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EVALUATING THE EQUITY OF FEDERAL CHARACTER PRINCIPLE AS SPECIE OF HUMAN RIGHTS IN THE NIGERIAN DEMOCRATIC SYSTEM

Lugard Amadin Emokpae [PhD, B.L]

Senior Lecturer in Law-Igbinedion University College of Law Okada, Edo State Nigeria

Email: <lugard.emokpae@iuokada.edu.ng> Digital Id. <<https://orcid.org/0009-0009-2450-8128>>

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Abstract

The federal character principle is aimed at providing equitable attention in the distribution of governmental and public positions within the civil and public service as well as other areas of benefits with a view to solving the problem of ethnic domination of the nation's governmental offices by any particular ethnic group particularly to the detriment of vulnerable ethnic groups. Ethnicity has been viewed as a major hindrance that causes a state of imbalance in the even distribution of governmental and public offices in Nigeria. To curb this misfortune, the federal government of Nigeria established the Federal Character Commission as a federal executive body through Act No. 34 of 1996 to implement and enforce the Federal Character Principle of fairness and equity in the distribution of public posts and socio-economic infrastructures among the various federating units of the Federal Republic of Nigeria. The author therefore maintained that the Federal Character Principle has not yet attained the purpose of its creation, as ethnic related sentiments and huddles operate to dominate every inch of the fabrics of the nation, Nigeria. The paper therefore concluded the result of the failure of the Federal Character Principle on the above direction has led to the dominance of some ethnic groups in the corridors of power, to the marginalization of the weaker ethnic groups.

Keywords: public service, national character, ethnicity, national unity, societal good

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1. Introduction

It is on record that the Nigerian nation was forcefully amalgamated by the British colonial masters for the purpose of convenience in the administration of the British-territory. Nigeria, especially the Southern part, was formerly known as the Royal Niger Company Territory. A territory administered purely for commercial ventures for the British colonialist. Before 1898 the acronym 'Nigeria' was not in existence. Flora Shaw, a mistress to the Colonial Administrator of Nigeria, Lord Lugard coined the name 'Nigeria' which was also known as the 'Niger area.'¹ The word Nigeria is a nick name to a territory administered solely for commercial reasons, after the British had successfully dismantled the powerful kings and rulers like *Oba Ovonramwen No' gbaisi* of Benin, Jaja of Opobo, Nana of Itsekiri, the Atta of Igala and a host of other traditional rebellious critics from within the above mentioned area.

The Nigerian territory as administered by the Royal Niger Territory was formally made up of powerful kingdoms and empires such as:

- i. The Northern Kingdoms of the Sahel
- ii. Kanem–Bornu Empire
- iii. Oyo and Bini kingdoms
- iv. Yoruba
- v. Igbo kingdoms
- vi. Nri kingdoms
- vii. Akwa Akpa, and host of others.²

These empires and kingdoms were divided across the length and breadth of Nigeria and they were autonomous before the political and commercial desecration by the invading colonial masters. They also had distinct and separate political, economic and religious differences prior to amalgamation in 1914.

Following the amalgamation of Nigeria, these different ethnic nationalities were joined into one state called Nigeria with majorities of the ethnic groups being Hausa-Fulani, in the Northern parts of the country, and Yoruba in the western parts as well as the Igbos in the mid-western and eastern parts. These three major ethnic groups literally submerged other ethnic groups in the country.

¹ <<https://www.npg.org.uk/collections/search/person/mp65594/flora-neeshaw-lady-lugard>>

² Michael Crowder, *The Story of Nigeria*, 4th ed., (Faber & Faber London & Boston) Pp. 10, 14.

The Yoruba and Igbo people made up of 60% of the entire population.³ Nigeria is not only diverse in ethnicity, but also in religion with Islam dominating in the Northern parts, while Christianity in the Southern parts. Ethnicity has been one of the problems bedeviling the Nigerian nation since the amalgamation of the country. Even at independence in 1960, these evils did not abate, but rather it soared, ultimately resulting in full scale marginalization of some ethnic groups from positions of politics and socio-economic development. At independence, the federal government was dominated by the Northern region which was though by far largest in size giving rise to power struggle for dominance among the three major groups (Hausa-Fulani, Yoruba and Igbo).⁴

It is against this backdrop that the present author examines the concomitant equity practice of the federal character principle in the Nigerian state as specie of human rights. Flowing from the above, the paper considers the nature and scope of ethnicity in the Nigerian state; framework on the federal character commission as well as political appointments in Nigeria; application of federal character in university education in Nigeria, and thereafter the conclusion.

2. The inter-relatedness of ethnicity with the Nigerian State

The attainment of Nigerian independence in 1960 exposed the contention for supremacy of power among the major ethnic groups in Nigeria. Ethnicity became highly pronounced and therefore politicized thus creating room for unhealthy competition for political offices. The policies of the Nigerian government became subjectively politicized in national appointments, resulting in ethnic domination and exploitation, in the occupation of government office position in favour of the North and to the detriment of national unity and inclusionary practice. The Nigerian multi ethnic state became activated in respect of ethnic inclination and leaning, as a basis for a politicized search for redistribution of scarce resources which were always contentions.⁵ Ethnicity operates as the basis for exclusionary practices, which had often resulted in conflicts. The effects of the colonial amalgamation of Nigerian ethnic groups came alive as it created a development pattern through the alien policies of assimilation of foreign system by the local people, thereby vehemently

³ AR Mustapha, Institutionalising Ethnic Representation: How effective is the Federal Character Commission in Nigeria? *Journal of International Development* (2009) P. 561-576.

⁴ R. T. Suberu, *Federalism and Ethnic Conflicts in Nigeria* (Washington DC: United States Institutes of Peace (USIP) Press 2001.

⁵ J. Ihonvbere, *Constitutionalism in Nigeria: A conceptual Analysis* File. <<http://Fterrorism%20JobKalu.html>> accessed 20/7/24.

retrogressing the freedom of the different ethnic groups into a state of denial of own self developed and improved indigenous philosophical beliefs and practices.

At independence, there also existed the sharp division between the Northern and the Southern parts of the country on demographic majority ratio of the North and the highly educated elites in the South particularly in the civil service structure.⁶ Ethnicity practiced by the major ethnic groups became a worrisome dimension with grave consequences on tribal affiliation and support for political parties on regional basis, resulting in escalation of trivial or petty issues among the various tribes along political lines and political parties. It is germane to state here that the Nigerian civil war of 1967-1970 was as a result of ethnic racketeering of the major ethnic groups in Nigeria, while other minority ethnic groups were subsumed under the major groups, the minor groups were also largely ignored and overlooked in their struggle to attain political leadership both at federal and state levels, undermining their interest as ethnic minorities.

There was lopsided structure in political appointments and public offices in Nigeria in which the northern elites seems to have surreptitiously dominated the south by repeatedly having their indigenes at the helm of affairs at the centre, which seemingly caused serious danger to the stability of the federation. Consequently, the federal government then charged the committee headed by late Chief Rotimi Williams to look at sustaining the continuation of a Federal system of government, and to avoid the pitfall of the first Republic.⁷ The committee was mandated to prepare the draft of a new constitution for the country and to ensure the election of an executive president for the country as well as appointment of members of a cabinet to reflect the federal character in the federation with the aim of promoting national unity and even distribution of resources and position.⁸ The 1979 constitution was distinct in the desire to give a sense of belonging to every ethnic group irrespective of size and for the purpose of national development in Nigeria.⁹

⁶ J. S. Coleman., *Nigeria Background to Nationalism*. Berkeley University of California Press, 1963, Pp. 353-408.

⁷ *Constitution Drafting Committee*, 1975

⁸ Address by the Head of State. General Murtala Mohammed on the inauguration of the Constitution Drafting committee (CDC) in 1975

⁹ Section 14 (3) 1979 constitution of the federal republic of Nigeria

3. 'Foundation-framework' for the Federal Character Commission¹⁰

The federal character commission was created in 1996¹¹ during the military rule of General Sani Abacha.¹² Consequent on the re-inception of democracy in Nigeria in 1999, the federal Character Commission became one of the 14th independent federal executive bodies.¹³ Sections 14 and 153 of the 1999 constitution (as amended) consolidated the establishment of the commission to operate in a democratic system of government to promote human rights with the following duties, 'to work out an equitable formula, subject to the approval of the President for the distribution of all cadres of posts in the civil and public service of the federation and the state, the Armed forces; the Nigerian police force and other security agencies, bodies corporate owned by the federal or state government and extra-ministerial departments and parastatals of the federation and states.'

In the wording of section 14 (3) of the 1999 constitution as amended:

The composition of the government of the federation or any of its agencies and the conduct of its affairs shall be carried out as 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 ethnic or other sectional groups in that government or in any of its agencies.

It further stressed in sub sec (4) that,

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

The condition of section 14 (3) and (4) of the constitution¹⁴ states that the federal government and the federating states and their agencies are to conduct their affairs in such a manner that reflects the federal character of Nigeria for the purpose of promoting national unity.¹⁵ Nwabueze maintained that in the light of the experience of the past, the principle expressed a worthy objective. He further

¹⁰ [Hereafter, the FCC]

¹¹ Military Decree No.34 of Nigeria

¹² Military Head of State of Nigeria 1993-1998.

¹³ Sec 153 (1) (c) 1999 Constitution (as amended) 3rd Schedule, part 1 C.

¹⁴ Section 14(3) (4) of the 1999 Constitution (as amended)

¹⁵ B. O. Nwabueze., *Federalism in Nigeria under the Presidential Constitution*, Lagos State Ministry of Justice Law Review Series, 2003 p. 396

stated that, mere declaration of its objectives in the constitution do not make it a living principle except the principles are faithfully implemented in actual practice of government.¹⁶

A. Duties of the Federal Character Commission

The mandates of the federal character commission is focused towards ensuring one and indivisible nation through fair and equitable distribution of political positions across the length and breadth of the country with the aid of its commissioners, for monitoring and execution of the process of its creation through comprehensive data analysis of geographical area and geo-political zones, states local government councils and electoral wards.

The commission is to work out

- (i) An equitable formula, subject to the approval of the President, for distribution of socio-economic services, amenities and infrastructural facilities.
- (ii) Modalities and schemes, subject to the approval of the President, for addressing the problems of imbalance and reducing the fear of relative deprivation and marginalization of the Nigerian system of federalism as it obtains in the public and private states.¹⁷

Under the socio-economic benefits of the federal character gains includes Education, Electricity, Health, Commerce and Industry, Telecommunications, Transportation and Youth Development.¹⁸

The second mandates have suffered a series of neglects owing to difficulties with its implementation, as well as the development of a distributional formula.¹⁹ The second mandate would have had positive touches on every Nigerian for justices and equity and human rights. If the commission could act independently of political manipulation and manoeuvring by successive government (The federal presence in some political zones in Nigeria has largely been influenced by the government of the day thereby truncating the principle of equity, justice, and human rights and therefore negating the essence of the establishment of the commission).

¹⁶ Ibid.

¹⁷ Section 4 of the FCC Act.

¹⁸ Sec 4(b), FCC Act.

¹⁹ The distribution of Socio-Economic benefits in line with the federal character principle

B. The management of the Federal Character Commission in Nigeria

The arrangement of the geo-political structure of distribution is based on ranking of political offices across the nation, this means that through the federal character principle, each states are to produce certain numbers of employee in compliance with the vision of the commission, to achieve this, the FCC collects data from Ministries, Departments and Agencies²⁰ across the nation on a yearly basis and produce annual report for the presidents, FCC then monitors recruitments exercises, pointing out to the MDAs, which states should receive preference in recruitment exercise. Candidates, however, must meet the requirements for the available vacancies, and then fulfil the federal character criteria. In which case, candidates with lower score but from the under privileged states or vulnerable states notwithstanding, must receive preference, as long as the minimum criteria are respected. Vacancies for positions in the federal civil service are to be made public for the accessibility of all within the geo-political zone in the Nation, while the commissioners in the commission are required to monitor the recruitment process to ensure the implementation of the principle. The MDAs are required to present the names and states of origin of successful candidates recruited. While successful MDAs who meets the requirements are awarded a certificate of compliance, those who do not may be prosecuted or made to pay fines of fifty thousand naira (₦50,000:00) or some years in prisons.²¹

It is extremely difficult to ascertain the extent to which the Federal Character Commission complies with the provisions of the commission in terms of employments statistics and appointments in the country. There are usually problems in MDAs record-keeping processes. The annual reports of the MDAs are sometimes not the true representatives of what is emitted from their system, neither was it regularly kept in the FCC library. The statistics usually employed in analysing the employment of the federal public service is usually subjective and cannot be said to be accurate, therefore, there is lack of fidelity on the part of the federal government in keeping to the federal character principle.²² On further inquiry, Mustapha²³ found that, the representation of the six geo-political zones in Nigeria's federal public service over time had not being able to redress historical imbalances, to justify the reasons for the creation of the FCC, and these imbalances have persisted incessantly in contravention to the spirit and intent of the constitution of Nigeria and where these contraventions

²⁰ [Hereafter, the MDA]

²¹ See generally Federal Character Handbook 2016 revised Edition. Abuja.

²² FCC, Department of Monitoring Enforcement, 2018 (Report covering between 2013 and 2022)

²³ A. R. Mustapha., Institutionalising ethnic representation: How effective is the Federal Character Commission in Nigeria? *Journal of International Development* (2009) p.572

occur victims usually find difficulties in seeking redress through the court because the perceived benefits accruable to the principle of the federal character are usually not justiciable as some are said to be mere fundamental objectives and directive principles of state policy.

In the case of *Archbishop Okogie v The Attorney-General of Lagos State*,²⁴ it was held by the court that:

This is the first time in the constitutional development of this country that Fundamental Objectives and Directive Principles have been spelt out. The Fundamental Objectives identify the ultimate objectives of the Nation and the Directive Principles lay down the policies which are expected to be pursued in the efforts of the Nation to realize the national ideals. While section 13 of the Constitution makes it a duty and responsibility of the judiciary among other organs of government to conform to and apply the provisions of Chapter II, section 6(6)(c) of the same Constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principle of State Policy. It is clear therefore that section 13 has not made Chapter II of the Constitution justiciable. I am of the opinion that the obligation of the judiciary to observe the provisions of chapter II is limited to interpreting the general provisions of the constitution or any other statute in such a way that the provisions of the chapter are observed, but this is subject to the express provision of the Constitution. Where the provisions of the Constitution define a certain course of action or enshrine certain rights, these provisions must be applied without any inhibition emanating from chapter II.

The Fundamental Objectives and Directive Principles of State Policy in our Constitution were derived from the Indian Constitution. It may therefore be pertinent and permissible to refer to the Indian practice on this matter. The Indian Supreme Court, in *State of Madras v. Champakam (1951) SCR 252* held:- ‘the directive principle of state policy which are expressly made unenforceable by any court cannot override the provisions in part III which, notwithstanding other provisions, are expressly made enforceable by appropriate Writs, Orders or Directions. The Directive Principles of state policy have to conform to and run subsidiary to the Chapter on Fundamental Rights.

Following the decision as enunciated above, it is the law that fundamental objectives and directive principles of state policy are distinguishable from fundamental rights, hence, are not justiciable and therefore unenforceable. The court however, took a detour in the case of *Baba-Panya v. President, Federal Republic of Nigeria*²⁵ when it held that:

The essence of the provision is made manifest by the directory that the appointment of ministries must be in conformity with the provisions of section 14(3) of the constitution which is under chapter II of the constitution which covers Fundamental Objectives and Directive

²⁴ (1981) 2 NCLR P.337 at 349-350.

²⁵ (2018) 15 NWLR (Pt. 1643) p. 395-425

Principles of state Policy. I am conscious of the position of the law, that generally the provisions under chapter II of the 1999 Constitution are not justiciable. However, because of the importance of the reflection of federal character in the appointment of ministers by the president, section 14(3) was incorporated into the provisions for mandatory compliance.

It is therefore absolutely important to note that the inclusion of section 14(3) for its compliance by the president in section 147(3) now makes section 14(3) in relation to Ministerial appointment justiciable. The law is settled that a specific provision prevails over the above a general provision in an enactment. Section 147 of the constitution brings to the fore the intent of promoting social equilibrium in our society, by ensuring the balance in the composition of the governance of the federation hence the issue of federal character is engraved in our constitution. Thus, the failure of the president to comply with the provision of section 147(3) is tantamount to a derogation of the constitution.

I am not aware of any judicial pronouncement on the purport of section 147 of the constitution. Specifically, section 13 of the constitution imposes duty and responsibility on all organs of government, judiciary, inclusive to conform to, observe and apply the provisions of chapter II, of which section 14(3) is a part. I am therefore of the firm view that for the courts to carry out their functions effectively under the constitution, it must be purposive in its construction of the provisions of the constitution. The courts must therefore interpret the provisions of the constitution so as to give effect to the purposes and intendment of the constitution and not to defeat its purpose.

C. The Right to Equity under the Federal Character Principle in Nigeria

In reality, the above decision does not hold water on relevant bodies or institutions or individuals. The federal government and the state as well as the local governments does not have the political will power to comply with the commission in the composition of governments, employment of personnel in MDAs or in the distribution of socio-economic services and amenities especially as they fail to adhere to the provisions of the law. The main issue stems from the interpretation given to the provisions of the constitution. On the overall, apart from seeing the federal character as a Directive Principle and not a Fundamental right and therefore, not enforceable, the FCC data themselves do not appear to support such inquiry.

D. Federal Character Commission and Political appointment in Nigeria

Though the FCC has the duty to monitor the distribution of political appointments,²⁶ the statistics of these political appointments have not been regularly published and controversies and debates trailed

²⁶ Baiyewu, L (2018, October 24). Buhari's alleged lopsided security appointments split southern, northern senators. Accessed on Thursday, 23rd August, 2024), <https://punchng.com/buharis-alleged-lopsided-security-appointments-split-southern-northern-senators>

the then President Buhari's political appointments and perceived bias towards the North²⁷ because most of his ministers and political appointment were in favour of his ethnic Fulani people and this led the National Assembly to call on the FCC for clarification in 2018. This led the federal character commission also to include in its website, data on political appointments based on the provision of section 14 (3) of the constitution. While the FCC has felt the need to publish the data as it is, the data was far from completion and updated. Also, there is no information provided on how much data was missing. Updates were hardly carried out regularly, however there was an equitable distribution of ministerial positions across the zones and states of the federation, which is due to the constitutional provision that requires each state to be represented by at least one Minister in the federal executive council.²⁸ Apart from ministerial appointments, compliance with the provisions of section 14(3) of the constitution was extremely lacking in both federal and state appointments. Perhaps, President Tinubu is not excluded from this ethnic bigotry which is visible in his political appointments with most key positions as at today, from his ethnic region.

Ojeme²⁹ believes the capacity of the FCC to address a situation where the president is perceived or seen too often violate the federal character principle with impunity in detesting, as the commission is beholden to the president who appointments it members, and approves its rules and budgets. The commission seems useless and helpless particularly as it cannot challenge the president over any contraventions to the provisions of section 14(3) of the constitution. It is disheartening that the President and Governors have the fiat to appointment as many political aides, special advisers and so on, from their ethnic group without much ado, thereby undermining the powers of the commission.

E. Federal Character Commission and University Education in Nigeria

The S. 18(1) and (3) (a) of the 1999 constitution (as amended) provides that:

- (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

²⁷ N. Ibeh., (2015 August 1). Buhari sued over 'lopsided appointments'. Premium Times. Accessed on Thursday 23rd August, 2024 and Retrieved from <<https://www.premiumtimesng.com/news/top-news/189383-buhari-sued-over-lospided-appointments.html>>

²⁸ Section 147 (3) of the 1999 Constitution (as amended), which states that, any appointment by the president shall be in conformity with the provisions of section 14 (3) of the constitution: provided that in giving effect to the provisions of aforesaid the president shall appoint one Minister from each state, who shall be an indigene of such state.

²⁹ V. Ojeme., (2018), Federal Character not required in appointment of service chiefs – FCC. Accessed on 24th August, 2024 <<https://www.vanguardngr.com/2018/03/federal-scharacter-not-required-appointment-service-cheifs-fcc/>>

(2) Government shall strive to eradicate illiteracy; and to this end, government shall as at when practicable provide.

(a) Free, compulsory and Universal Education etc.

The quota system is introduced in the constitution in Nigeria to enhance the policy of even distribution of benefits and resources to catchment areas, to bridge the gap between the highly developed zones against the less or vulnerable zones in Nigeria. Quota system and catchment area policies are cognate policies of the federal government to create equitable access to educational benefits for all its citizens in order to diffuse ethnic tension and also promote national unity. These policies are designed to influence all major decisions and actions that have taken place within educational institutions. In Nigeria, quota system and catchment area policies are also taken into consideration during recruitment exercises, for the benefit of each state or local government areas.

The commission takes into consideration the need for Nigerian citizens to take advantage of the provisions of the law dealing with the fundamental objectives and directive principle of state policy, tertiary institutions, such as universities and be guided by admission policies such as quota system for catchment areas for educationally less developed states, among others. The admission policy might require that a ratio of 60:40 in favour of science subjects to Arts be maintained. However with a pass at credit level of 5 subjects in not more than 2 sittings at secondary school level. The federal government guidelines for admissions into its institution of higher learning are based on source elements such as academic merit determined by the UTME score, and 45% of students' admissions allotted to it. Educationally less developed areas are given 20%, catchment areas have 25%, and 20% to the discretion of the Vice Chancellor of the institution which is the quota system.³⁰ This implies that 45% of the available spaces are reserved for candidates with very high marks. They are given first consideration for first choices of course and institution before other candidates. The catchment areas have 25% and this is for candidates within the geographical and sociocultural area contiguous to the institution of the candidates' applications. Some of the federal universities have all the states as their catchment areas, whereas other federal universities have their neighbouring states

³⁰ Policy of the government backed by the National Universities Commission (NUC), a statutory body charged with the responsibility of advising the federal and state government of all aspects of university education and the general development of universities in Nigeria.

as catchment areas.³¹ While all state-owned institutions have all local government areas as their catchment areas.

In spite of the astronomical growth of universities in Nigeria, and the adoption of quota system and catchment area policies, both the federal and state governments have not been able to contend with the surging demand for university education. While some consider the policies as an equity formula, others consider them inequitable. These policies however, enjoin public authorities, government agencies, institutions of learning, and the private sectors to ensure fair and effective representation of the states and local government areas or ethnic groups who are in position of Power, Authority and Placement in enrolment into schools, among others with the quota system and the catchment area policies, Universities are under obligation to admit students not entirely on merit but on quota of the states as stipulated by the government. This is a bid to foster equity in the university admission process, as the FGN provides opportunity for all Nigerian citizens at all levels of education without any form of discrimination. The Federal Character Commission³² defined this as lowering the entering qualification of the states considered disadvantaged, the essence of all these is to create a state of unity for all Nigerians.

F. Challenges with the Implementation of the Federal Character Principle in Nigeria

Mustapha³³ asserted that the FCC has not be able to redress the imbalances in the public service, for this apparent ineffectiveness to have largely remained the same, that the commission lacks the political will to give effect to the provisions of the constitution. In addition, the FCC has failed to handle the bull by the horn, probably for fear of losing some public servants to redress imbalances, as this could cause disaffection and protest. Also, some states are educationally disadvantaged and lagging behind others, hence, the inability of the FCC to effectively address the problem of imbalance becomes impracticable and obstructing the commission's functioning.

Another constraint is the practical workings of the FCC in addressing the statistics from FCC on the aggregate level. The FCC itself focuses on geographical representation on the level of each institution, and recruitment guidelines are developed for each MDA in the public service. Imbalances in one institution cannot be compensated by imbalances in another institution in another

³¹ Ibid.

³² <<https://federalcharacter.gov.ng/>> accessed 20/8/24.

³³ A. R. Mustapha, Institutionalising Ethnic Representation: How Effective is the Federal Character Commission in Nigeria? *Journal of International Development* (2009) Pp.561, 576

part of the country. This has slows down the processes of redressing imbalances in the public service as a whole, and the Fundamental Objective and Directive Principle of state Policy under chapter II of the constitution no longer becomes achievable.³⁴

A second challenge is the balance of power between the FCC and the MDAs as Chief executives and Permanent secretaries of these institutions tend to hire their own kinsmen in Public institutions without regard to the provisions of the constitution. MDAs often avoid the rules of federal character implying that, imbalances can be more noticeable in their operations as FCC data are usually on the nominal rolls provided by the MDAs unfortunately, the FCC has no direct access to the system.³⁵

The constitution itself is another huddle as the cooperation and approval of State Governors will be required for the FCC to access data needed to enforce the federal character principle.³⁶ Prior to Baba-Panya's case, the court has repeatedly held that, the fundamental objectives and directive principles of state policy are not justiciable and cannot be enforced.³⁷

Yet another challenge is the never-ending power tussle between the FCC and the Federal Civil Service Commission.³⁸ Both the FCC and FCSC are established by the constitution, however, the latter has for a long time argued that the former cannot have power over it. The FCSC operates a different allocation system, by which all new positions are divided equally across all states without taking into account prior imbalances. The FCC has a stronger role in monitoring the parastatals which the FCSC would always counter.³⁹

Also, while the MDAs are not always willing to co-operate with the FCC, the FCC find difficulties in enforcing compliance with the Federal Character Principle. It is argued that though the FCC has the powers to take Chief executives to court for prosecution⁴⁰ but practical terms, this rarely

³⁴ See 1999 Constitution of the Federal Republic of Nigeria.

³⁵ V. Ojeme (2018) The FCC is not required in the appointment of Service chiefs <<https://www.vanguardngr.com2018/03>> accessed 24/8/24

³⁶ Section 160(1) and (2) which states that, (1) subject to subsection (2) of this section, any of the bodies may, with the approval of the president, by rules otherwise regulate its own procedure or confer powers and impose duties on any officer or authority for the purpose of discharging its functions, provided that in the case of the Independent National Electoral Commission, its powers to make its own procedure shall not be subject to the approval and control of the president. (2) In the exercise of any powers under subsection (1) of this section, any such body shall not confer powers or impose duties on any officer or authorities of a state except with the approval of the Governor of the state.

³⁷ See Ss. 13 to 24 of the 1999 Constitution (as amended).

³⁸ [Hereafter, the FCSC] One of the federal statutory bodies provided for under Section 153(1) of the Constitution and established by Section 10 of the Third Schedule.

³⁹ Mustapha, supra, at p. 570

⁴⁰ Section 5 (1) (g) (h) of the Federal Character Commission Act, 2016

happens, and when it does, sentences are hardly passed on convicted persons. The FCC works better when it resorts to a more informal, mediating role, and this is seen as a weakness to the commission.

Lack of adequate funds is also a serious impediment to the workings of the FCC. While the FCC receives numerous complaints, the commission often lacks the resources to deal with them effectively, MDAs fund part of the FCC monitoring costs,⁴¹ which raises doubt about their integrity. One of the privileges of the commissioners is that they can occasionally nominate people for employment in MDAs, a rule which appears to encourage patronage and slot-selling.⁴² Another challenge lies with the number of commissioners provided for by the constitution. Mustapha⁴³ expressed concern about the costs and inefficiencies of 37 full-time commissioners. According to him, it appears that, recent years have experienced serious shortages in the number of active commissioners. While the non-replacement of state commissioners show a serious lack of interest from policymakers in defending and supporting the FCC.⁴⁴ This is reflective in the manner other organs of government relate with the FCC. The National Assembly oversight functions on the FCC mostly concerned with the budget, rather than with the substantive workings of the commission. The FCC also rarely undertakes public outreach activities and whenever it does the results are not presented to news media and stakeholders which could create a stronger impact on policy makers to pay more attention as well.

The commission itself does not seem to respect federal character principle. While the executive chairman and secretary of the commission should be drawn from the North and South and rotate in that order,⁴⁵ all past chairmen have originated from the same zone which has led to criticism.⁴⁶ The position of acting chairman is an exceptional procedure but this has been used several times and

⁴¹ See Section 153(1) 1999 Constitution through Sec 10 of the 3rd Schedule.

⁴² H. Umoru, (2018, 11 January), Our commissioners indulge in job racketeering, FCC Chair tells Senate, accessed 24th August, 2024. <<https://www.vanguardngr.com/2018/01/commissioners-indulge-job-racketeering-fcc-chair-tells-senate/>>

⁴³ FCC, Department of Monitoring and Enforcement, 2018, reports covering several years.

⁴⁴ C. Agabi, & F. A. Iloani, (2018). Absence of Boards, Commissioners slows SEC, character commission. The Daily Trust. Retrieved from <<https://www.dailytrust.com.ng/absence-of-boards-commissioners-slows-sec-character-commission.html>>

⁴⁵ A. R. Mustapha, Institutionalising Ethnic Representation: How Effective is the Federal Character Commission in Nigeria? CRISE Working Paper 43 (2007)

⁴⁶ M. Oloja, (2017, 18 June). A Federal Character Commission without Federal Character! The Guardian. Retrieved from <<https://guardian.ng/opinion/a-federal-character-commission-without-federal-character>>

originating from a particular geographical zone. This issue has led MDAs and other stakeholders to question the FCC's integrity.⁴⁷

The FCC cannot resolve on its own, (the indigene-settler dichotomy) which distinguishes between natives of a particular locality and migrants. While indigenes can receive certain entitlements which are not accessible to migrants, because they are to receive those benefits in their locality of origin, rather not in their temporary place of residence, no matter how long they have stayed in the area. In some cases, notably in Benin City, the capital of Edo State, contestation over who is an indigene and a settler has led to some hiccups in the definition of the rights of the Nationalism.

A second concern is FCC's focus on geographical territory and not ethnic or religious group in assessing the distribution of public service positions. This appears to benefit larger ethnic groups such as the Hausa-Fulani, Igbo, and Yoruba as their lot are spread across several states. Ethnicity plays major roles in people's perceptions of marginalization. The minor ethnic groups such as the Binis, Esans, Urhobos, and etcetera, in Southern Nigeria, seldom taste presidential positions in the government of Nigeria.

4. Conclusion

It is unfortunate that the federal character commission has turned into a puppet in the hand of successive administrations in Nigeria since 1996, when its mandate to monitor and enforce the constitutional principle of Federal Character in government employment and public expenditure, as well as the distribution of socio-economic amenities as a right to Nigerian citizens has turned a mirage. The creation of FCC was widely seen as a positive step towards dealing with Nigeria's 'nagging problem of national unity' unfortunately, there are still imbalances in Public services Employment and Distribution of Socio-Economic activities in the nation and these imbalances have increased over time, particularly along ethnic divide, rendering the functions of Federal Character Commission almost useless in strengthening power-sharing along ethnic lines. It has been demonstrated that every successive governments in political appointments and other political benefits have been excessively lopsided. Right from the time of military rules down to civil, the nation has been at the mercy of ethnicity, favouritisms and nepotism, and the commission is therefore helpless, thereby hindering the complete and successful achievement of human rights in Nigeria.

⁴⁷ See, the FCC Department of Monitoring and Enforcement.

Apart from the fact that the Federal Character Principle has now become cancerous in the societal fabric of the Nigerian people, the MDAs and Public institutions do not see the need to abide by the Constitutional principle that birthed the commission. The anarchy in the Nigerian constitution which provides for the federal Character Principle, making its provisions non-justiciable and enforceable through courts, specifically needs to be reviewed. It is therefore suggested that the chapter II of the constitution (fundamental objectives and directive principle) of state policy be moved to chapter IV of the constitution to make it enforceable as Fundamental Human Rights to enable injuries from the commission be justiciable and this will enhance human rights and democracy in practice.

Flowing from the above, it is hereby suggested that:

- i. If human right goals are to be achieved, the FCC is to function to its optimal capacity, by allowing it direct access to the records of Ministries, Departments and Agencies (MDAs) on real time basis.
- ii. The Federal Character Commission should be independent like the Independent National Electoral Commission (INEC) to function independently and out of the control of the President of Nigeria in negation to section 160(1) of the Constitution of Nigeria.
- iii. The Federal Character Commission Act should be amended by deleting the section dealing with the requirement of a Governor of a state approval or consent for the FCC to carry out its statutory duties in the state to prevent nepotism.
- iv. Gradual abolition of the quota system and catchment area policies of political appointments and Education admission into higher institution be encourage to avoid social discrimination of one group against the other to promote human right.
- v. The use of Ethnic groups as a yardstick into position should be discouraged of any sitting President rather than merits and Human rights basis.



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