

FEDERAL CHARACTER PRINCIPLE IN THE NIGERIAN FEDERAL SYSTEM OF GOVERNMENT

By
Professor Kamal Alhaji Dawud*
Dr. Musa Alkali Lawan**
Abdullahi Usman***

Abstract

The aim of federal character as a principle is to ensure that all public service institutions, ethnic, and geographic diversity of the country. To this, Section 14 (3) and (4) of the 1999 Constitution (as amended) is to the effect that: the government or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government. However, the challenges of imbalance in our national life between states and ethnic groups in relation to the educational sector, appointments and recruitments based on quota system and the non-justiciability of Chapter II of the 1999 Constitution as amended have a serious challenge to the proper implementation of the federal character principle in the country. Due to the nature of the research, doctrinal method was adopted in the conduct of this research, wherein primary and secondary sources were consulted. The primary sources include: legislation, cases etc. while the

* *Professor of Comparative Constitutional Law, Faculty of Law, University of Maiduguri, Borno State, Nigeria, LL.B/Sharia (UniMaid), LL.M and PhD (UniJos) kamaldawud0@gmail.com; kamaldaud@nigerianbar.ng; 08023859123; 08035054222.

** Lecturer, Faculty of Law, University of Maiduguri, Borno State, Nigeria, LL.B/Sharia (Unimaid), BL (Kano Campus), LL.M (Udus), PhD (Udus), musaalkalilawan@gmail.com; 0706075700.

*** Lecturer, Department of Sharia and Civil Law, Mohammed Goni College of Legal and Islamic Studies, Maidugur.

secondary sources include: books, journals as well as internet materials. The paper observes that: non-justiciability of Chapter II of the 1999 Constitution (as amended) and lack of fairness in making appointments, promotions and recruitments has seriously undermined the smooth and effective implementation of federal character principles in the country. The paper recommends that, chapter II of the 1999 Constitution be made to be justiciable and the governments both at the Federal, State and Local Governments level be fair in their appointments, promotions and recruitments.

1.1 Introduction

For long, democratic stability, national integration and sustainable socio- economic development have eluded the Nigeria post- colonial state. Nigeria still remains one of the most under developed post-colonial states in the third world that is characterized by high external debt, inflation and general infrastructural decay, urban dislocation and violent crimes, in spite the enormous wealth and large population as well as agricultural potentials, Nigeria has not been able to establish the relevant socio-political and economic framework for transition and development. In fact since independence, Nigeria has been essentially characterized by ethno-religious conflicts, secessionism, corruption, mismanagement and coups and counter-coups.¹ Best describing the situation of Nigeria is the former Governor of Nasarawa State, Adamu Abdullahi who observed that:

God in His infinite wisdom made our dear country a rainbow collection of tribes and tongues.... But we seem blind to the beauty in our rainbow collection of tribes and tongues. Instead we find mutual suspicion, hate and fear in other tongues and tribes. Consequently, several parts of our country are today convulsed in inter and intra- ethnic

¹Abubakar. D, "The Federal Character Principle, Consociationalism and Democratic Stability in Nigeria", in Federalism and Political Restructuring in Nigeria, Amuwo. K, (et al), (2000, Spectrum Books Ltd), Op Cit, p 164

conflicts leading to loss of lives as well as the destruction of private and public property.²

The problem of acrimonious existence among the diverse groups and interests in the federation of Nigeria leading to mutual distrust and inter- community conflicts has become perennial and endemic in the nation's body – politic and has militated against the political stability of the country since independence. The fear of the domination of one ethnic group by the other or section of the country by another and the national question of who gets what and how the 'national cake' should be equitably shared constitute a major factor of this problem.³ These problems have seriously hampered the efforts for national integration as it applies to a nation-state building, out of the disparate ethnic, geographic, social, economic and religious elements in the country.⁴ In line with the above, efforts have been made to resolve (constitutionally) the problems of political stability and national integration through restructure of the nation, by the creation of states and local government areas (whose divide was not based on ethno-linguistic line), introduction of the federal character principle and the use of zoning system as a mechanism for power sharing.⁵ Of all ethnic policies so far tried for national integration, federal character is the most far reaching. A principle that was first included into the provision of the 1979 Constitution, under Sections 14, 15, and 16 of the said Constitution, and good enough; the same principle has been retained in the 1999 Constitution of the Federal Republic of Nigeria.⁶

1.2 Brief about the Federal Character Principle in Nigerian

A number of writers on Nigeria's federal character principle attributed the authorship of this principle to the former Head of State, late General Murtala Ramat Mohammed, who used the phrase federal

²Adamu. A, "Ethnic Conflict in Nigeria", www.abdullahiadamu.com/speeches/2ethnic.htm, 28/12/02, p 1

³Agbodike. C.C, "Federal Character Principle and National integration", in Federalism and Political Restructuring in Nigeria, Op Cit, p 177

⁴Ibid

⁵ Abubakar. D, "The Federal Character Principle, Consociationalism and Democratic Stability in Nigeria", Op Cit

⁶M. O. Maduagwu, "Nigeria's Federal Character Towards its Correct Constitutional Interpretation and Application", 1999, CJLJ, Vol. 5 No. 5, p 65

character of Nigeria in his inaugural address on October 18, 1975, to the Constitutional Drafting Committee (CDC), which drafted the 1979 Constitution of Nigeria.⁷ Further research has also shown that probably, the term federal character was first coined by Chief Obafemi Awolowo as far back as 1945 in the context of his proposal for ethnic federalism in Nigeria.⁸ It was shortly after his comment that in 1947 the Richards Constitution divided Nigeria into three regions, namely; North, West, and East.⁹ It was said that the Richards Constitution compounded the ethnic conflicts in Nigeria owing to the fact that before it came into effect the country was managed under two separate and contradictory systems. In the North, the political system was controlled by traditional rulers in line with the pledge of Lord Lugard to the Lamido of Adamawa and the Sultan of Sokoto in 1901 and 1903 respectively that he would not temper with the existing religious and political systems in Northern Nigeria. It was on this premise that the policy of indirect rule, which was very popular in the colonial northern Nigeria, was woven. On the other hand, southern Nigerians had representatives in the National Legislative Assembly and as such, they were more sophisticated politically than their northern counterparts; Western education was also not as successful in the North as it was in the South.¹⁰ The disadvantaged position of the Northerners, compared to their counterpart in the South was made clear under the Richards Constitution which made it necessary for the two groups to work together.

The same Constitution compounded the mutual suspicion among the different ethnic groups in Nigeria and marked the beginning of acrimonious ethnic politics in the country.¹¹ It was because of this fact, Afigbo viewed that colonial administration bequeathed to their Nigerian wards an enduring legacy of mutual suspicion and contempt.¹² The imbalance between the South and the North in terms of size and

⁷Ibid, p 66

⁸Awolowo, Path to Nigerian Freedom, (1947, Faber & Faber, London), p 47, referred to in M. O. Maduagwu, "Nigeria's Federal Character Towards its Correct Constitutional Interpretation and Application", Ibid

⁹Albert. O, "Federalism, Inter- ethnic Conflicts and the Northernization Policy of the 1950s and 1960s", in Federalism and Political Restructuring in Nigeria, Op Cit, p 50

¹⁰Ibid p 51

¹¹Ibid

¹²Ayoade. J.A.A, "The Federal Character Principle and the Search for National Integration", in Federalism and Political Restructuring in Nigeria, Op Cit, p 102

representation may be attributed to be main reason for the unrest between the tribal groups in Nigeria at that time. Must especially among the three major tribes of the Hausa, the Yoruba and the Ibo, this position was aggravated, and compounded by the Richards Constitution, which gave recognition to the administrative division of the South into two, the Eastern and the Western Nigeria.¹³ The problem created by the territorial restructure of 1939 was confirmed and compounded by the Nigerians themselves at the Ibadan Constitutional Conference in 1951. But with the coming of the Gowon administration, he created twelve States, six from the South and six from the North, a situation that though did not solve the said problem but to some extent, minimized the power domination by the North. The Murtala-Obasanjo administration further neutralized the power domination when it increased the numbers of States to Nineteen.

1.3 The Aim of the Federal Character Principle

The principle of Federal Character was aimed at balancing power sharing among the tribes, groups that are in Nigeria such that there is symmetry between the diversity of the nation and representation of that diversity. In other word federal character principle is thus to ensure that all ethnic groups are accorded fair and equitable treatment and that a combination of few states cannot dominate the government to the exclusion of the others. The aim of the federal character as a principle is to ensure that all public service institutions fairly reflect the linguistic, religious, ethnic, and geographic diversity of the country., this has provided by the provision of the constitution, stating that; ...the government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or in any of its agencies.

¹³Ibid

The main idea for the principle of federal character is to create conditions where no tribe is favoured above another.¹⁴ Section 318 (1) of the 1999 Constitution defines federal character of Nigeria as ‘the distinctive desire of the peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation as expressed in Section 14 (3) and (4) of the Constitution.’ This provision does not only identify the basic utilitarian function of the federal character principle, to wit, the desire to foster national unity and loyalty, but also incorporates subsections (3) and (4) of Section 14 of the Constitution, which, in fact, states what the federal character principle entails. On the one hand, subsection (3) of the said Section 14 of the Constitution provides that;

The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies.

On the other hand, subsection (4) of the said section 14 states that:

The composition of the Government of a State, a local government council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation’¹⁵

¹⁴ Zain Agu, What is Federal Character Principle in Nigeria? Tuesday, July 03, 2018 at 2:32 PM: <https://www.legit.ng/1174879-what-federal-character-principle-nigeria.html>

¹⁵ C.E. OKEKE, Implementation and Enforcement of the Federal Character Principle in Nigeria, NAUIJILJ 10 (2) 2019, p 75

1.4 Definition of the Concept Federal Character System

In defining the term federal character, Section 318 of the 1999 Constitution, which is the same with Section 272 of the 1979 Constitution provides:

Federal character of Nigeria refer to the distinctive desire of peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation as expressed in Section 14 (3) and (4) of this constitution.¹⁶

One will want to believe that the above definition is not enough to comprehend what the term federal character means, the definition of the concept is as uncertain as its origin, this was why it has been resolved that the term federal character should be understood as a mere technical term or a code for the multi- ethnic character of Nigeria¹⁷. It therefore means the character of the Nigerian Federalism, and to understand the character of the Nigerian federalism, many factors must be considered, this include:

1. The innate or primordial federal character of Nigeria's federal society going back to the days of yore;
2. The quality and performance of the statesmanship which has sought to harness the inborn characteristics of Nigerian's federal society to the federal constitution;
3. The degree of harmony existing between the primordial features and usages of Nigerian society and the structure and usages of the constitution;
4. The fact that the character of the Nigerian federation has been rather dynamic in response to the changing perceptions of statesmanship and other relevant forces.¹⁸

Another way of understanding the idea about the concept federal character is by going back into history to see the context in which the first authors of the concept has used it. Historically the federal character

¹⁶ Section 318 of the 1999 Constitution Federal Republic of Nigeria

¹⁷ Maduagwu. M. O, "Nigerian's Federal Character: Towards its Correct Constitutional Interpretation," 1999, CJLJ, Vol. 5 No 5, Pp 66 - 67

¹⁸ "Federal Character: its Meaning and History", in Nigerian History, Politics and Affairs, Pp 425 -426

was a tool used by the military for the purpose of supposedly, promoting unity and integration among the various ethnic groups. This concept was later become part of the 1979 Constitution, under the fundamental objectives and directive principles of state policy in chapter two of the said constitution. The phrase was said to have been invented by General Murtala Mohammed in 1975 at the inauguration of the Constitutional Drafting Committee. The Committee when deliberating on this term gave it a definition to mean:

The distinctive desire of the people of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation notwithstanding the diversities of ethnic origin, culture, language, or religion which may exist and which it is their desire to nourish, harness to the enrichment of the Federal Republic of Nigeria.¹⁹

Despite the uncertainty in the definition of the term federal character, the intention of the principle of federal character was to ensure equal opportunity to all Nigerians, regardless of ethnic belonging, and in particular, to ensure equitable distribution of political and economic powers among all ethnic groups in Nigeria.²⁰ Nigeria is inhabited by 470 ethnic groups, which are distinguished by languages, customs and religious beliefs and vary in size, power and influence. To cope with the problems created by Nigerian multi-ethnic society, and to ensure the spirit of unity in diversity, successive constitutions of Nigeria have included specific provisions to promote power sharing and to protect groups considered to be relatively disadvantaged²¹, such as the federal character principle. The federal character principle has been used by the Nigerian government, as an equitable principle in a multi ethnic society.²² This requires that public appointments, in appointments into strategic departments and functions of government, be based on equitable distribution among the component groups, and the equitable

¹⁹ Ibid p 423

²⁰ Maduagwu M.O, "Nigerian's Federal Character: Towards its Correct Constitutional Interpretation", 1999, Op Cit, Pp 65- 66

²¹ In the past fifty years, Nigeria has been obsessed with fears of domination by one ethnic, regional or religious group over others. Much of the country's politics revolves around methods of preventing or resisting such domination.

²²Maduagwu. M. O, "Nigerian's Federal Character: Towards its Correct Constitutional Interpretation", Op Cit.

distribution should reflect in some rough or approximate way, the respective numerical strengths of the groups but without adhering rigidly to fixed reservations²³.

1.5 The Constitutional Basis of the Federal Character System in Nigeria

Nigeria is a nation founded by the British colonial administration, by fusing together ethnic groups that hitherto know not of each other, and are so diverse in many ways. This diverse nature of Nigeria remains much as it was in the early 19s when the amalgamation took place, and was better control during the colonial administration. At independence each of the three major ethnic groups selfishly desired to control the federal centre, and have the national cake all to itself and the members of the group, at the detriment of the other groups. To defuse this problem, the Military government under the Gowon administration, created more units for the federation, which was never based on ethnic or cultural line. In the way the Murtala/ Obasajo administration created more unites (making Nigeria 19 States), and recognized the local government as the third tier of the Nigerian federation. To ensure balance in the nation structurally, the federal principle was conceived, and its application became imperative as a directive principle of state policy.²⁴ This was why the Federal Character Principle was provided for under the Fundamental Objectives and Directive Principles of State Policy, under Chapter II of the 1999 Constitution.

Under the 1999 Constitution the relevant chapter is Chapter II and the provision through Sections 13-22. Section 13 provides that:

It shall be the duty and responsibility of all organs of Government and of all authorities and persons, exercising

²³Nwabueze. B. O, Constitutional Democracy in Africa, Vol. 1, 2003, Ibadan, Op Cit, p 56

²⁴ Abubakar. D, "The Federal Character Principle, Consociationalism and Democratic Stability in Nigeria", in Federalism and Political Restructuring in Nigeria, K. Amuwo, (et al), Op Cit., p 164 - 174

Legislative, Executive or Judicial powers to conform to;
observe and apply the provisions of this chapter.

This Section has been the subject of comments by writers and authors alike as to its true interpretation. Section 14 also provides in entirety that the Federal Republic of Nigeria shall be a state based on the principle of democracy and social justice; sovereignty belongs to the people through which the constitution derives its powers and authority; the participation of people in their Government shall be ensured; the affairs of the Government shall be carried out in manner so as to reflect the federal character of Nigeria and the diversity of the people and the need to promote a sense of belonging and loyalty among all the people of the federation. It has been submitted that this Section is merely declaratory of the facts and principles that underline every democratic system of administration and therefore evoke no controversy. On the other hand, it draws attention to the need for ensuring fair and equitable treatment for all component states and ethnic groups within the country, but it has been observed that the provision of Section 14 is salient on the question of political ideology for the country.²⁵ However, in practice, the process of contracting Government between the people and their representatives is well beyond the people. The electoral system has suffered series of abuse and damage so much that elections do not reflect the true wishes of the electorate. On that count, sovereignty, which ought to belong to the people, is hijacked and the contract is abused.²⁶ Section 15 provides for the political objectives that the motto of the Federal Republic of Nigeria shall be unity and faith, peace and progress.

Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic, or linguistic association or ties shall be prohibited. Though it has been expressed that all these political objectives are indeed laudable and desirable, but the enforcement and observance of some of these ideas are difficult if not impracticable,²⁷ for between 1999 – 2004, differences in language, religion, geographical location, and ethnic

²⁵Joye. M, and Igweike. K, Introduction to the 1979 Constitution, (1982), London: Macmillan Press Limited, p.52

²⁶Williams. A, 'What Nigerians Desires: National Political Reform Conference The Guardian Newspaper, February, 10, 2005. p3 of 6.

²⁷Akande. J. O, Introduction to Nigerian Constitution, (1982, London: Sweet & Maxwell), p.15

origin have heightened to a very dangerous level. These principles seek to direct the efforts and actions of the people towards the achievement of those goals and unite the society into one nation bound together by common attitudes and values, common social objectives and destiny.

The federal character principle has done much in trying to balance governmental opportunities, appointments into federal and state agencies, and admissions into federal and state institutions, with a view that every ethnic group would be represented, and with the view of avoiding any kind of ethnic domination, which has been the fear of the minority ethnic groups since independence.

1.6 Establishment of the Federal Character Commission and its Powers

The federal character commission is one the fourteen (14) Independent Federal Bodies established by Section 153 of the 1999 Constitution. The Commission was established to give effect to section 14 (3) and (4) of the Constitution which provides as follows:

14 (3) the Composition of the Government of the Federation or any of its Agencies and the conduct of its affairs shall be carried out in such need to promote national unity and also command loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional group in that Government or in any of its agencies.

14 (4) the composition of the government of a state, a Local Government Council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote sense of belonging and the loyalty among all the peoples of the federation.

The embodiment of this provision in the Constitution is to promote the unity of the country. This can be seen and appreciated by examining

the powers of the Commission. By virtue of section of the Federal Character Commission Act 1995, the commission shall have power to:

- i. formulate and provides guidelines for Government agencies and other employers and providers of services and socio-economic amenities;
- ii. monitor compliance with the guidelines and formulae at Federal, State, Local Government and zonal levels in the employment and provision of socio-economic amenities.
- iii. Enforce compliance with guidelines and formulae in areas of the provisions of employment opportunities, distribution of infrastructural facilities, socio-economic amenities and other indices.
- iv. Compel boards of directors of government owned companies and other enterprises, which are subject to the provisions of this Act to comply with the guidelines and formulae on ownership structure, employment and distribution of their products.
- v. Demand and receive return on employment and socio-economic indices from any enterprises or body corporate and penalise any enterprise which does not comply with a request from the commission.
- vi. Under take the recruitment and training of staff of government agencies or departments where desirable.
- vii. Institute investigate into any matter relating to any institution or organisation where the institution or organisation shall be required to bear the cost of such investigation, and
- viii. Do anything which in the opinion of the commission is incidental to its functions under the Act.

As a follow-up to the provisions of the Act which enables the commission to formulae and provide guidelines from Government agencies and other employers and providers of services and socio-economic amenities, the commission in 1996 published the Guiding Principles and Formulae for the Distribution of posits in the public

service.²⁸ The guiding principles provide for general principles under Column A as follows:

- a. that each state of the federation is to be equitably represented in all national institutions and in public enterprises and organisation.
- b. That the best and most competent persons are recruited from each state of the federation to fill positions reserved for the indigenes of that states.
- c. That once a candidate has attained the necessary minimum requirement for appointment to position, he/she should be qualifying to fill a relevant vacancy reserved for the indigenes of his/her states.
- d. That, where the number of positions available cannot go around the states, then sharing should be on zonal basis, but that in the case where two items only are available, they should be shared between northern zones and the southern zones.
- e. That if the indigenes of a state are not able to take up all the vacancies meant for them the indigenes of other states within the state zone should be given preference in filling such vacancies.
- f. That in an ideal situation, posits to be distributed among the indigenes of the states and Abuja on the formula of quality would be 2.75% of the indigenes of each state after reserving 1% for the indigenes of Abuja.²⁹

However, in the spirit of give and take, the commission has decided to adopt a range so that the indigenes of any state should not constitute less than the lower limit or more than the upper limit of the range. That the six zones and the states they are comprise are:

- i. North Central: Benue, FCT, Kogi, Kwara, Nassarawa, Niger and Plateau States

²⁸ Tukur Aliyu, Federal Character Principle and Quota System in Nigeria: A Critical Assessment of the Recruitment Exercise in the Public Service of Federal Inland Revenue Service, A Case Study of Federal Inland Revenue (FIRS) Sokoto State. Long Esay Submitted to the Department of Public Administration, Faculty of Management Sciences Usmanu Danfodiyo University Sokoto, in partial fulfilment for award of Degree, 2015, 42-43.

²⁹ Ibid.

- ii. North East: Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe States,
- iii. North West: Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto and Zamfara States.
- iv. South East: Abia, Anambra, Ebonyi, Enugu and Imo States.
- v. South South: Akwa Ibom, Bayelsa, Cross Rivers, Delta, Edo and Rivers States.
- vi. South West: Ekiti, Lagos, Ogun, Ondo, Osun and Oyo States.³⁰

That for the zones, depending on the number of states within each zone, the commission has adopted three ranges such that the indigenes of any state within a zone should not constitute less than the lower limit or more than upper limit of the range applicable to the zone. Column B of the guiding principles entitled “Definition of Indigenes adopted by the commission” state:

- a. Indigenes of a Local Government: An indigene of a local government is a person:
 - i. Either of whose parents or any of whose grandparents was or is indigene of the local government concerned; or
 - ii. Who is accepted as an indigene by the local government concerned provided that no one can lay claim to more than one local government.
- b. An indigene of a state: An indigene of a state is a person who is an indigene of one of the local governments in the state that is to say, an indigene of a state is a person either of whose parents or grandparents belong or belonged to a community indigenous to the state or a person who is accepted as such by a local government in the state. No person should be allowed to lay claim to more than one state in the application of the federal character principle.
- c. An indigene of the Federal Capital Territory: An indigene of the Federal Capital Territory is a Nigerian citizen other than by naturalization, who cannot lay claim to any state of the federation in other words, the indigenes of territory are those Nigerian and their descendants who lived in the area now

³⁰ Ibid

- constitute as the Capital Territory before 26th February, 1976 and decided to continue to reside in the territory after that date.
- d. Indigenous status of a married woman: A married woman should continue to lay claim to her own state of origin for the purpose of implementation of federal formulae at the national level.

1.7 The Enforcement Power of the Commission and its Challenges

The commission is vested with power to take such legal measure including the prosecution of the head of any ministry or government body or agency which fails to comply with any federal character principle or formulae prescribed or adopted by the commission. However, the Constitution makes it impossible for the commission to enforce these powers with respect to the President or the State Governors who are vested with power to make the most important appointments or the chief executive authorising the appointment to be immediately prosecuted.³¹ Section 17 (5) of the 1999 Constitution also makes it imperative that the in exercising his power of appointment under the above section, regard shall be had to the federal character principle of Nigeria and the need to promote national unity. By this provision the President is under the powers of the commission. This is because, paragraph 8 (1) (a) of the Third Schedule Part 1 c of the 1999 Constitution is wide enough to include the appointments required to be made under Section 17 (1) -(4) of the 1999 Constitution.

1.7.1. Non-Justiciability of the Federal Character Principle

The Supreme Court has said it clearly that “For the purposes of interpreting or construing the provisions of our Federal Constitution, neither other Federal Constitutions nor theories and principles of federalism, will be a substitute to the provisions of our Constitution. Such federal Constitutions and theories and principles can only be aids, and in some cases, useful aids in the interpretation of our Constitution. Accordingly, where there is any conflict between arrangements in other Federal Constitutions or theories and principles of federalism, with our Constitution, the provisions of our Constitution will prevail”.³² The

³¹ See Section 308 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

³² The case of AG LAGOS STATE v. AG FEDERATION & ORS (2003) LPELR-620 (SC) P292

principle of federal character falls under the provision of Chapter II of the 1999 Constitution and are non-justiciable. The 1999 Constitution of the Federal Republic of Nigeria (CFRN) divided rights into Fundamental Human Rights as enshrined in Chapter IV and Socio – Economic Rights under Chapter II of the Constitution. The provisions in Chapter II of the 1999 CFRN are collectively entitled as Fundamental Objectives and Directive Principles of State Policy. They are regarded as mere directive principles for the purpose of governance.

These provisions are fundamental guidelines to policy formulation by political parties and government; they are therefore non-justiciable in the court of law³³. In a nutshell, federal character principle seeks to prevent the [pre]dominance of persons from one or a few states or from one or a few ethnic groups in the running of the Government of the Federation or any of its agencies. Although the federal character principle forms part of the 1999 Constitution, it has remained substantially non-justiciable by Section 6 (6) (c) of the Constitution. However, the federal character principle will become justiciable where the Constitution otherwise provides that it shall be justiciable. It shall also become justiciable where the Constitution empowers the National Assembly to implement the principle of federal character via legislation. The task of promoting, monitoring and enforcing compliance with the federal character principle is entrusted with the Federal Character Commission, one of the federal executive bodies established by Section 153 of the Constitution³⁴. The powers and procedures of the Commission are spelt out in Part I C of the Third Schedule to the 1999 Constitution and the relevant Sections of the Federal Character Commission Act. The Commission is specifically empowered to ‘take such legal measures, including ‘prosecution’ of the head or staff of any Ministry or government body or agency which fails to comply with any federal character principle or formula prescribed or adopted by the Commission³⁵.

³³U. Edih and B. Ganagana, Justiciable or Non-Justiciable Rights: A Debate on Socioeconomic and Political Rights in Nigeria, *Global Journal of Politics and Law Research*, Vol.8, No.4, pp.78-85, July 2020, p79

³⁴ C. E. OKEKE, Implementation and Enforcement of the Federal Character Principle in Nigeria, *NAUJILJ* 10 (2) 2019, p174

³⁵ Ibid, p175

1.7.2 Impact of Federal Character Principle on Public Service Delivery

Service delivery simply put, is getting public goods and services as expected and as quick possibly (recipient) by citizens. In another word, service delivery is the degree and hallmark of excellence in the public service.³⁶ It also involves considerable human activities, hence human resource management is important as human element is often the key ingredients of service industries.³⁷ Public service delivery is one of the major challenges facing developing countries Nigeria inclusive. This should be a top priority of the government if the country is to make substantial progress in socio-economic development.³⁸ In the Nigerian context, a number of problems confront and complicated the public service delivery. For instance, the implementation of the Federal Character Policy to some extent affect recruitment exercises in the public service, public corporation and government controlled enterprises. In real practice, less qualified candidates and inexperienced persons are considered in preference to their counterparts. Vacancies and positions are deliberately reserved until designated scouts discovered privileged persons who may be willing to occupy them. Furthermore, the federal character principle zoning arbitrary use of quota system in the public service, recruitment, admission and promotion within security apparatuses have all been turned into avenues for nepotism and the destructive when issues like recruitment is made and these problems have seriously undermined an effective public service delivery in the country.

1.7.3 Federal Character Principle and Government Appointments in Nigeria

The Federal Character Principle was born out of the need to ensure even the spread of government appointments in all regions, states and

³⁶ I. P. Akhakpe, *Bureaucracy and Good Governance*. (Lagos: Pumark Publisher, 2014), 38.

³⁷ U. Franz, "Service Delivery Concepts and the Namibian Situation" Workshop on Achieving Benefits of Enhanced Service Delivery by National Metrological Services (NMSs) in Eastern and Southern African, 2011, 45.

³⁸ M. F. Bello, *Rethinking the Federal Character Principle and Service Delivery in the Nigerian Civil Service*, (2019) (6) (1) and (2) ASUU Journal of Social Science, 9.

local government councils in Nigeria.³⁹ The above assertion is in line with the provision of Section 14 (3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). This principle therefore recognises the plural nature of the Nigerian nation in ethnicity, language, religion and beliefs.⁴⁰ In line with the above assertion, it is pertinent to note that, the principle of federal character was meant to regulate recruitment, distribution of administrative and political offices and power as well as other natural resources of the country.⁴¹ To this end, Babura, opine that the federal character principle was to foster national loyalty and give every citizen of Nigeria a sense of belonging notwithstanding the diversities of ethnic origin, language or religion which may exist and which should be nourished and harnessed to the enrichment of Federal Republic of Nigeria.⁴² However, this principle has become very difficult to achieved in the Nigerian context, due to an ideology of the superior political groups dominance of the minority political groups in other to protect their interest. To this, Bello opined that, the operation of federal character principle in Nigeria has given more powers to the political superior groups, thus, creating a wider power disparity between the strong and the weak. He further maintained that, a situation in which the politically weak are subjected to a form of double jeopardy is antithetical to national integration which the federal character principle was meant to achieved.⁴³ Furthermore, there are different perceptions of the federal character principle by people from different regions of Nigeria.⁴⁴

Those from the northern part of the country perceive the principle as an opportunity to bring them to be on equal scale in the appointments with the people from the other part of the country.⁴⁵ However, those from the southern part of the country see it as an attempt by the north to enter into the areas which they hitherto regarded as their exclusive

³⁹ O. Nzeshi, The Quests Amend Federal Character Commission Act, (This Day Newspaper, 2012), 97.

⁴⁰ F. N. Mbuba, Federal Character Principle and Nigerian Federalism: An Overview, (2021) (13) (1) Journal of Social Sciences and Public Policy, 28.

⁴¹ Ibid.

⁴² Ibid.

⁴³ M. C. Bello, Federal Character Principle as a Recipe for National Integration: The Nigerian Paradox (2012) (3) Journal of Politics and Good Governance, 1-7.

⁴⁴ F. M. Mbuba, Op cit, 33.

⁴⁵ Ibid.

preserve.⁴⁶ But, it is pertinent to note that, Section 14 (3) and (4) of the 1999 Constitution (as amended) reveals that, caution should be exercised by political parties and politicians in the way and manner they make government appointments, which should be made in a way and manner that reflect the representations of diversities in the polity of the country. However, Chris, found in a recent survey of the percentage of staff of some Federal Government Establishments are dominated by Hausa-Fulani and Yoruba tribes⁴⁷, which is against the tenor of the federal character principle in Nigeria.

1.8 Conclusion and Recommendations

The paper examined federal character principle in the federal system of government. The federal character principle was aimed at balancing power sharing among the tribes, groups that are in Nigeria such that there is symmetry between the diversity of the nation representation of that diversity. Furthermore, the federal character as a principle is to ensure that all public service institutions fairly reflect the linguistic, religious, ethnic and geographic diversity of the country. To this end, the 1999 Constitution (as amended) provided in clear terms that: the government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or in any of its agencies.

However, the implementations or proper application of the federal character principle in Nigeria becomes a difficult task if not impossible due to the following challenges: the non-justiciability of the federal character principle which is contained under Chapter II of the 1999 Constitution (as amended) and the dominance of the political arena by the ruling political parties, in which the appointments, promotions, recruitments and power sharing are been done best on selfish interest of the few. In view of this, the paper recommends that, Chapter II of the 1999 Constitution (as amended) be further amended to make chapter of the 1999 Constitution as a justiciable right that can be enforced in a court of law in the event of non-compliance with the

⁴⁶ Ibid.

⁴⁷ D. Chris, *Federal Character Principle and Nigerian Public Service*, (Ibadan: Spectrum Books Limited, 2014)

principle of federal character, also the government in power should be fair in the distribution of appointments, promotions and other entitlements of any region or tribe.