



**THE PRE-EMPTIVE IMPACT OF NIGERIA'S FEDERALISM ON  
PUBLIC HEALTH RESPONSE: EBOLA VIRUS DISEASE AND  
COVID-19**

**\*MARIE-LOUISE AREN\***

# PRE-EMPTION & THE CONSTITUTION

- • Pre-emption- is the invalidation/overriding of a state law that conflicts with federal law and state law that conflicts with local government law. The purpose/objective of Higher Parliament is the supreme benchmark/standard in every pre-emption case
- • pre-emptive laws proponents laud it for the regulatory space it provides to make stronger laws.
- • Critics fault it restricting/eliminating local policymaking space especially in times of recurrent health/other emergencies and limits swift/innovative responses Preemption is a problem in most federal systems including Nigeria.
- • Nigeria runs a 3-tier federal governance system, all governed by the Constitution-. The Federal Government makes laws for the Federation, The State- States and Local Government (LG) for an LGA By-Laws. See. 2 & 3 CFRN (1999) Cap C23 LFN 2004.
- • Nigerian Legislative Pre-emption is founded on the Supremacy/ Inconsistency Clause (both general & specific) in the Constitution See- S. 1(1) & (3) & S. 4(5) CFRN and the Legislative Lists- Exclusive, Concurrent and Residual. See- Second Schedule to the CFRN (1999). See also LGC functions Schedule 4 CFRN.
- • Note: Legislative Power is subject to the jurisdiction of the court.
- • The CFRN places health on the concurrent legislative list, such that both the federal, state have power to legislate on Health.

- • LG functions include provision and maintenance of health services, while the state may confer additional functions. The CFRN does not list this as law making but, in the process, LGs can exercise law making functions. LG have the responsibility to mobilize and deploy resources for the provision of health services within their respective jurisdiction.
- • There have been certain areas of friction between the federal and state governments, esp where FG covers the field in a way that oust the state government.
- • The Courts held in weighed in. In AG Bendel v AG Fed, the courts reaffirmed the doctrine of division of governmental powers, stating that it is implicit in the CFRN that neither the Federation nor the States can make laws imposing extra burden on each other. AG Lagos v Eko Hotels Ltd (2017), there a federal law exist with a state law on a matter, the state becomes inoperative.
- • The Supreme Court in the case of Gov Ekiti State v Olubunmo unanimously voided laws which enable governors sack elected local government chairs as the state overstretching its powers. Compare to AG Abia v AG Fed where states have legislative pre-emption over LGs.
- • In A.G. Federation v A.G. Lagos, the Federal Government cannot legislate on matters in the residual list. This has ensured that the federal and state governments respectively know their place, don't interfere.
- • Nigeria's preemption law and the FG ousting powers has been attributed to influence of military dictatorship, relic of colonialism forcibly uniting different nationalities under a federation., acts of over centralisation, insubordination of state governments, over dependence of states on central funding.

# Health Laws

- IDSR (Infectious Disease Surveillance and Response) Policy & Technical Guideline, National Health Act 2014, Quarantine Act of 1926, The CFRN.
- National Health Promotion Policy (NHPP) in 2006 to strengthen the health promotion capacity of the National Health System to deliver health care that is promotive, protective, preventive, restorative and rehabilitative
  - See also the controversial failed CONTROL OF INFECTIOUS DISEASES BILL 2020 that give extensive power to the NCDC, statutory recognition for power of the President/ Governor , to declare any place or area “an infected area” and accordingly issue appropriate regulations or directives to prevent spread.
  - Preemption in the Quarantine Act, statutory recognition for power of the President, to declare any place or area “an infected area” and accordingly issue appropriate regulations or directives to prevent the spread of such infections in Nigeria, and the transmission from Nigeria to outside.

# Comparing EVD and Covid Response

- • The was a synergy between the Federal, State and Local Government.
  - • The Lagos State government develop a policy on emergency preparedness and biosecurity.
  - • In Lagos, a strong FETP(Field Epidemiology Training Program)was already in place, and the team's contact tracing efforts helped identify and isolate potential cases of Ebola.
  - • Nigeria Field Epidemiology and Laboratory Training Program (NFELT): Established in 2008 by US CDC and the FMOH to train field epidemiologists was already in place.
  - • Swift involvement and Reaction of the FMOH.
  - • LSG provided oversight and coordination of emergency preparedness strategies.
  - • Used the centralized Incident Command Structure and the key activities of the Emergency Operations Centre.
  - • Developing a robust surveillance system, and setting up a Biosafety Level 3 laboratory and biobank
- • Multi Sectoral National Emergency with the NCDC at the helm of response activities
  - • At the federal level and in most states, evidence-based policies such as social distancing and “test and trace” approaches have been implemented.
  - • However, implementation efficacy was strongly restricted weak health systems, sluggish emergency response, weak accountability systems, and fragmented data and information monitoring systems.
  - • Nigeria's COVID response was a stroke of luck.

# WHAT CAN BE LEARNT?

- • Over dependence on federal fund risks accountability and legislative capacity.
- • Not enough (constitutionally provided) State/LG Fiscal independence/ space to raise revenue.
- • Legislative Inconsistency sometimes creates problems of duplication, coordination, and wastage of legislative resources.
- • FG failure to recognize that the primary responsibility for delivering public health services rests with the states and local governments
- • FG distrust of State/LG capacity to effectively make laws in concurrent areas infantilizes them and encourages legislative passivity/innovative response to crisis.
- • local governments especially have weak capacity to implement their expenditure assignments, since many of them were created out of political pressures and plagued by unaccountability, corruption and are almost powerless.

# What can be done about Pre-emption?

- • Fiscal decentralization necessary to improve accountability and public service delivery.
- • More devolved power to States and LG on the Health Emergency response. Federal laws may not always reflect the needs of a local community.
- • Stronger use of Legislative Saving Clauses in the Short term
- • States/ LG Work within the space they have.
- • Increased legislative power/ grant for accountable and effective state/LG legislative or health service delivery implementation through national dialogue. The autonomy of LG/States may be increased as better institutions of accountability and capacity are developed.

# Conclusion and Appreciations

- • Nigeria pre-emptive impact is mostly a mixed issue of constitutionally backed over-centralisation of power, capacity and accountability and ensuring round square are kept in round holes and vice versa.
- • For now, the solution could be to increasingly devolve more powers to the states and local government as their capacity /accountability in shared responsibilities.

- *THANK YOU*