.

⁴⁸ Yusuf Ali, To Restructure or Not to Restructure: The New Swan-Song of the Nigerian Elites (paper presented at the 10th Hon. Justice M.M.A. Akanbi Faculty of Law, University of Ilorin Annual Lecture on 14th December 2017) p; 17-18.

⁴⁹ Sections 5 and 45(1) (a) of the 1999 Constitution.

⁵⁰ The Quarantine Act (LFN 2004).

⁵¹ Article 4 of the International Covenant on Civil and Political Rights, Article 11 of the African Charter on Human and Peoples' Rights.

In pursuance of the above, the President locked down states like Lagos State, Ogun State and later Kano State. Undoubtedly, Lagos State strictly complied with the lockdown order of the federal government. Palliatives were rolled out to the people in order to reduce the harsh effects of the lock down on the people of Lagos State. The situation was however not the same in Ogun and Kano States. In Ogun State, contrary to Presidential Broadcast, the Governor issued another order that the lockdown would not start on the day stated in the presidential order until after some days later. The Governor claimed that he sought the permission of the presidency in order to suspend the presidential order. Yet, the presidential order was not amended to reflect this claim. This makes the claim doubtful. It appears the Governor fell for the pressure of the people of the state who wanted to exercise their freedom of movement notwithstanding the effects on the spread of the deadly coronavirus. The situation in Kano State was even worse. In the spate of unexplained deaths, with limited testing capacity and high number of positive COVID-19 cases, the Governor unilaterally relaxed the presidential lockdown order. The lockdown was relaxed two times in a week. Like its Ogun State counterpart, the governor of Kano State also claimed to have sought the permission of the federal government to relax the order. This claim is doubtful as there is no amended presidential order on lockdown on the state. This perhaps led to the loud silence of the President when the two weeks lockdown expired. Another two weeks extension of lockdown was further relaxed by the Governor on 18 May 2020 to pave way for religious gatherings.⁵² The effect of these is that cases rise as the virus spreads like fire in the states with so many deaths.⁵³ These states also export the number of positive cases to so many other states in the country.

One main argument of the governors that relax the presidential lockdown is to cater for the need of considerable percentage of people who are daily bread earners. The category of people are said to live from hand to mouth. It is said that the lockdown would definitely affect their sources of livelihood. Hence, these people will be severely affected by hunger and starvation all in the name of curbing the spread of COVID-19. However, the President took this issue into consideration in his broadcast. He took a fair balance in the overall interest of the

⁵² COVID-19: Ganduje amends Buhari's lockdown directive, allows congregational prayers. Mr Mustapha said President Buhari approved a two-week extension of the total lockdown in Kano, one of the states hardest hit by COVID-19. Read More: <https://www.premiumtimesng.com/news/headlines/393496-COVID-19-ganduje-amends-buharis-lockdown-directive-allows-congregational-prayers.html>.

⁵³ Nigeria Records 184 New Cases Of COVID-19, Total Infections Near 5,000* <https://www.barristerNG.com/nigeria-records-184-new-cases-of-COVID-19-total-infections-near-5000/>.

people of Nigeria. The risk of spreading the virus when the lock down was relaxed is higher. This is the directive made on the advice of NCDC and the Federal Ministry of Health. Really, someone has to be alive for him to complain of hunger and starvation. Yet, so many palliatives were rolled out by the President and well-meaning Nigerians in order to cushion the effects of the lockdown especially to the vulnerable Nigerians.

It is important to learn from the lesson of history and the situations in countries like United States of America, Spain, Italy, Germany, France and Russia. The most severe pandemic in the world history was the Spanish Flu of 1918. It reportedly lasted for about 2 years. This was in three waves infecting about 500 million people with 50 million deaths. Most of the fatalities reportedly happened in the second wave. This is because people felt so bad about the quarantine and social distancing measures to the extent that when they were first lifted, the people rejoiced in the streets with abandon and negligence. In the coming weeks, the second wave occurred killing millions of people. In the same vein, the President of the United States initially said it was a Chinese Virus, globally, as of 5:04PM CET, 11 March 2021, there have been 117,799,584 confirmed cases of COVID-19, including 2,615,018 deaths, reported to WHO. As of 10 March 2021, a total of 300,002,228 vaccine doses have been administered.⁵⁴ The governments have to take a decisive step to stem the tide. The uncoordinated effort of the federal and state governments is not in the interest of the people. Of the two evils of lockdown to prevent the spread of the virus and hunger as a result of the virus, one has to be chosen. The best is to lock down and curtail the spread of the virus once and for all. In the spirit of common sense, lesser evil should be chosen.

2.2 Conflicts with Agents of Federal Government by State Governments

Intense conflicts, endemic disunity, systemic struggle for dominance in the fight against COVID-19 continues unabated. It seems to be more of politics than the fight itself. Balancing the two main important principles of federalism i.e. National Unity in diversity and states autonomy in the fight of COVID-19 is very difficult. This is mainly due to persistent conflicts between agents of federal government and the state governments. It will be recalled that the President did not lockdown the whole country. Some states were allowed to use their measures to fight the virus so

⁵⁴ WHO Corona Virus Dash Board. Available at: https://covid19.who.int/?gclid=EAJaIQobChMI4SnjtKq7wIVLEiRBR2B5gk3EAAAYASABEgIV-fD_BwE. (Accessed on 12 March, 2021).

long as those measures did not conflict from the order of the President. Nevertheless, conflicts occurred in some states.

One notable state where there is loggerhead between federal agencies and the state government was Rivers State. In the first place, the Federal government sent some men to Rivers State to operate in order to save the nation's economy during lockdown. These men were arrested and detained for weeks in Rivers State for allegedly violating the lockdown order of the state. Some maritime workers were also arrested by the State government.⁵⁵ "They were arrested by the Rivers State Government Task force on COVID-19 lockdown led by the Governor Nyesom Wike. According to the Union's President, "All entreaties/explanation made by the Workers fell on deaf ears; in spite of presenting essential duty Port permit duly signed by the Nigeria Port's Authority NPA. Instead, the Governor mocked them saying they should go and work in Abuja. The Union further noted that "in the next forty eight (48) hours i.e. Monday May 11, 2020, if nothing is done to release our members, the union will have no option than to withdraw our services in all the Nation's seaports, terminals and jetties in solidarity with our detained members as injury to one is injury to all. The President General of MWUN explained that consequent upon the decision, terminal operation, shipping companies and Port users in Port Harcourt Ports are closing down shops as a direct result of the unsavoury activities of the Rivers State Government for not allowing Port workers and other maritime stakeholders to work. The Union warned that the direct implication is on the nation's economy with a clear threat to employment and job security of Port workers, Dock workers and shipping companies employees. "As it were, Port terminals have closed down till further notice, leading to loss of jobs and there is already restiveness in the entire Port and this appeal for the release of the workers is to douse rising tensions in the Ports, which could snowball into a full blown national industrial unrest if not checked," the union said.

The above attitude of the state governor has been described as 'hostile and aggressive' by the Chairman of the Presidential Advisory Committee Against Corruption (PACAC), Prof. Itse

⁵⁵ Wike: Maritime Workers threaten to shutdown ports over arrest of 20 dockworkers* <https://thenigerialawyer.com/wike-maritime-workers-threaten-to-shutdown-ports-over-arrest-of-20-dockworkers/>.

Sagay (SAN).⁵⁶ He added “the way Wike has been carrying on is as if there is a republic of Rivers state of which he is the President. He has done it so far and gotten away with it because the federal government is very accommodating. We have a President who is very gentle, who doesn't want to make trouble with anybody but wants things to go on peacefully in the country.”⁵⁷ This shows that governor has been ignoring the authority of the federal government and behaving as if the federal government has no authority in the state. Yet, federal government has overriding authority both under the Quarantine Act of 1926. States can operate, provided they don't clash with the federal government. Sagay concluded that “I remember the speech he made to the traditional rulers in the state; he treated them like rascally schoolboys that you can talk to anyhow without any regard. That is his attitude, so I'm not really surprised.”⁵⁸ Others notable legal scholars have described that Governor's attitude in different manners. According Falana, SAN, the Governor is a colossal embarrassment to the body of benchers, being a member of the highest law body in the country.⁵⁹ Some see it as act of dictatorship especially the demolition of some people's hotel all in the name of enforcing lockdown.⁶⁰

One other state that has conflicted with the federal government agency in the fight against COVID-19 is Kogi State. The State governor ordered the quarantine/isolation of the officials of the Nigeria Centre for Disease Control who were in the state to ascertain the claim by the state to be COVID-19 free. It will be recalled that the state, despite bordering about nine states and the FCT that have confirmed cases of COVID-19, claims to be COVID-19 free. The governor's attitude is a clear violation of the principle of state autonomy as provided for in the constitution. It is a clear case of provocation of the federal government, a more powerful entity than the state. Yet, he got away with it. Even as a layman in medical science, Kogi state is probably full of

⁵⁶ Gov.Wike Is Acting Like President of Rivers State Freely because FG Under Buhari Is Gentle And Accommodating -- Prof. Sagay* <https://thenigerialawyer.com/gov-wike-is-acting-like-president-of-rivers-state-freely-because-fg-under-buhari-is-gentle-and-accommodating-prof-sagay/>.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Rivers: Wike a colossal embarrassment to Body of Benchers – Falana* <https://www.barristerNG.com/rivers-wike-a-colossal-embarrassment-to-body-of-benchers-falana/>.

⁶⁰ COVID 19: Wike must check his despotic tendencies* <https://www.barristerNG.com/COVID-19-wike-must-check-his-despotic-tendencies/>. See also The Emerging Dictatorship in Rivers State –Adegboruwa, SAN blast GovWike: A Rejoinder By River State Attorney General, Prof. ZacchaeusAdangor* <https://www.barristerNG.com/the-emerging-dictatorship-in-rivers-state-%e2%94%80adegboruwa-san-blast-gov-wike-a-rejoinder-by-river-state-attorney-general-prof-zacchaeus-adangor/>. Covid 19: Wike And The Hordes Of Mordor By Prince Azubiuke Esq.* <https://www.barristerNG.com/COVID-19-wike-and-the-hordes-of-mordor-by-prince-azubiuke-esq/>.

COVID-19 infected people in view of contagious nature of the disease and its borderlines to about Nine states already infected with COVID-19. The reason for the state awkward attitude is not clear. It has been described as “It is very childish and infantile act.”⁶¹ It appears there is a kind of covering up as if there is a prize to win if the governor continues to deny the existence of COVID-19 in the state. The implication now is that when the virus spreads and death toll continues to rise like the case in Kano State, then the state will be overwhelmed and nobody will tell the governor before he goes back to the federal government for help. The federal government has the power to send those NCDC officials back to Kogi state with full security and they will go in, do all the tests they want in the interest of the nation. This is clearly constitutional and within the power of the federal government. The same position should be adopted in Cross River State. The state also borders Cameroon and some states which have a considerable number of COVID-19 positive cases. Yet, the State claims to be COVID-19 free.

2.3 Dominance and Over-stretching of Nigeria Centre for Disease Control

The Nigeria Centre for Disease Control (NCDC) is the country’s national public health agency, with the mandate to lead the preparedness, detection and response to infectious disease outbreaks and public health emergencies.⁶² NCDC was formerly established in 2011 when some departments in the Ministry of Health, including the Epidemiology Division, the Avian Influenza Project and its laboratories; and the Nigeria Field Epidemiology and Laboratory Training Programme (NFELTP) were moved to form the nucleus of the agency. The Bill for an Act to establish NCDC was signed into law in November 2018, by President Muhammadu Buhari.

The mission for the NCDC (2017-2021) is ‘To protect the health of Nigerians through evidence based prevention, integrated disease surveillance and response activities, using a one health approach, guided by research and led by a skilled workforce’. The main functions of NCDC are to prevent, detect, and control diseases of public health importance; coordinate surveillance systems to collect, analyse and interpret data on diseases of public health importance; support States in responding to small outbreaks, and lead the response to large disease outbreaks; develop and maintain a network of reference and specialized laboratories;

⁶¹ COVID- 19 Why FG Should Send NCDC Officials Back To Kogi With Full Security -- Prof. Sagay* <https://thenigerialawyer.com/COVID-19-why-fg-should-send-ncdc-officials-back-to-kogi-with-full-security-prof-sagay/>.

⁶² Covid-19 Nigeria, <https://covid19.ncdc.gov.ng/>. Accessed on 25th July, 2021.

conduct, collate, synthesize and disseminate public health research to inform policy; and lead Nigeria's engagement with the international community on diseases of public health relevance.⁶³

As at the first quarter of 2020, the NCDC has 213 staff, working across its locations at the Headquarters and the National Reference Laboratory in Abuja, as well as the Central Public Health Laboratory in Lagos State which is a campus of the National Reference Laboratory. However, many ad-hoc staff have been employed and many volunteers are helping the organisation. It is led by a Director General, the members of staff work in six Directorates, four of which are Technical Directorates.

The country consists of 36 states, a Federal Capital Territory (FCT) as well as seven hundred and sixty-eight local government areas within the states and six area councils in the FCT.⁶⁴ The FCT is treated as a state with its area councils as its local governments. However, due to the large expanse of Nigeria's territory as well as it being over 200 million population, it becomes difficult for the NCDC to achieve its mandate in the present COVID-19 Challenge in Nigeria. This accounts partly for the slow testing capacity, slow response time, inadequate man power and equipment and many other challenges which Nigerians complain of in the discharge of NCDC's functions. At a time like April 2020 in Kano, the state kept begging for the presence of NCDC officials despite increase in mysterious death in the state.

States in Nigeria also appear very well unprepared for the challenge of COVID-19 in the states. This accounts for the reason why many states quickly, after breakout of the virus, set up ad-hoc isolation centres to control the spread of the disease. States should have, long before now, set up their various centres for disease control in their various states. There is nothing in the constitution preventing the states from setting up their own centres for disease control in the states. This will assist the federal government in proper coordination of the system of disease control in Nigeria. Thus, the absence of centres for disease control in various states of the federation has hindered states responses to the challenge of COVID-19 in various sub-nationals in Nigeria.

2.4 Federal Security Agents in the Enforcement of Lock down Orders

⁶³ *Ibid.*

⁶⁴ Section 2(2) and section 3(1)-(6), CFRN, 1999.

As earlier stated, Police and other Security agencies are within the exclusive preserve of the federal government.⁶⁵ Undoubtedly, orders of state governments in curtailing the spread of COVID-19 will have to be enforced or implemented by the police and other security agents established by law. These security agents are agents of the federal government. Their appointments, recruitment, structure and composition is done by the Federal government. Except that the constitution requires these agents, especially the police to carry out or implement the lawful orders of the governors, though subject to the direction of the Inspector general of Police, no real obligation is imposed on the security agents to enforce the orders of state governors. This clearly played out in the implementation of COVID-19 orders of the state governors.

The consequence of the above on the states' COVID-19 response is that many citizens behave irresponsibly. The COVID-19 orders were breached with impunity. More than 50 percent of the people are not carrying any facemasks at all. Of the remaining 50 percent, half of them are carrying the facemasks under their chins; only 25 percent are wearing it properly.⁶⁶ Yet, if citizens do not cover their mouth and nose, the essence of the idea is defeated. Those who are infected will be ejecting the virus from their mouth and nostrils on innocent people. Observing social distancing has disappeared into thin air. Commercial motorcycles (okada) have been riding in areas where they have been banned without anybody challenging them. The ban on inter-state travel has clearly become ineffective. People move from one state to another without much hindrance. Commercial vehicles fill their buses to capacities. Many governors allege the police and other security agents hinder the effectiveness of the ban on inter-state travel which is meant to curtail the spread of the virus.⁶⁷ It is also alleged that security agents collect bribes from motorist in order to compromise lockdown orders.⁶⁸

2.5 Quarantine being under Exclusive List

⁶⁵ Item 45 of Part I of the 2nd Schedule to the CFRN 1999.

⁶⁶ [Tessy Igomu](https://healthwise.punchng.com/nigerians-poor-attitude-towards-COVID-19-testing-remains-a-challenge-mustapha/), Nigerians poor attitude towards COVID-19 testing remains a challenge –Mustapha, August 21, 2020, Available at: <https://healthwise.punchng.com/nigerians-poor-attitude-towards-COVID-19-testing-remains-a-challenge-mustapha/> Accessed on 02/11/2010

⁶⁷ Security Agents Hindering Compliance With Ban On Inter-State Movement, Says Civil-Society* <https://thenigerialawyer.com/security-agents-hindering-compliance-with-ban-on-inter-state-movement-says-civil-society/>

⁶⁸ *Ibid.* COVID-19: Police collecting bribe, sabotaging lockdown in Rivers – Wike alleges <https://www.barristerNG.com/COVID-19-police-collecting-bribe-sabotaging-lockdown-in-rivers-wike-alleges/>

Quarantine is under the exclusive list of the federal government.⁶⁹ This implies that it is within the exclusive power of the federal government to quarantine individuals found with infectious diseases. The little power given to the states to manage and control diseases like COVID-19 is under the Quarantine Act. Although some states pass infectious disease bill into law, it does not mean that states are not empowered to quarantine individuals suspected of having infectious diseases. The Nigeria Centre for Disease Control still plays enormous role in this regards. Yet, quarantine remains an effective mechanism in curtailing the spread of COVID-19. Despite being a potent tool to fight the spread of COVID-19, it is regrettable to state that the Constitution does not give this power to the states, at least in a concurrent nature with the federal government. This is a serious set-back on the states' responses to COVID-19.

2.6 Immigration and Emigration from Nigeria

As earlier stated, Nigeria's federal structure involves sharing of powers between matters listed in exclusive legislative list and concurrent lists. Foreign affairs matters like immigration and emigration fall within the exclusive legislative list. The effect of this on COVID-19 response of the state governors, particularly Lagos state is that it is only the federal government that has the power to close and open airports. Since COVID-19 is a foreign disease that was only imported into the country, early closure of the nation's airspace would have to a large extent reduced the incidences of infections in the country. This point was stressed by the governor of Lagos state. According to the governor, the delayed closure of the country's borders, seaport, and airports, including the failure of returnees to self-isolate, caused the spread of COVID-19.⁷⁰ The governor noted that Lagos was prepared to curb the spread of COVID-19 but had to wait for the Federal Government to shut airport, seaport and land borders.⁷¹ Although Nigeria recorded its first COVID-19 death on February 27, the federal government officially shut the country's airports, seaports, and borders on March 29.⁷² As of March 29 when the federal government shut the country's airports, seaports, and borders, Nigeria had recorded 111 confirmed cases of COVID-19 and one death. When asked about the state's preparedness, the governor noted that, "Given

⁶⁹ See item 54 of Part I of the 2nd Schedule to the CFRN 1999.

⁷⁰ Sodiq Oyeleke, The Punch News Paper, Sanwo-Olu blames late airport, border closures for COVID-19 spread, <https://punchng.com/sanwo-olu-blames-late-airport-border-closures-for-COVID-19-spread/?amp=1> Published April 30, 2020.

⁷¹ *Ibid.*

⁷² *Ibid.*

the population that we have, we are a bit ahead in terms of preparation, as a state, but we are sub-national. We couldn't give directives as to when Nigeria should close the airport, seaport, or inland border".⁷³ The shows that aviation matters, being within the exclusive preserve of the federal government, has serious response on the state's response to COVID-19.

2.7 The *Almajiri* Problem

The challenge of *Almajiri* has been a great set-back to the fight against COVID-19 especially in Northern Nigeria. It is one of the easiest ways in which COVID-19 spread in the northern part of the country. This is because the *Almajiris* (beggars) who mainly have no specific places of abode are being deported back to their states of origin. Many of these children have tested positive to COVID-19. Hence, when they get to their states, they easily spread the disease to the innocent residents of their states of origin. The deportation of these children started from Kano State. The children were sent to states like Kaduna, Jigawa, Bauchi, Plateau, Gombe, Katsina, Niger. Some of the states in turn send the *Almajiri* children in their states to the neighboring states. The care of these children does not really concern some of the governors.⁷⁴ Politics is being played with the lives of these unfortunate *Almajiri* children.⁷⁵

The above is a clear abuse of the principle of autonomy in a federal system like Nigeria. At least, it can be mildly described as a product of lack of understanding of the principle and constitutional law. First, the Constitution secures full residence rights for every citizen in all parts of the federation.⁷⁶ The Constitution also promotes national integration while discrimination on grounds of place of origin, sex, religion, status, ethnic or linguistic ties is prohibited.⁷⁷ In order to also promote national integration, states are enjoined to encourage free mobility of people, goods and services throughout the federation. Thus, the deportation of these *Almajiri* children is unconstitutional.

3. THE EXPERIENCE OF FEDERAL STRUCTURE IN ETHIOPIA

⁷³ *Ibid.*

⁷⁴ COVID-19 Positive *Almajiri* Kids Need Care Not Publicity – Ganduje* <https://thenigerialawyer.com/COVID-19-positive-almajiri-kids-need-care-not-publicity-ganduje/>.

⁷⁵ COVID-19: Governors playing politics with *Almajiri* – Ganduje accuses El-Rufai, others* <https://www.barristerNG.com/COVID-19-governors-playing-politics-with-almajiri-ganduje-accuses-el-rufai-others/>.

⁷⁶ Section 15(3)(b) of the CFRN 1999.

⁷⁷ Section 15(2) of the CFRN 1999.

Ethiopia is one of the countries highly exposed to the COVID-19 Pandemic through its huge involvement in air transportation to exports: the national carrier, Ethiopian Airlines that has the largest fleet in Africa.⁷⁸ The country announced the suspension of 80 flight routes. On the 8th of April 2020, the Prime Minister declared a state of emergency pursuant to Article 93 of the Federal Constitution, which allows it to impose more stringent measures in situations of epidemic or pandemic. The Constitution establishes a federal and democratic state structure, known as the Federal Democratic Republic of Ethiopia. The lists of states are also provided for in the Constitution.⁷⁹ Addis Ababa is the capital city with complete powers of self-administration but accountable to the Federal Government.⁸⁰

3.1 Measure of Autonomy of Tiers of Government in Ethiopia

Each member state of the Federation may have its own flag and emblem. Particulars shall be determined by their respective parliaments.⁸¹ The member states of the Federation shall determine their respective official languages.⁸² The Constitution is supreme and states are not allowed to violate the constitution. In fact, all laws, customary practices, and decisions made by state organs or public officials inconsistent therewith, shall be null and void.⁸³ All citizens, state organs, political organizations, other associations and their officials, have the duty to comply with this Constitution and abide by it.⁸⁴

One important provision is that the State shall not interfere in religious affairs; neither shall religion interfere in the affairs of the State.⁸⁵ However, due to this pandemic, social and religious gatherings have been suspended. This is a form of interference of states in religious affairs.

The Federal Government and the States shall have legislative, executive and judicial powers.⁸⁶ The State Parliament is the legislature of the State with regard to matters falling within

⁷⁸ Ethiopia Government and institution measures in response to COVID-19. <https://home.kpmg/xx/en/home/insights/2020/04/ethiopia-government-and-institution-measures-in-response-to-covid.html>. (Accessed on 18th Day of May, 2020).

⁷⁹ Article 47 of the Constitution of the Federal Democratic Republic of Ethiopia (The Constitution)

⁸⁰ Article 48(3) of the Constitution.

⁸¹ Article 3(2) of the Constitution.

⁸² Article 5(3) of the Constitution.

⁸³ Article 9(1)(2) of the Constitution.

⁸⁴ *Ibid.*

⁸⁵ Article 11(3) of the Constitution.

⁸⁶ Article 50(2) of the Constitution.

its powers. It has power to prepare, adopt or amend the Constitution of the State.⁸⁷ The Government of the State is the highest executive organ of the State.⁸⁸ Judicial powers of states are resident only in the courts.⁸⁹ Each tier of government is enjoined to respect the power of another tier.⁹⁰ However, where necessary, the Federal government may delegate some of its power and responsibilities to the states.⁹¹ Member States of the Federal Democratic Republic of Ethiopia shall have equal powers and rights.⁹² The mode of power sharing is that some powers are exclusive to the federal government,⁹³ some are exclusive to the state government⁹⁴ and some are concurrent to both. Powers not exclusively reserved to the Federal Government or concurrently given both to the Federal Government and State Governments by the Constitution shall belong to the States.⁹⁵ One important power of the state is the power to create, organize and direct state police force within the state.⁹⁶

The exercise of judicial powers also has some level of autonomy by the states. The States also have State Supreme Courts, State High Courts and State First Instance courts.⁹⁷ Particulars shall be determined by law. Judicial power shall be vested only in the courts both on the Federal and State levels.⁹⁸ The Federal Supreme Court also has the highest and final jurisdiction over federal matters.⁹⁹ In the same vein, the State Supreme Court is the highest and final jurisdiction over state matters and assumes, in addition, the jurisdiction of the Federal High Court.¹⁰⁰ However, final decisions made by the Federal Supreme Court or state courts may be reviewed in cassation by the Federal Supreme Court where it finds such decision to be affected by a fundamental error of law. Particulars shall be determined by law.¹⁰¹ The State High Court, in addition to its jurisdiction in the state, assumes the additional jurisdiction of the Federal First

⁸⁷ Article 50(5) of the Constitution.

⁸⁸ Article 50(6) of the Constitution.

⁸⁹ Article 50(7) of the Constitution.

⁹⁰ Article 50(8) of the Constitution.

⁹¹ Article 50(9) of the Constitution.

⁹² Article 47(3) of the Constitution.

⁹³ Article 51 of the Constitution.

⁹⁴ Article 52(2) of the Constitution.

⁹⁵ Article 52(1) of the Constitution.

⁹⁶ Article 52(2)(g) of the Constitution.

⁹⁷ Article 78(2)&(3) of the Constitution.

⁹⁸ Article 79(2)&(3) of the Constitution.

⁹⁹ Article 80(1) of the Constitution.

¹⁰⁰ Article 80(2) of the Constitution.

¹⁰¹ Article 80(3) of the Constitution

Instance court.¹⁰² Nevertheless, decisions rendered by the State High Court in its federal jurisdiction can be reviewed on appeal by the State Supreme Court.¹⁰³ In the same token, decisions rendered by the State Supreme Court in its federal jurisdiction may be reviewed on appeal by the Federal Supreme Court.¹⁰⁴

Even in terms of judges' appointments, the tiers of government have some measure of autonomy. The President and Vice-President of the Federal Supreme Court are appointed by the Council of Peoples' Representatives upon their nomination by the Prime Minister.¹⁰⁵ Similarly, the appointment of other judges of the Federal Supreme Court is to be made by the Council of Peoples' Representatives upon nomination of candidates by the Judicial Administration Commission and subsequent presentation by the Prime Minister.¹⁰⁶ In the spirit of state autonomy, the President and Vice-President of the State Supreme Courts are appointed by their respective State Parliaments upon their nomination by their respective heads of government.¹⁰⁷ Moreover, judges of the State supreme and High Courts are appointed by their respective state parliaments upon nomination by their respective Judicial Administrative Commissions.¹⁰⁸ The judges of the First Instance Courts of the states are appointed by their respective parliaments upon nomination by their respective Judicial Administration Commissions. Furthermore, the Judicial Administration Commission must, before presenting the nominees to the State parliament, solicit the opinion of the Federal Judicial Administration Commission on the nominees and submit the same, together with its own recommendations, to the State Parliament.¹⁰⁹ Also, matters relating to the transfer and discipline of judges at all levels are determined by the Judicial Administrative Commissions concerned.¹¹⁰

Furthermore, in the declaration of emergency in periods of epidemics, pandemics or other national disaster, autonomy of the tiers of government is also provided for. Article 95 is clear on the State of Emergency. The Council of Ministers of the Federal Government may declare a state of emergency in the event of among others, of natural disaster or epidemic endangering public

¹⁰² Article 80(4) of the Constitution

¹⁰³ Article 80(5) of the Constitution

¹⁰⁴ Article 80(6) of the Constitution

¹⁰⁵ Article 81(1) of the Constitution

¹⁰⁶ Article 81(2) of the Constitution

¹⁰⁷ Article 81(3) of the Constitution

¹⁰⁸ Article 81(4) of the Constitution

¹⁰⁹ Article 81(5) of the Constitution

¹¹⁰ Article 81(6) of the Constitution

health.¹¹¹ The procedure for such declaration is equally provided for.¹¹² In the spirit of state autonomy, the State Governments may, within their territory, declare a state of emergency in the case of natural disasters or epidemic endangering public health. Particulars shall be determined by the constitutions of the respective states adopted on the basis of this Constitution.¹¹³

5. THE FUTURE OF FEDERAL PRINCIPLE AND AGENDA FOR REFORMS

This segment discusses the implication of the above threat to constitutionalism and proposed reforms to be included in the constitutional and institutional architecture in the light of the current conflicts and disunity in the fight against COVID-19 in Nigeria.

What is the implication of the foregoing? The constitutional architecture is generally deficient and institutional designs of the federal structure largely contribute to the current conflicts and disunity in the fight against COVID-19 in Nigeria. Efforts at constitutionalism or proper coordination of states' responses to COVID-19 with the present federal structure have not yielded the desired results. One of the reasons is that most Nigerian leaders do not understand, believe in constitutionalism in a federal system or lack the requisite knowledge of the impact that proper structuring and understanding of federalism can have on the states responses to COVID-19, peace, and unity in diversity in the fight against COVID-19 and future pandemics or epidemics.

What further actions can be taken by the country, its leaders and civil societies to ensure constitutionalism in the federalism in managing the states' responses to COVID-19? Enhancing constitutionalism in the federal structure requires certain key actions.

4.1 Capacity-building to Enhance Expertise in the Operation of Federalism

Smooth operation of a federal structure presumes expertise and enabling institutional framework on constitutionalism. It is important to build capacity on federal governance structure and the importance of constitutionalism in operating federal structure for proper management of COVID-19 cases. It will be counter-productive to operate a federal system where there are inadequate experts in federalism who will train or advise their respective leaders on the nature

¹¹¹ Article 95(1)(a) of the Constitution.

¹¹² Article 95(2)-(6) of the Constitution.

¹¹³ Article 95(1)(b) of the Constitution.

and importance of federal constitutionalism to peace and unity in the country. The constitutional architecture in the country needs to be tailored towards effective federal structure and good governance. A preliminary investigation in this study shows that some so called constitutional experts are not aware of any idea of federalism and how it can operate to properly coordinate states' responses to COVID-19. If many constitutional law 'experts' do not have requisite knowledge of the operation of federalism, the society will suffer for it. The respective governments will be ill-advised as states' responses have shown. There have been so many actions of state governments identified above that are contrary to the principles of states 'autonomy in federalism and clear provisions of the constitution.

4.2 Security Matters should be Taken Out of the Exclusive List and be Inserted into the Concurrent Lists

The original idea of perhaps inserting security matters in the exclusive list was to prevent states from becoming too powerful as to secede from the union of federal system. One other reason was to prevent state from the abuse of security forces. All these were the fall out of the Nigeria's civil war. After the war, there was too much suspicion in the land. In order to prevent its future occurrences, more states were created in order to produce multiplicity of interest groups reacting to one another to produce equilibrium in a federal system. A union of more states will, like the USA, will force each state to be aware of its relative insignificance *vis-a-vis* the whole with the futile exercise of the policy of separatism. This will lead to individual state ostracizing itself from the rest thus denying itself of comradeship in communal life.

However, it is timely for the states to have their own police. This is evident from the recent abysmal performance of the federal security agents in the resolving many security challenges in the country. This is also clear from their terrible performance in the enforcement of lockdown orders by the state and the federal government. However, state police should be well regulated in the constitution in order to prevent incidences of conflicts with federal security agencies. The bottom line is that both the federal and state governments should be ready for constitutionalism and obey the rule of law. This will prevent the occurrence of many avoidable conflicts between states and federal government in the enforcement of their various responses to COVID-19 and other future epidemics or pandemics.

4.3 Altering the Mode of Power Sharing in the Constitution

The technique of power sharing should be altered in the constitution to prevent incidences of conflicts in the exercise of power and at the same time enjoy the flexibilities and other benefits associated with concurrent list. It is suggested that one may be exclusive to the Federal government, one exclusive to the state and another will be concurrent to both the state and the federal governments. Residue can be taken to the local government, which is also with the ambits of the states.¹¹⁴ It is submitted that simplicity will be achieved and uncertainties and conflicts between the federal and state governments will be eliminated where the constitution provides for only one list of matters exclusive to the states and the other exclusive to the federal government. And to create a fair balance and reap the benefits of concurrent lists stated above, some matters should still be included in the concurrent list. This will have positive impacts on states responses to COVID-19.

4.4 Quarantine should be Taken Out of the Exclusive List and be Inserted into the Concurrent Lists

As earlier stated, quarantine is still within the exclusive preserve of the federal government. This is clearly needless. It has hampered the states' responses to COVID-19. This is because despite limited federal presence in some states, they will be looking for officials of federal government for them to quarantine some individuals suspected to be carrying the corona virus. Due to this difficult challenge, some States have resorted to forceful and unconstitutional quarantine of individuals even without seeking help from the federal government. This has severe implications on constitutionalism.

Also, the presence of quarantine in the exclusive list of federal government has hindered proper state legislative responses to COVID-19. The lee-way provided for the States under the Quarantine Act is not enough for most states to operate. Some States have, however, provided for some infectious diseases laws. Some even provided for quarantine laws. Definitely, those laws do not have the capacity of giving powers of quarantine to the State without offending the constitutional provisions. Where it thus, then it is unconstitutional and this may be put to test in the future. The result is that states would have made many efforts in futility due to the

¹¹⁴ Section 7 of the CFRN 1999.

unconstitutionality of the quarantine laws. The best is to remove the quarantine from the exclusive list and put in concurrent list to allow the states operate freely in responding to COVID-19 cases in the States.

4.5 States should create their Centres for Disease Control

As earlier stated, the NCDC has been very much overstretched. This has occasioned unnecessary delay in responding to emergency situations. In some cases, it takes NCDC 3 to 4 days to respond to emergency situations. The state should create their own centres for disease control that will perform the role of NCDC at state levels. There is nothing unconstitutional with this. It will go a long way in supporting the effort of the Federal government in the fight against the corona virus.

4.6 The System of *Almajiri* Should be Institutionalised

The plight of the *Almajiris* requires urgent attention. It has been established in this study that the deportation of the *Almajiri* children from one state to another is not only a violation of the right of the children to movement as guaranteed under the constitution, it's also a violation of the constitution and the principle of federalism. The Northern States can be more coordinated in dealing with the *Almajiri* syndrome. The current situation should be abolished with some reinvention. Schools and institutions can be created to cater for this menace. This will prevent or reduce further spread of Covid -19 in the state.

4.7 There should be more Coordination of Immigration and Emigration from Nigeria

As earlier stated, matters on immigration and emigration is within the exclusive preserve of the federal government. However, states should not be in a situation of helplessness where the federal government's actions and inactions on foreign affairs can cause the spread of diseases in the state. The purpose of federalism is to bring good things to the people and not bad things like COVID-19. It is not a bad idea to have coordinated synergy in matters of this nature for overall good of the people of Nigeria. Each tier of government should not work at cross purposes but should cooperate for the greater happiness of the people of Nigeria.

CONCLUSION

This study makes an expository analysis on how the deficiency in constitutional and legal architecture generally and institutional designs of the Federal structure largely contributed to the conflicts, improper coordination and disunity in the fight against COVID-19 by the government in Nigeria. From the foregoing analysis, it can be said that the present federal structure has also contributed negatively to the states' responses to the fight against COVID-19. The uncoordinated actions of the state and federal government agencies have increased the spread of confirmed COVID-19 cases in Nigeria. The states are not truly autonomous in the true sense autonomy required in a Federal system. Yet, the little autonomy enjoyed by the state governments are misused by some state governors. This is particularly true of states like Kano, Kogi, Rivers, Kaduna, Cross Rivers and some others. It's either the governors do not understand the nature of the autonomy granted to states under the constitution or they are simply mischievous thus acting against constitutionalism in their states.

Also, the mode of power sharing as contained in the constitution is faulty. This has increased the conflicts between the federal government and states thereby affecting the states' responses to the fight against COVID-19. It is suggested that some matters should be under Exclusive List of the Federal government, some to be exclusive to the states and some should be concurrent to the federal and state governments. This will to a large extent eliminate conflicts and uncertainties in the fight against COVID-19. Moreover, issues like police and security matters should be taken away from the Exclusive List and be taken to Concurrent List. The same thing applies to quarantine. It will enhance the enforcement mechanisms of the state in enforcement of COVID-19 orders by the state governments.

The study has also shown that the NCDC has been overwhelmed in the fight against COVID-19. States need to create their various centres for disease control in the state to support the efforts of the Federal government in the fight against the Corona Virus. The *Almajiri* syndrome has also spread COVID-19 cases to various states of the federation. There has to be a coordinated approach by northern governors with federal government support to curtail the menace of *Almajiri* in the north. Also, there has to be a coordinated approach between the federal and state governments on matters of immigration and emigration. People who come from foreign countries will definitely enter into states. Hence, cooperation is needed to enhance fight

against COVID-19. Where all these suggestions are taken into consideration, it will go a long way in enhancing the states' responses to COVID-19.

It can be said from the foregoing analysis that the Ethiopian Constitution presents a unique federal structure which gives a measure of autonomy to the state governments than the situation in Nigeria. One major area of state autonomy which has led to proper coordination of the fight against COVID-19 is the State police permitted by the Ethiopian Constitution unlike the situation in Nigeria. Enforcement of lockdown orders appears seamless and properly coordinated. Again, the courts are also separated from the federal courts. Each tier has their own with different mechanism for enforcements. The Constitution clearly empowers the state organs to declare a state of emergency in periods of disaster, epidemic, pandemic and national disaster in their states without having to wait for the federal government. This is different from Nigeria where the Constitution does not empower state government to declare a state of emergency in their state during the period of pandemic or natural disaster. The little window under which states operate is the Quarantine Act. This Act is subject to amendment by federal agencies and may be to the disadvantage of the state government. The mode of power sharing is also clear thereby devoid of conflicts associated with the mode of sharing power in Nigeria. Some are exclusive to the federal government, some to the states and residue are clearly left for the state governments.