

FEDERAL CHARACTER COMMISSION: AN EVALUATION

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Introduction

The history of Nigeria shows that the country comprised of independent kingdoms prior to independence.¹ These kingdoms were brought together to form a federation by a colonial *fait*. These features make Nigerians incompatible and compel citizens to be ethnic conscious, giving their loyalty to their regions rather than the nation.

The sectional polarization has in recent times manifested itself in what is now known as “ethnic militias.” Thus we have such militant groups like ‘Oduduwa Peoples Congress’, ‘Bakassi Boys’, ‘Movement for the Actualization of State of Biafra’, ‘Egbesu Boys’, ‘Oduduwa Liberation Movement’, ‘Arewa Vanguard’ and a host of others.² At the higher level are the cultural groups such as Afenifere for the Yorubas, Ohaneze Ndigbo for the Igbos, Arewa Consultative Forum for the Northerners, just to mention but a few. These groups emerged to protect their collective ethnic or regional interests.³

The reasons for these fierce agitations are not unconnected with the sharing of the so-called “national cake”.⁴ This must however be understood in the light of the reasons for the amalgamation of the northern and southern protectorates made by Sir Lord Frederick Lugard in 1914 when he wrote to the Secretary of State for the Colonies as follows:

For sometime it has been realized that the total isolation of the North from the South cannot continue indefinitely. The North has no access to the sea except through the South. Its revenue is insufficient to maintain its administration and deficits has to be met by annual grants from the South and the imperial treasury. It is expected that the unification of the North and South would relieve the imperial treasury of the necessity of making such yearly contributions. Also it is desirable that transport and communication should be under some central authority to avoid competition and clash of ... interests.”⁵

This agitation for even and fair distribution of national resources transformed into political solution muted in 1978 by the Constitution Drafting Committee (CDC) as Federal Character concept was first entrenched in the Constitution of the Federal Republic of Nigeria 1979. The flagrant violation of the provisions led to the promulgation of the Federal Character Commission Act 1995. The Act was later adopted into the 1999 Constitution.⁶

The focus of this paper is not on the federal character as a concept under the Nigerian Constitution. Rather it sets out to examine:

- (i) the establishment of Federal Character Commission;
- (ii) its composition and structure; and

¹ Odumosu, O A, *Nigerian Constitution History and Development*, London, Sweet & Maxwell, 1963, 5.

² These groups are association of young men and women who operate a guerilla warfare posture in protecting their ethnic interests.

³ Instead of regions now we now have six zones – North-West Zone, North-East Zone, North Central Zone, South-West Zone, South-East Zone and South-South Zone. The geopolitical arrangement is not recognized by the 1999 Constitution but was entrenched in the Federal Character Commission Act 1995. See s.19 of the Act.

⁴ National cake in Nigeria means allowing the national resources to go round.

⁵ Odumosu *op. cit.*, at p. 10. You may wish to see the full report of the amalgamation 1912-1919 by F.D. Lugard 192 Cmnd. 468.

⁶ Section 153 of the 1999 Constitution.

(iii) its relevance and workability.

Recommendation for possible constitutional amendment would be made at the end.

Due to the fact that unlike the Federal Character as a concept on itself, the introduction of Federal Character Commission is novel in Nigerian political history, the paper will focus on things that are of practical value. Academic arguments are excluded so as not to complicate the issues. The primary intention of the author is to set out issues that may enhance the functionality of the Commission to let it attain its main objectives of promoting national unity and creating a sense of belonging to all groups in the country.

The Federal Character Concept

By virtue of the provisions of the Third Schedule Part I-C paragraph 8(1) of the 1999 Constitution, the Federal Character Commission is to give effect to section 14 (3) and (4) of the Constitution. Section 14(3) provides:

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.

Subsection (4) makes similar provision as applicable to states.

It is necessary to reproduce here the following extract from a book published on the subject:

A new comer to the Nigerian political scene is most likely to understand the phrase 'Federal Character' as applied to Nigeria, to mean the legal and constitutional structure of the Nigerian Federation. He would think it refers specifically to the number of the constituent members of the Federation, their relationship, the division of powers and functions amongst them and such other tangible matters which are usually carefully spelt out in legal terms in a constitution and on which designated courts of the land can pronounce binding opinions whenever these becomes matters of disputes between members states.⁷

The phrase "federal character" entered into Nigerian political vocabulary for the first time in 1978 when the idea to incorporate it into the Constitution the federal character concept was muted by the Constitution Drafting Committee as submitted to it by its subcommittee on the executive and legislature. The subcommittee based its reason on how to promote "national loyalty in a multi-ethnic society."

In its reports submitted to the defunct Supreme Military Council (SMC) in 1979, the CDC defined the term as "the distinctive desire of the people of Nigeria to promote national unity, foster national loyalty and every citizen of Nigeria a sense of belonging to the nation notwithstanding the diversities of ethnic origin, culture, language or religion."⁸ This definition was incorporated into the Constitution as an amendment. It is described as a mere description.⁹ Efforts to define the concept lacks practical value as what is important now is that an average Nigerian has come to understand what the concept

⁷ Ekeh, P P and Osaghae, E E (eds.) *Federal Character and Federalism in Nigeria* Ibadan, Heinemann, 1989, 1 (hereafter Ekeh and Osaghae, *Federal Character*). Report of the Constitution Drafting Committee Vol. 1 Lagos, 1977 at p. x. the definition was adapted under s. 27(1) Constitution of the Federal Republic of Nigeria 1979, s.329 of the 1989 Constitution. See also s.318(1) of the 1999 Constitution.

⁸ P. P. Ekeh & E. E. Osaghae *supra* at p. 5.

⁹ Oluyede, P A O, *Constitutional Law in Nigeria*, Ibadan, Evans, 1992, 170. For further reading on the concept of Federal Character in Nigeria, see Nwabueze, B O, *Federalism in Nigeria under the Presidential Constitution*, London, Sweet & Maxwell, 1983, 32 – 324.

means within Nigerian political-socio context. It can further be simply defined as a mechanism where every member of the Federation of Nigeria has equal access to the state's resources and opportunities. Despite the entrenchment of the provision of the concept in the Constitution, it has been said to have been misused and continued to be abused.

The common argument against the introduction of the concept into the Nigerian political life is that the concept provides mediocrity at the expense of merit. The clear manifestations of these problems associated with the practice of Federal Character led to the establishment of the Federal Character Commission to ensure its enforcement.

Establishment of Federal Character Commission

The Commission was first introduced in 1995 under the military regime led by General Sanni Abacha. By section 1(1) of the Act the Commission was established and by virtue of subsection (2) the Commission has the following features:

- (a) shall be a body corporate with perpetual succession;
- (b) sue and be sued in its corporate merit;
- (c) shall have its headquarters in the Federal Capital Territory, Abuja and
- (d) shall establish an office in each state of the Federation.

The Commission is one of the Federal bodies established under section 153(1) of the 1999 Constitution.

Composition and Powers of the Commission

The composition of the Commission and its powers are spelt out the Third Schedule, Part 1(c) of the 1999 Constitution. Paragraph 7(1) provides:

The Federal Character Commission shall comprise the following members,

- (a) a chairman; and
- (b) one person to represent each of the states of the Federation and the Federal Capital Territory, Abuja.

In essence, the Commission has 37 ordinary members besides the chairman and the secretary. In general term the chairman is a member of the Commission. The equitable representation by each state of the Federation as envisaged by the provisions is undermined by the fact that the chairman and the secretary would come from any state which would have been represented by virtue of paragraph 7(1) (b) of the provision under reference. This problem would have been eliminated if there has been no duplication of membership from the chairman/secretary's states. More important is the reality of the fact that the chairman has inherent power to cast votes where members are equally divided on an issue that requires voting. Moreover, there are many states in Nigeria with multiple ethnic and religious groups;¹⁰ this was not taken into consideration. It appears the focus of the provision is on the states. Whereas the provision on federal character in the Constitution center on balancing interests among the states, ethnic and other sectional groups.¹¹ Playing down such important issues like ethnic group influence in Nigeria's political scenario may not augur well for the effectiveness and efficient operation of a body of such nature.

Examination of Powers of the Commission

By virtue of section 5 of the Federal Character Commission Act1995, the Commission shall have power to:

¹⁰ Some states have more than two ethnic groups e.g. Delta, Edo, Rivers, Plateau, and Ogun States. Lately, there have been communal clashes among Ijaw, Itsekiri and Irhobo groups of Delta States. In fact the ethnic group clashes led to the imposition of state of emergency on Plateau State for six months in 2004.

¹¹ See again s.14(3) of the 1999 Constitution.

- (a) formulate and provide guidelines for Government agencies and other employers and providers of services and socio-economic amenities;
- (b) monitor compliance with the guidelines and formulae at Federal, State, Local Government and zonal levels in the employment and provision of socio-economic amenities;
- (c) enforce compliance with its guidelines and formulae in areas of the provisions of employment opportunities, distribution of infrastructural facilities, socio-economic amenities and other indices;
- (d) 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;
- (e) demand and receive returns on employment and socio-economic indices from any enterprise or body corporate and penalize any enterprise which does not comply with a request from the commission;
- (f) undertake the recruitment and training of staff of government agencies or departments where desirable;
- (g) institute investigation into any matter relating to any institution or organization where the institution or organization concerned fails to comply with the commission, the institution or organization shall be required to bear the cost of such investigations; and
- (h) do anything which in the opinion of the Commission is incidental to its functions under this Act.

As a follow-up to the provisions of the Act which enables the Commission to formulate and provide guidelines for Government agencies and other employers and providers of services and socio-economic amenities,¹² the Commission in 1996 published the "Guiding Principles and Formulae for the Distribution of Posts in the Public Service" (hereafter Guiding Principles).

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 organizations.
- (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 state.
- (c) that once a candidate has attained the necessary minimum requirement for appointment to a position, he/she should qualify to fill a relevant vacancy reserved for the indigenes of his/her state.
- (d) that where the number of positions available cannot go round 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 state(s) within the same zone should be given preference in filling such vacancies.
- (f) that in an ideal situation, posts to be distributed among the indigenes of the states and Abuja on the formula of equality would be 2.75% for the indigenes of each state after reserving 1% for the indigenes of Abuja. 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.
- (h) that the six zones and the states they comprise are:

¹² See s.5(1)(a) of the Act.

- (i) North Central: Benue, FCT, Kogi, Kwara, Nassarawa, Niger, and Plateau States.
 - (ii) North-East: Adamawa, Bauchi, Borno, Gombe, Taraba, and Yobe States.
 - (iii) South-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 River, Delta, Edo, and Rivers States.
 - (vi) South West: Ekiti, Lagos, Ogun, Ondo, Osun, and Oyo States.
- (i) 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 the upper limit of the range applicable to the zone.

Column B of the Guiding Principles entitled “Definition of Indigene Adopted by the Commission” states:

- (a) *An indigene of a Local Government:* An indigene of a local government is a person:
- (i) either of whose parents or any of whose grand parents was or is an 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 grand parents 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 the territory are those Nigerians (and their descendants) who lived in the area now constituted 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.

Powers and Functions of Commission under 1999 Constitution

By virtue of paragraph 8(1) of the Third Schedule Part I-C of the 1999 Constitution the Commission has responsibility to give effect to section 14(3)(4) of the Constitution. In effect, it has a duty to enforce compliance with provisions relating to the concept of Federal Character enshrined in the Constitution.

In the light of the enormous responsibility placed on the Commission by the Constitution, it is necessary to carefully examine the power of the Commission with a view to weighing it with the Commission’s objectives so as to bring into light the reality of the power granted in contemporary Nigeria.¹³ The socio-political structure of Nigeria

¹³ As a student of Sociological School of Jurisprudence, this writer believes that it is not germane to provide for power that would be rendered less potent by the society.

shows that the Commission would operate under the pressure of powerful group interests¹⁴ most especially as regards sensitive and influential posts.

The inclusion of section 14(4) of the Constitution gives the Commission jurisdiction over the states of the Federation. Unlike the provision of the Act, the provision in the Constitution omitted local governments. This is understood in the light of the fact that local governments are not recognized in the Constitution as part of the federating units of Nigeria.¹⁵ This might mean that the Commission's power does not cover local governments. However, local governments may be read into state as integral part of states of the Federation. The Commission would need to seek for judicial clarification on the issue to avoid the pitfall of *ultra vires*.

Appraisal of Commission's Power as Granted by Constitution and Act

It appears that Nigerian courts would be liberal in giving effect to Constitutional provisions. In *Nafiu Rabiu v The State*,¹⁶ Udo Udoma JSC stated that on the interpretation of the Constitution the question whether the constitution used an expression in a wider or narrower sense, the courts should whenever possible learn to the broader interpretation which will best carry out the object and purposes of the Constitution. To this end issues relating to power vested in the Commission shall be discussed on liberal terms.

Paragraph 8(1) of the Third Schedule, Part I–C of the 1999 Constitution provides: In giving effect to the provisions of section 14(3) and (4) of this Constitution, the Commission shall have power to –

(a) work out in an equitable formula subject to the approval of the National Assembly for the distribution of all cadres of posts in the public service of the Federation and of the States, the armed forces of the Federation, the Nigeria Police Force and other government security agencies, government owned companies and parastatals of the states.

Commentary on the Powers of the Commission

Enforcement Power: The major task of the Commission is the convenience of exercising its enforcement power. The Commission is vested with power to take such legal measures including the prosecution of the head of any ministry or government body or agency which fails to comply with any federal character principle or formula prescribed or adopted by the Commission.¹⁷

The power vested on the Commission to prosecute its offender is enormous considering those who are to be the object of the prosecution. The provision should have been limited to legal measures as Federal Character is a social phenomenon being encouraged to develop in our polity. In most advance countries social character are allowed to evolve through regular convention.¹⁸

With its power to take any legal measure, the Commission's operation could be unfettered but the workability of prosecuting the violations of its guiding principles for formula is doubtful. Those who will be subject of the Commission's jurisdiction as

¹⁴ See Amuwo, Agbaje, Subaru, Hesian't (eds) *Federalism and Political Restructure in Nigeria*, Ibadan, Spectrum, 1990, at 101-106 for a discussion on the full nature of conflicting interests in Nigeria.

¹⁵ Section 2(2) of the 1999 Constitution.

¹⁶ (1981) 2 NCLR at 399.

¹⁷ Paragraph 8(1)(c) of the Third Schedule Part I C of the 1999 Constitution.

¹⁸ The practice in Britain is conventional, yet her system is well conserved even though she operates an unwritten constitution. See Olyuede, P, *Constitutional Law in Nigeria*, Ibadan, Evans, 1992, 54.

detailed in the Constitution as earlier listed may not be easily come by in terms of successful prosecution.¹⁹

Some of the important positions that should enjoy Federal Character flavour are to be made by the President or the State Governor, as the case may be and subject to the confirmation of either the senate or the appropriate State House of Assembly.²⁰ In a situation of this nature, who would be prosecuted, the appointing authority or the confirming authority?

Moreover, the Constitution makes it impossible for the President or the State Governors who are vested with power to make the important appointment or the chief executive authorizing the appointment to be immediately prosecuted.²¹ The Commission would be appropriately advised to engage in those legal measures that can invalidate the appointment so made. Declaratory judgment²² can be a potent weapon in the hands of the Commission.

Further examination of the point being raised here may be made clear by the examination of section 171(5) of the 1999 Constitution which provides:

In exercising his powers of appointment under this section, the president shall have regard to the Federal Character of Nigeria and the need to promote national unity.

By this provision the President is brought under the jurisdiction of the power of the Commission. This is because paragraph 8(1)(a) of the Third Schedule Part 1C of the 1999 Constitution is wide enough to include the appointments required to be made under section 171(1)–(4) of the Constitution. Would it be convenient for the Commission whose members are appointed by the President to prosecute him even after he might have left office when his immunity would have ceased? Would it not be more appropriate if the Commission is empowered to report the President or the State Governor who violates the principle of Federal Character to the National Assembly or the relevant State of Assembly for impeachment or caution?

It is pertinent to note that the Constitution is federal in nature. The provision on Federal Character Commission violates the principle of Federation in that it is difficult to comprehend a situation where the president who heads the government which forms a unit of the Federation should be saddled with a responsibility to put in place a Commission that would control appointments made by other component units. The functions of the Commission should have been limited to the federal level. The present situation may promote intergovernmental disaffection. This on its own will negate the goal of the Commission which tends towards promotion of national unit and loyalty. Where the Commission exercises its power over a state, it may be seen as Federal government deliberately meddling in the affairs of the state government.

In order to sustain the Federal nature of the constitution, and to avoid possible clash between the government at federal level and those of the states, it is necessary that a state commission like other state bodies established under the Constitution be set up.

The general notion of Federation is the power structure arrangement that allows each unit draw its strength without the interference of the other. Thus it is anomalous for the central government to control the affairs of the federating units.

¹⁹ Recently matters of serious constitutional and criminal nature were made subject of political solution: the current Anambra State political crisis is apposite.

²⁰ See for example s.197(7); 154(1) of the 1999 Constitution.

²¹ Sections 143 and 188 of the 1999 Constitution where provisions are made for immunity.

²² For details on declaratory judgment, see Ilyomade and Eka, *Cases and Materials on Administrative Law in Nigeria*, Ile Ife, Obafemi Awolowo University Press, 1992.

The issue of the power vested by paragraph 8(1)(c) of the Third Schedule Part II C of the 1999 Constitution deserves critical appraisal. Prosecution entails putting a legal personality on trial with a possibility to obtain conviction and sentencing.²³ In the light of this there is a need for a detailed legislation that must deal with the substantive offences and the procedure for the trial of offenders.

Section 14 of the 1995 Act provides for some offences that might be committed in respect of the functions of the Commission. The section provides as follows:

(1) Information supplied by the Commission shall not be made public by any person except it is duly authorized by the executive chairman of the Commission.

(2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence under this Decree.

(3) Any person, body corporate or unincorporated who:

(a) required to furnish any information to the Commission under the Decree but fails to do so or in purported compliance with such requirements to furnish information knowingly or recklessly make necessary statement which is false in any material particular or is incomplete or inaccurate; or

(b) willfully obstruct, interfere with, assault or resists any member of the Commission or any other officer or servant of the Commission in the performance of his duty under this Act; or

(e) aids, invites, induces or abets any person to obstruct, interfere with, assault or resist any such member of the Commission, officer or servant of the Commission in the discharge of his lawful activity under the Act; or

(f) fails to produce a clear criteria and comprehensive guidelines on the procedure for determining eligibility for employment and the provisions of services, goods and socio-economic amenities in Nigeria, is guilty of an offence under this Act.

(4) Any person who is found guilty of abuse of office in the observance of any matter under this Act is guilty of an offence.

Section 15 of Decree imposes terms of fine ranging from N50,000 to N100,000 or term of imprisonment for six months or both.

Critical appraisal of the provisions of this section shows some inelegance in the drafting of the law. The Act includes unincorporated body as those could be prosecuted. This in terms of jurisprudence beats imaginations as to know how an unincorporated body which lacks legal personality in law could be prosecuted. It is a trite law anybody that lacks personal legal personality cannot sue or be sued.

Also the Act extends the offences to cover services, foods, and socio-economic amenities in Nigeria.²⁴ The power granted the Commission under paragraph 8(1)(c) of the Third Schedule Part II C of the 1999 Constitution does not extend beyond appointment. We submit that the Commission lacks power to prosecute anyone on this matter. Although paragraph 8(1)(c)(i) of the Schedule confers on the National Assembly power to extend the functions of the Commission by Act, the provision of services and socio-economic amenities are provided for under Chapter II of the 1999 Constitution which deals with Fundamental Objectives and Directive Principles of State Policy. The provisions of this chapter are not justiceable by section 6(6)(c) of the same Constitution. Except the provision 8(1)(c)(i) referred to could be regarded as exception mentioned in section 6(6)(c) of the Constitution, any such Act made would be unconstitutional.

Section 14(4) of the Act is simply an evidence of poor drafting work. The provision on abuse of office appears to be too wide. It lacks exactitude required of a criminal legislation. The Act should have defined what "abuses of office" means. Again,

²³ For further reading, see Okonkwo and Naish, *Criminal Law in Nigeria*, London, Sweet & Maxwell, 1980 at 25, 26.

²⁴ Section 14(3)(8) of the Act.

the Act imposes sentences for infraction of the provisions but fails to state what becomes of the appointment made by the person who violates the principle of Federal character.^{35a} However, the power conferred on the Commission under paragraph 8(1)(c) of Part II C of the Third Schedule of the Constitution confers on the Commission to take appropriate legal measures against any public officer who fails to comply with any federal character principle or formula prescribed or adopted by the Commission.

Brief Examination of the Controlling Power of the Commission

Paragraph 8(1)(g) of Part II C of the Third Schedule to the 1999 Constitution empowers the Commission to work out an equitable formula subject to the approval of the national Assembly for the distribution of all cadres of posts in the public service of the Federation and the states and a host of others.

The Commission is yet to work out a formula. However, the Commission published a "Guiding Principles and Formulae."²⁵ The Guiding Principles, subject to bringing it to conformity with the provisions of the Constitution can operate with the Act as existing law.²⁶ The Guiding Principles can operate as transitional provision. It is however hereby submitted that in order to avoid conflicts and confusion the Commission should prepare a new formula that would be approved by the National Assembly. The existing Guiding Principles were approved by the Military Head of State. It will be absurd to argue that National Assembly is the successor to the Military Head of State. The rightful successor to that office is the President. The Constitution does not say the formula should be made subject to the approval of the President. The legitimacy of the existing formula is doubtful.

The Guiding Principles define indigenes with an application that is general from national to local government levels. As noted earlier, the jurisdiction of the Commission over local governments is doubtful. The Constitution clearly restricts itself to federal and state governments; if the Constitution intends to include local governments it would have so stated. As they now stand, the Guiding Principles need to be brought into conformity with the Constitution. For instance, the formula prohibits claims of dual indigeneship. This may be difficult to support

The Commission needs to draw a formula that would take ethnicity into consideration rather than placing emphasis on states of origin. It is inequitable to allow a few powerful groups from a state to dominate the affairs of the state while sharing appointment. It is possible in Nigeria for people to come from different states and still enjoy common ethnic bond.²⁷

It is erroneous therefore for the existing Guiding Principles to place emphasis on state of origin. The original source of federal character is the fear of minority groups who feel they would be dominated by the majority groups in the federation. The essence of federation lies not in the Constitution or institutional structures but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected.

The essence of the Commission is to ensure fair distribution of employment opportunities and functional posts in the public service of the federation of Nigeria and

^{35a} We suggest that the appointment made in that circumstance should be voidable at the instance of the Commission or any interested party.

²⁵ This has been discussed *supra*.

²⁶ Section 315 of the 1999 Constitution.

²⁷ The majority people of the states of the Southwest, Nigeria are Yorubas, while a large number of people of the states in the South East are Ibos. The same goes with Northwest whose majority are Hausa-Fulanis. These three groups in Nigeria are normally referred to as the major groups, yet there are numbers of minority ethnic groups across the divides of the country. See for instance fn. 14. This argument must be extended to religion. For more on the issue see Ekeh and Osaghae, *Federalism and Restructuring in Nigeria*..

the component states. The Commission must therefore evolve an impeachable formula that is capable of eliminating the fear of marginalization in any group no matter how insignificant.

Tenure of Office and Independence of the Commission

The Commission has no ex-officio members. Members and chairman of the Commission are appointed on merit²⁸ subject however to the condition that each member must represent each state of the federation and the Federal Capital Territory, Abuja.²⁹

The tenure of office of each member and the chairman is five years.³⁰ No member of the Commission shall be removed before the five years tenure except by the resolution supported by 2/3 majority of Senate.³¹ By section 157 of the Constitution the President cannot on his own initiative remove any member; the removal can only be on the initiative of the Senate.

To a large extent the provision guarantees security of tenure for members of the Commission. This arrangement is understood in the light of its effect of the functions of the Commission on the President himself. By virtue of Section 171 (5) of the 1999 Constitution, the President could be dealt with by the legal measures adopted by the Commission by virtue of the provisions of paragraph 8(1)(c) of the Part II C of the third Schedule to the Constitution. How much better if the Constitution had provided that members of the Commission should not belong to any political party?

Section 158(1) provides for the independence of the Commission. While exercising its power of appointment or disciplinary control over any person, the Commission shall not be subject to the direction or control of any other authority or person. The disciplinary power of the Commission includes the power to prosecute any person or body as prescribed by the Constitution and the Act.

This provision does not fully guarantee the independence of the Commission. By restricting the provisions to when the body is making appointment and while exercising disciplinary power, its independence is qualified. For instance the Commission is not financially autonomous from the executive organs of the government that may normally come under the exercise of the power of the Commission. It is necessary for the efficiency and effectiveness of the Commission that its independence be fully guaranteed.

The Relevance of the Commission

By and large, the history of Nigeria shows that it has been a country built on mistrust and suspicion. Ekeh and Osaghae state:

Students of Nigeria's political history would have no difficulty in agreeing that our public life has been dominated by conflicts and division between opposing sides in politics. Where agreement would seem to be less certain is the characterization of the issues of this conflict. Ethnicity has of course been widely recognized, in the long view at least, as a central factor in Nigeria's political problems.³²

The introduction of the Federal Character clause into the Constitution, first in 1979 and later in 1999 was as a result of the experience garnered from the failure of 1963 Republican Constitution to sustain the nascent nation. The period normally referred to as the "First Republic" was marked by political power play of all sorts dominated by ethnic and regional loyalty.³³ This problem translated into political crises and later

²⁸ Merit here means without restriction to either political affiliation or to official capacity.

²⁹ See 3rd Sch. Pt 1-7-(i) b of the Constitution, this translates to 38 members, including the chairman, and obviously there must be a Secretary.

³⁰ Section 155(2) of the 1999 Constitution.

³¹ Section 57 of the 1999 Constitution.

³² *Federalism and Political Restructuring in Nigeria*, 102.

³³ *Ibid* at 103.

culminated into a civil war between 1967 and 1970. The country came under military rule for the first time in 1966.³⁴

The problem associated with ethnic suspicions, regional loyalty and religious bigotry that dominated Nigerian political life necessitated the emergence of the principle of federal character entrenched, for the first time, in the 1979 Constitution. The principle was attempting to establish itself as a constitutional phenomenon when the life of the democratic government was terminated by a military coup *d'état* on 31st December, 1983.

The Military Government that was put in place on 1st of January 1984 suffered a setback when in 1985 it was removed by a palace coup within the military top brass. This brought into power the first Military President, General Ibrahim Badamosi Babangida.

The new military regime after a protracted political debate put in place an elongated democratization process which culminated into a presidential election on 12th June 1993. The election was annulled on 23rd June 1993 by the then Armed Forces Ruling Council. This annulment rekindled the age-long ethnic suspicion because it was believed the Military Government headed by a person of northern origin did not want power to shift to the south.

The crisis was so volatile that it nearly led to another civil war. It was an attempt to remove tension from the entire polity that the Military Government led by General Sanni Abacha promulgated the Federal Character Decree 1995 (now Act). For the first time the Act set up the Commission.

In effect, the need to establish the Commission was necessitated by the country's quest to remain as one entity. In the scheme of things, considering the existence of mutual suspicion, fear of domination and anxiety for marginalization of all the groups in Nigeria, the existence of the Commission is relevant and needed. Its existence would however, be relevant and meaningful if only it can ensure the observance of the Federal Character principle as enshrined in the Constitution with a paramount objective of giving every Nigerian a sense of belonging, no matter how minor his group.

The Commission must work relentlessly to eliminate the age long impression of regional dominance, ethnic rivalry, nepotism, the North/South dichotomy in the area of appointment into key positions in the public services of the federation as enumerated in paragraph 8 Part IIC of the Third Schedule to the 1999 Constitution.

Recommendations

In view of the foregoing evaluation of the power of the Federal Character Commission, we recommend:

(i) that there is a need for Constitutional amendments to review the power granted the Commission to make it practicable. It will be difficult for the Commission to be able to prosecute anyone for violating its formula.

(ii) the 1995 Act should be repealed and be replaced with a more comprehensive Act of the National Assembly which must reflect the substantive law and the procedural rules that would guide the Commission to enforce the law.

(iii) Nigeria operates federalism which discourages any level of government to have overbearing influence on another. In this wise, each state should have a separate Commission. This should be taken into consideration in the proposed amendment to the Constitution.

³⁴ See Walter Schwarz, *Nigeria*, London, Pall Mall Press, 1968, 168 referred to in Kasumu, A B (ed), *The Supreme Court of Nigeria*, Ibadan, Heinemann, 1977

(iv) the Commission needs to take the issue of ethnic and other groups' interests into consideration while reviewing its existing formula. This is necessary to prevent the domination of few groups in the state quota.

(v) The Commission should be fully independent of any government its membership should be made devoid party politics.

Conclusion

Considering our own peculiar circumstances and history, the Commission is needed to promote national unity and cohesion. However, in order to ensure its efficiency and effectiveness of the Commission there is a need to enact a comprehensive Act of the National Assembly which will reflect the spirit of the 1999 Constitution. To this end the Act would be repealed along with its formula and guiding principles.

Membership of the Commission should be reduced to a manageable proportion. Membership may be on zonal basis while states should be given seat on the Commission on rotational basis.