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FEDERAL CHARACTER LAW AND THE ALLEGORY OF CONTRADICTIONS

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ABSTRACT: Behind the deepening divisive ethnic relations spread across Nigeria are cries against majority ethnic led government inequities, exclusion and suppression of minorities. The enormous cost of those clashes in terms of lives, properties and revenues losses that the Nigerian state continues to bear are enormous. The fine-tuning of the Nigeria 1979 Constitution and its modification in 1999 was to warrant the adoption of the power sharing with the intent of always producing representative bureaucracy and government that incorporate all ethnic groups. This effort was believed will eliminate inequities, suppression and imposition that had in the past caused ill will. This paper seeks to answer this question: has the post-1999 Constitutional power-sharing scheme achieved its objective? The objective of this paper therefore is to interrogate the practice of the power-sharing scheme to determine whether it is serving its purpose or if it is an epitome of contradictions. This paper used the descriptive research method to answer the above stated question in order to realize this paper's declared objective. Going through the analysis it is evident that while the FCP law have attained some level of ethnic inclusion in some of the MDAs, however, it has fallen short of establishing a representative bureaucracy and inclusive government the law was meant to engender given some of the contradictions discussed in the paper.

Keywords: Constitution, Power Sharing, Federal Character Principle, Representative Bureaucracy

INTRODUCTION

Public institution in an open society should be able to effectively incorporate and utilize the variety of workers' abilities from different backgrounds and experiences enhance government performance through the utilization of diverse creative problem solving capacities (Imran and Rogger, 2015) to birth wise government (Henry, 2007) capable of boosting citizens' productivity and drive a developmental state. This was the reason that informed Obasanjo military regime to include the FCP (law) into the 1979 constitution. This singular act according to Eziebe, (2010) was a positive response to correct those practices that undermined equal employment, fair promotion and equitable distribution of amenities across all parts of the country in the past that caused ill will. It was also a right step taken against those negative forces that placed sectional interests above national interest (Eziebe, 2010) thereby preventing the control of the federal government or any of its agencies by one or a few ethnic groups (Babalola, 2015). The models of affirmative action include the-tiebreaking model, plus-factor model, trumping model, and quota model (Mustapha, 2007).

In Nigeria, the proportionality principle of the quota system governs the actions of the FCP. In practice, the arithmetic quota is easy to understand and implement despite its inability to consider important variables such as ethnicity, religion and relative merit, unlike its emphasis on the group and geographical zone represented rather than on the relative qualifications of the candidates under consideration. While Nigeria may prefer the quota system in practice, the 'plus option' and the 'trumping' models also influence the appointment, promotion and placement of persons in public organizations through the FCP. In cases where there are only two posts, one must go to the north and the second to the south, and where there are six posts one must go to each of the six geopolitical zones of the country. This practice is defended because it: i) exterminates past discrimination (compensation); ii) thwarts present unfairness (provides a level playing field); and iii) achieves equalization (balancing diversity) (Mustapha, 2007).

The opponents of affirmative action asserts that state institutions should be colour-blind or blind to ascriptive group affiliation. Thus, ascribing rights through affirmative action to some groups is morally arbitrary and discriminatory (Mustapha, 2007). While this reasoning is not arid, however, the absence of infrastructural development (the bedrock for providing opportunities) occasioned by government neglect and abuse of minority rights in Nigeria's Middle-Belt, South - South and Northeast regions (Maiyaki, 2018) demonstrates that upholding 'difference-blind rules' in ethnically diverse societies is disadvantageous for those groups that are not represented at the administrative decision making arena of government. Upholding affirmative action in unequal and diverse societies is a propitiation for distrust, disagreement and conflict.

Behind all ethnic minority conflicts spread across Nigeria are cries against unfair and unequal treatment, exclusion and suppression. The enormous cost in terms of lives, revenues and property lost that the Nigerian state has and continues to bear because of the neglect and exclusion of the Niger-Delta (Baba & Aeysinghe, 2017; Koos & Pierskalla, 2016) and other excluded groups are enormous. It is wise and enriching for a culturally diverse country such as Nigeria not to be blinded to ascriptive group affiliation in order to end the exclusion of groups from state institutions and governance. This is unavoidable given that representative bureaucracy makes it much harder for certain groups to segregate from others, making it easier for groups to be exposed to each other and thus potentially offset biases held against members of other groups (Imran & Rogger, 2015).

In diverse societies, social cleavage has bureaucratic consequences that if not fairly balanced can disrupt political and social stability. The balancing does not rest only on the political structuring of the country rather it is heavily reliant on the administrative system. Given that bureaucrats exercise enormous discretionary powers (Mustapha, 2007) in the authoritative allocation of values with lasting impacts on groups, every group wants to be part of the process to guarantee even distributional spread in society. Since the administrative system is the bridge between the citizens and the government. Administrative penetration is necessary. in contrast, the desire of the Nigerian government to ensure inclusion had led adoption of poor policy choices that did not contribute to economic growth.

The choice of the Nigerian the government to site a petro-chemical refinery in Kaduna, such as the location of Katsina and Oshogbo Steel Rolling Mills in Katsina and Osun states respectively where the raw materials needed for production have to be transported at enormous cost did not facilitate the attainment of the desired economics and development

outcomes. Those organizations of national importance have remained moribund and unproductive painting a dismal picture of a negative correlation between ethnically diverse society and economy-wide outcomes (Imran & Rogger, 2015). This paper seeks to answer this question: has the post-1999 Constitutional power-sharing scheme achieved its objective? The objective of this paper therefore is to interrogate the practice of the power-sharing scheme to determine whether it is serving its purpose or if it is an epitome of contradictions. This paper used the descriptive research method to answer the above stated question in order to realize this paper's declared objective.

Power-Sharing: Connotation, Scheme and Associated Conversation.

Power sharing aims to balance group relations fairly and limit majoritarianism by constraining the power of federation-wide majorities (McGarry & O'Leary, 2005). Milton Esman **(**2004**)** sees Power-sharing as an accommodative set of attitudes, processes, and institutions that ensures that the art of governance involves bargaining and conciliation, and that the aspirations and grievances of its diverse ethnic communities (Bogaard, 2006) are not ignored nor the quest of pursuing a common national interest is not abrogated. Even though it includes a broad sets of arrangements that may vary across different dimensions, it is however not unconnected with efforts aimed at developing institutions, policies, arrangements (Rothchild & Roeder 2005) that guarantee inclusivity through a central, territorial, military or economic power-sharing (Hoddie & Hartzell 2003). Specifically, such arrangements do not divorce itself from the power that has been shared between competing elites, levels of government, the environment in which power sharing is implemented, or the time horizon of the power sharing agreement (Raffoul, 2019). Power sharing is a desirable scheme for any nation that seeks an immediate exit from deadly ethnic wars because of its ability to create some sort of political settlements (Papagianni, 2008). However, it is not a viable long-term solution for managing uncertainty in ethnically divided societies (Bogaards, 2006).

Power is distributed economically or politically. Economically, it is about the distribution of state resources between the different regions (Miti, Abatan & Minou, 2018). The power is shared horizontally or vertically. Horizontally, it is between the various political parties and, by political parties with other institutionalized nonparty entities. Vertically, it is between the central government, regional governments and local governments (Trzciński, 2018). According to Lijphart (1977), two forms of power sharing are corporate consociationalism associated with the use of ethnic quotas, reserved seats, veto rights, and cultural autonomies and liberal consociationalism which proposes pure proportional representation (PR) for electoral systems or sequential and proportional allocation of rules for ministry portfolios (McGarry & O'Leary, 2016). Horowitz (1985) pushed forward the integrative scheme and it is aligned with institutional prescriptions such as vote pooling or preferential electoral systems that incentivize the formation of preelectoral coalitions across conflict lines (Raffoul, 2019). This arrangement incentivizes elite cooperation in divided societies. Hartzell & Hoddie, (2003) tri-polar power sharing modes broadens the scope of power-sharing beyond the political sphere by including territorial, economic and security domain (Miti, Abatan & Minou, 2018). These power sharing modes accept group autonomy, proportionality, and minority veto principles. Minority veto is the necessary definitive weapon that minorities need to protect their vital interests (Lijphart, 2008).

Scholars such as Lijphart, (2002) and Wolf, (2011) assert that the most plausible solution for peace for deeply fragmented and divided societies is consociationism. What makes consociations attractive **is its** emphasis on joint-ness (Raffoul, 2019) or joint consent that emerges from involving all the interested communities. The integrative approach also designs political institutions to give incentivize for elite and mass moderation with the aim of transcending the cleavages that divided the country. Although consociational systems incite cooperation at the elite level with the deliberate aim of counteracting disintegrative tendencies in the system it however reinforces social divisions instead of breaking them down (Bogaards, 2006). Though Sisk, (2003) argued that the niche for moderation of integrative power sharing makes it most appreciated over the more rigid consociational scheme which deepens the dominance of a few powerful groups. Horowitz, (2002) still opines that power sharing should be seen as an umbrella concept that should not only advocate the use of consociational democracy, but also the rival model of integrative majoritarianism. Given this backdrop, for a political system to produce fruitful power sharing outcome it has to apply both approaches (Sisk, 2003).

The common trend with all forms of political power-sharing is that consensus regulates decision-making rather than by majority (Raffoul, 2019). The desired political outcome is to convoke a unity government that incorporates diversity thereby guaranteeing all groups full participation and representation in decision-making at the executive level. This arrangement is vital for societies with deep social divisions (Lijphart, 1985; 2004) as it eliminate those forces that inhibit solidarity of action toward the attainment of common national goal notwithstanding ethnic diversities. It incentivizes diverse groups to live together given that it does not only place a constraint marginalization but it shelters minorities groups from the adverse effects of majoritarian rule (Papagianni, 2009). This fear is towering in a weak state like Nigeria where ethnic primordial consideration still strongly influences policy choices and outcomes. Most often, the political interests of minorities are often sidestepped such that it challenges their survival. Thus, genuine power sharing in a federal scheme must seeks to strengthen the will of all members to develop linkages that cascades into a strong bonded community affiliation (Ojo, 2009). In a federal state group fears are assuaged and they are willing to cohabitate and relate peaceful when arenas of state powers for the authoritative allocate values at all levels are shared instead of monopolized, devolved rather than centralized (Bogaards, 2006).

Despite power sharing popularity as a conflict resolution instrument its effectiveness is suspect Miti, Abatan and Minou, (2018) especially, if it is not all-encompassing, it encourages elitism, hinders inclusory political engagements and inhibit new entrants into the political scene (Papagianni, 2009) from weak communities. Limiting popular participation in politics is a potential threat to any power-sharing arrangements that make democracy possible (Bogaards, 2006). This may explain why Nigeria remains unsettled as its power sharing arrangement has not been full-proof, this may be given fact considering that most countries like Nigeria that have used power-sharing to resolve their conflicts have not achieved any long lasting stability nor have they been able to establish a credible system of multiparty politics (Miti, Abatan & Minou, 2018). Inarguably, none of these critique is new and worst still, the alternative strategy of power sharing is not fully elaborated and lacks an empirical record. Rothchild and Roeder (2005) sums up the problems of power-sharing to include: (1) limits on democracy; (2) the creation of institutional weapons for ethnic entrepreneurs; (3) a focus on inter-ethnic allocation; (4) the problem of outbidding and extremism; (5) governmental inefficiency; (6) governmental rigidity; and (7) inadequate enforcement.

The FCP is a law and as an affirmative action (Ohemeng., Adusah-Karikari & Hilson, 2018) designed to birth representative bureaucracy at the federal states and local governments in Nigeria. The FCP is rooted in S14(3 & 4) of the 1999 federal Constitution. S14(3) applies mainly to appointive positions and does not extend to elective positions that are determined by the electorates during periodic elections (Okeke, 2019). FCP was crafted to ensure fairness in equalizing opportunities for all by facilitating the inclusion and integration of all groups to change the preexisting inequities in the allocation of resources, infrastructures and employment using the instrumentality of proportional representation in administrative and executive functions of the relevant government institutions (Lijphart, 2004). The state, senatorial districts, local government areas and wards are the units used to distribute posts (Mustapha, 2007; Adeleye, Atewologun & Matanmi, 2014) or allocate resources so to guarantee the eclectic redistribution of infrastructures, amenities and industrial sites (Ayoade, 2003) fairly across Nigeria.

The FCP law permits the FCC in some instance to lower the entry and promotional points for people from less disadvantaged areas to be employed or appointed to certain position without destroying the merit system of the service (MAMSER, 1987). The argument supporting this proviso is to strengthen ethnic balance of power, and the desire to preserve the Nigerian state on an equitable inter-segmental basis, given the apparent unavailability of more peaceable or stable alternatives to the country's federal union (Suberu 1997). Obviously, the representative bureaucracy creates is intended to help the federal, states and local governments attain its desired democratic outcomes of ensuring that the peoples' voices are heard and democratic values are fulfilled (Ding, Lu & Riccucci, 2021). However, the lowering of point to accommodate candidates from educationally disadvantaged states into the Nigerian bureaucracy or appointment to executive positions are given to candidates who are not necessarily the best or most qualified. It is not surprising that the overtime implementation of the clause of the FCP law has only enabled some less qualified persons gain employments or appointments at the sacrifice of merit (Agbakoba, 2011; Simbane, 2002).

Though the FCP is rooted in the 1979 constitution, it was however a modified reintroduction of the quota system that was utilized in 1954 to tackle the problems of bureaucratic/representative underrepresentation of minorities that was hitherto heavily tilted in favour of the Ibo and Yoruba ethnic majority (Ezeibe, Abada, & Okeke, 2016; George, Yusuff & Cornelius, 2017). The location of the colonial headquarters in Lagos, the acceptance of Christianity and western education by Ibo and Yoruba gave them the advantage of gaining employment which also translated into their numerical control of the colonial bureaucracy over other ethnic groups. The southern dominance of the colonial administration made the North deeply suspicious of southern domination of even its Northern regional bureaucracy, hence, the Northern government adopted the policy of containment. To protect itself, Northern politicians promoted the Northernization policy in the 1950s, which adversely affected minorities representation in northern Nigeria even though the official colonial policy was Nigerianization (Kwanashie, 2002).

Hitherto, the Yoruba, and Ibo's dominated the federal bureaucracy, in response, the northern strategy was to offset that numerical advantage and control the executive arm of government in terms of numbers, clout and influence of the various offices occupied (Mustapha, 2007). Today, this line of reasoning is inadequate considering that the number of northerners in the

federal bureaucracy has risen astronomically. A plausible reason is tied to its large population as the north-West-7; North-Central-6; North-East-6, which totals 19 states excluding FCT while the South Consist of the South West-6; South-South-6 and South-East-5 have 16 states. So, going by the S147(3) the north will always have the highest number of ministers irrespective of who is the president. It is therefore not surprising that for each new government take over power there is accusation and counter accusation of the new administration of ethnic favouritism of the federal bureaucracy (Monguno, 2005; Afenifere, 2009; Ugoh & Ukpere, 2012).

The post-colonial state was inundated with accusations and counter-accusations of nepotism and tribalism between the two groups and against the north in the new federal institutions and agencies. From 1966 thereafter, the numerical supremacy of the Ibo's in Nigerian public bureaucracy waned due to their mass resignation from the federal service to fight on the side of Biafra during the Nigerian civil war of 1968-1970. This allowed the Yoruba's to cement their control of the federal bureaucracy until the late 1990s when the Hausa/Fulani group outstretched their control over the Nigerian bureaucracy (Asaju & Egber, 2015). The changes were accompanied by the steady barring of access and marginalization of minorities who were caught in the interstices of the majority scramble for bureaucratic dominance (Ugoh & Ukpere, 2012).

The Federal Character Commission (FCC) is an upspring institution to enforce FCP laws. It is a permanent executive body established by Decree 43 but later recrafted as Decree 34 of 1996 with prosecutorial powers (S4) (1c) and (S4) (1di and 1dii) to function effectively. While the constitution assigns prosecutorial powers to the FCC, however it does not have the power to independently initiate legal action against defaulting institutions or regime without the authorization of the Attorney-General of the federation (Mustapha, 2007). Also, the FCP law does not apply in the appointment of the presiding officers of the federal courts whose appointments are usually predicated on seniority at the bench (Okeke, 2019). The functions and powers of the Commission are: (a) determine the formula for sharing posts and services; (b) monitor compliance; (c) enforce compliance and prosecution of offenders through the courts; (d) demanding and receiving data on staffing from all public organization; and (e) instituting investigations. It is an offence to forward false information to the FCC or withhold information from it, or it supply it with incomplete information. S8(3) of the Third Schedule of the 1999 constitution required the Commission to ensure that every public company or corporation in Nigeria reflects the federal character in the appointments of its directors and senior management staff (Trzciński, 2018).

The FCP law provides that the indigenes of a zone should constitute a minimum of 15% and a maximum of 18% of the senior-level positions in each establishment in that locality. It is however impermissible within the Federal Civil Service for the indigenes of any State to constitute less than 2.5% or more than 3% of the total positions available for both senior and junior staff at Head office. A N50 000 fine ($67) or six-month imprisonment, or both, for individuals; and a N100, 000 ($134) fine against organizations that disregard or deliberately hamper the application of the FCP. Equally too, a fine of N10, 000 ($13.4) per day is prescribed against individuals or organizations, and in extreme cases, two years' imprisonment is imposed without an option of fine where a case of persistent breach is established (Obe, 2012; Adeleye, Atewologun & Matanmi, 2014). Despite these checks, the towering feature of governance in Nigeria since 1960 is that few ethnic groups still dominate federal, state and local government political and administrative institutions.

A functional political regime is not only responsible for fairly regulating the dynamics of social participation in political processes but it is also to expressly stipulate the rules for the political game (Kifordu, 2013). Those efforts must be open so that the processes of engagements in building democratic institutions is legitimate, reflect broad socio-political inclusion, representation and consensus in the formal structures of the polity. Unfortunately, political mobilization, participation and rules setting in Nigeria is dishonest in all ramifications (Baba & Aeysinghe, 2017). This dubious character influences how political elites set the unwritten ground rules for deciding who gets what, even if it means breaching constitutional provisions that governs the allocation of resources to achieve their private purposes. Obviously, political elites disregard of extant laws and institutional autonomy is the most inhibiting force against the faithful implementation of the FCP in Nigeria.

The elite criteria for employing or considering a candidate for appointment is predicated on the individual's willingness to do their bidding and protect their private group and not the public interest. This is how Nigerian elites build their patron-client networks pyramids to ensure the consolidation and transfer of powers from them to their cronies and loyalists who execute the rules in servitude to their interests (Draper & Ramsay, 2008). This lopsided pattern of recruitment is partly responsible for undermining public bureaucratic effectiveness and efficiency (Asaju & Ayeni, 2020), while also reinforce institutional distrust, (Nnamani et, al. 2020) and it has failed to prevent inter-ethnic conflicts (Shodunke & Subair, 2020). Political elites disregard of laws and institutional autonomy is the most inhibiting force against the unfaithful implementation of the FCP in Nigeria.

The Nigerian experience shows that the dominant ethnic groups focus their efforts on the struggle to transfer employment, appointments to political positions and the allocation of government projects and programmes to their own ethnic group members or communities. This unconstitutional methodology is not only responsible for sabotage of government policies (Alozie, 2019) but continue to strengthen systemic ethnic hegemonic domination. This outcome is entrenched in federal state when formally institutions are monopolized by a minority of the state's population (McGarry & O'Leary, 1993). In Nigeria, a few ethnic group (Hausa/Fulani, Yoruba and Ibo) dominance of public institutions has gradually eroded public institutions of being composed with boards that are broad based and inclusiveness. Sadly, employment and especially, appointment to leadership position (the post of provost, rector or vice chancellor) have been regionalized or localized to the state or states within which those institutions are located. The defence of this kind of ethnic control is that it is the only alternative to continuous war (Lustick 1979). Paradoxically, hegemonic dominance inflate repression by side-lining moderation and bolsters entitlement thereby obstructing any prospects for future accommodation (McGarry & O'Leary, 1993).

A look at the heads of most of the federal tertiary institutions reflects the rule of ethnic hegemony and so are their governing boards. The consequence is clearly evident by the lack of proper checks and balances that is required to guarantee institutional efficiency and effectiveness. The staff spread also reflect regional and ethnic hegemony footprints. This seemingly unhealthy practice became institutionalized in the 1990s. 1n 1995, the Northern Element Progressive Union (NEPU) mobilized to remove Prof. Daniel Saror who was the substantive vice chancellor of the ABU, Zaria at that time simply because he was not from the hegemonic northern group. NEPU in justifying their action argued that ABU as a northern institution should be headed by a northerner and should not be headed or dominated by southerners. This was a weak defence, given it had ethnic and religious prescriptions as a

consideration for the appointment of institutional heads in Nigeria. More so, it is sound reason according to them for the federal government to appoint a person from the locality who knows the traditional way of life of the people and easily associated with them. Although, Saror was from a minority ethnic group in Benue state which is presumed to be a part of northern Nigeria he was never reinstated rather Gen. Sani Abacha appointed Gen. Mamman Kontagora to administer the institution to the satisfaction of NEPU.

Since the illegal removal of Prof. Saror, no one, (not even those from southern Kaduna who are from the same Kaduna state) outside the northern hegemonic ethnic group is given the opportunity to rise to the position of the Vice chancellor of the institution or other northern institutions though owned by the federal government. If the federal government at that time considered FCP law that must be enforced, the proper thing was to reinstated Prof. Saror as the vice chancellor of ABU since his tenor did not expire nor was he found guilty of any wrong doing to put a stop to those anti-integrative elements. This practice has extended to the east and the west thereby facilitating majority ethnic group dominance of tertiary institutions and federal parastatals in Nigeria. This singular act symbolized that the federal government tacitly supported the ethnic hegemonization of public institution leadership in Nigeria which contravenes the FCP law. The consequence is that minorities ethnic groups are schemed out of heading public institutions.

A similar narrative is brewing as the northern political elites are unhappy with President Ahmad Bola Tinubu for appointing Nyesom Wike from the south-south region as the minister of the FCT (The Sun, August 21, 2023). The grouse of the core northern oligarchy expressed by Seikh Gumi, see the governance of Abuja as their birthright as such, anyone who is appointed to be minister of Abuja must come from that group (Nigerian Tribune, October 30, 2023; Premium Times, August 21, 2023). Gumi asserted that it is wrong for a Christian southerner to be appointed minister of the FCT, as Abuja is for the north and Muslims (October, 24, 2023; Cable, October, 26, 2023). While Abuja is the federal capital and even though it is presumed belong to all Nigeria as it is a symbol of national unity of our common nationality it is importantly state that the native inhabitants of that area before it became the FCT are the Gbagyi's. Sadly, since 1999, no southerner has been appointed as the minister of the FCT as the position has been held by only persons from the north west and north east (The Sun, August 21, 2023). Another contradiction that contravenes the FC law is that the appointment of the minister of the Federal Abuja (FCT) from 1999 to 2023 is restricted to the north.

Table 1: Names and Regional Composition Former Ministers of the Federal Capital Abuja

S/N	Names	Period	State and Region
1	Ibrahim, Bunu.	1999-2001	Borno State (NE)
2	Mohammed Abba Gana	2001-2003	Borno State (NE)
3	Nasir Ahmed El-Rufai	2003-2007	Kaduna State (NW)
4	Aliyu Modibo Umar	2007-2008	Adamawa State (NE)
5	Mohammadu Adamu Aliero	2008-2010	Kebbi State (NW)
6	Bala Mohammed	2010-2015	Bauchi State (NE)
7	Mohammed Musa Bello	2015 2023	Adamawa State (NE)
8	Nyesom Ezenwa Wike	2023 -	Rivers State (SS)

Source: Authors Compilation 2024.

Table 1 clearly shows that the FCT ministry is ostensibly a northern prerogative and it seems that the FCC's law seems not to address the discrimination appointing into certain office such as the minister of the FCT leading to the domination of this office by members of the northern hegemony. The FCP with more consociational coatings seems to satisfy the interests of the main ethnic groups to a greater extent and those of the minority groups to a lesser extent (Krzysztof Trzciński, 2018).

The towering position of the three majority ethnic groups over Nigerian bureaucracy, in executive and ministerial appointments has made it easy to divert policies, programmes and projects targeted to benefit minorities areas with less representation. The inability of the FCC to equalize ethnic representation is not because of conspicuous inequalities in educational, professional achievements between the different states/regions but because of unequal access to state power by minorities (Adeleye., Aja-Nwachukwu & Fawehinmi, 2012). The blatant unwillingness of the ethnic majority ruling class in in the north to see other minority group as equal and competent as they are has continued to contribute to FCC failure.

Although the FCP is constitutionally crafted to prosecute offenders, but Chapter II of the 1999 renders its activities non-justiciable. Section 6 (6) (c) of the Constitution inhibits the citizens from approaching the court to enforce compliance with the FCP law. A piece of legislation or any part of it is said to be non-justiciable if it cannot be positively enforced by courts within a given jurisdiction. This has encouraged various organs of government, especially the executive, to disregard the FCP law in the composition of the federal Government and its agencies with impunity (Okeke, 2019). The most palpable explanation for the none justiciable controversy is that the FCP primarily seeks to protect public or collective rights or interests as against private right or interest. In common law, a private person lacks the requisite legal capacity to institute a judicial proceeding to enforce public right or to enforce the performance of a public duty (Okeke, 2019).

From 1999, most Nigerian presidents have tried to respect and apply the FCP law. In contrast, President Buhari's federal cabinet from 2015 to 2023 indicated that all key ministries, department and agencies (MDAs) of government, including security agencies, were headed by northerners except for the retirement of Justice Ibrahim, Tanko as the chief justices paving way for a southerner to take the post. The Senate had in 2016 rejected President Buhari's ambassadorial nomination because it lacked the federal character given the non-inclusion of indigenes of Bayelsa, Ebonyi, Ondo and Plateau. The response of the Federal Government that the omission from the list was because those state lacked qualified candidates was unacceptable given that the FC policy is not wholly merit-driven but it is driven by inclusion to give every section of the country the sense of belonging.; similarly, the appointment of the deputy governor of central bank, chairman of FERMA were done without recourse to the FC law (Vanguard, July 19, 2018). The National Assembly allowed the emergence of an all-powerful president with uninhibited liberty to go off course at will, even on matters of national interest such as the FCP (Premuim Times, July 6, 2022).

Similarly, President Buhari's appointment of Presidential Aides, chief executives of Federal Parastatals and the service chiefs totaling 130 appointees showed that 80-62.5% were from the North, 24-18.4% were from the South West, 7-5.3% were from the South-East and 19-14.6% were from the South-South (Akpan, Uwaechia & Nwafor, 2019; This Day, Jan. 7, 2017; The Whistler, Jan. 7, 2017; Oguniran, 2018). Lopsided appointment into the board of the NHRC, PENCOM, NPC (This Day, April 26, 202; October 31, 2020). President Buhari in

defending the awful breach of the FCP law averred that the region that gave me 97% of votes cannot in all honesty be treated the same on some issues with constituencies that gave me 5% from the south-east. (This Day, July 1, 2017). Those mentioned infractions against the FCP informed Senate decision to direct its committee on FCP to probe all appointment of Muhammadu Buhari to establish alleged lopsidedness or otherwise (The Sun, July 19, 2018. The President and his Vice as well as the Governors, their Deputies cannot be prosecuted for their infractions of the FCP law because they enjoy constitutional immunity (Okeke, 2019). Worst still, S1(3) of the FCC Act place the Commission under the supervision of the President without expunging this section from the Act the FCC will remain helpless.

Political engineers seeking to resolve ethnic inequities and conflict often recommend the creation of an all-inclusive political parties that will engender electoral integration and break down divisive ethnic cleavages. The framers of the 1999 were strongly influenced of the inviolability of including engineering electoral integration in to the constitution to propel political parties to mobilize membership support across all regions of the state (McGarry and O'Leary, 1993). The 1999 constitution in S133(1) (a & b) constitution contained these provisions: (a) get a national majority of votes cast; (b) cross a threshold of not less than 25% of votes cast in at least two-thirds of all the states (S133(1) (a & b) of the 1999 Constitution; (c) The introduction of pan-ethnic rules for the formation of political parties; (e) the entrenchment of consociational power-sharing rules (Federal Character).

This rule is designed to promote the amalgamation of different ethnic and religious communities in national politics thus making it difficult for a divisive ethnic candidate to be elected into public office (IDEA, 2017). So also, S179(2) (a & b) of the 1999 Constitution demand that for the election of governor of a states the candidate must have not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the state. These sections are all designed to erase ethnically aligned leader at the federal and state government levels. These were all institutional designs aimed at forcing politicians out of their ethno-regional cocoons towards the promotion of diversity (Mustapha, 2007). This needed because one of the major factors responsible for the persistent abuse of the federal character principle is the prevalence of ethnic cleavages and prejudices among the populace especially the political class and elites (Okeke, 2019).

The Babangida regime still-born 1989 constitution restrict electoral competition to only two state-funded political parties (SDP & NRC) and ensured that each political party had their offices in all the local government areas across the country. The normative lesson is obvious: a majoritarian system of liberal democratic government, designed to create strong powers for the governing party, is no guarantee of liberty for ethnic minorities (McGarry & O'Leary, 1993). The Abacha government crafted constitution avoided the government funded two party arrangement but required prospective parties to establish offices in two-thirds of the local government areas in each state of the federation. It also required that each party must enlist at least 40,000 members in each state and 10,000 members in the federal Capital Territory.

The believe was that a party that met this numerical demand and coverage will not only have over a million members but will reflect a collective of diverse ethnic groups which is necessary for promoting consensus building, understanding and engendering integration. This is plausible given that party politics will not be viewed as a winner takes it all and that inter-ethnic competition will not be regarded as a zero sum conflict. Specifically, S222 (b, e & f)

and S223 (2b) of the 1999 Constitutions detailed the conditions a political party must meet in line with S15(3d) (4) to eliminate any chance of the emergence of ethnic parties even before it is registered by INEC. These conditions are:

1. the absence of any sectional (ethnic, regional or religious) connotation in the name, emblem or motto of the association (e);
2. a membership that is open to every Nigerian citizen 'irrespective of religion or ethnic grouping (b);
3. the maintenance of functional branches in, or a governing body that includes members from at least, two-thirds of the states in the federation (S223(2b);
4. the location of the headquarters of the association in the federal capital territory (f).

These conditions were meant to integrate Nigerians beginning at the political party level thereby ensuring that national rather than ethnic agenda remains utmost pursuit during and after elections with the ultimate target of eliciting national rather than sectional loyalties. While this demand on political party is a plausible constitutional engineering to defeat divisive ethnicity. This demand however negates the rights of an ethnic group to form their own parties, restrict their activities to their states or local governments, and dedicate themselves to the improvement of their particular communities. A critical voice from Suberu and Diamond, (2002) seems to suggest that imposing these conditions for political party formation for integrative purpose is anti-democratic and anti-federalist because they restricted the freedom of individuals and also deny people effective autonomous political expression to legitimate ethno-territorial interests.

These observations are reasonable if it is aligned with Chapter 5, S35, 39 and 40 of the 1999 constitution. The problem is not with the conditions for the formation of political association but the method of political leadership recruitment at all levels in Nigeria that is flawed and based on what the party wants and not what the people want. This focus has consistently continued to defeat any genuine effort at integration at the political party level. It sad that for the selfish interest of one powerful elite group the rule of the game is easily changed to accommodate their interest while the interest of those that have been undermined are not given the opportunity to seek redress at the party level (Machina and Ahmed Lawan in Yobe North, Omahi in Ebony, and Godswill Akpabio in Akwa-Ibom State. The result of these infractions is the inability of local people to promote the candidates of their choice that will boost their communal wellbeing.

The most popular of these informal ethnic balancing arrangement is the ethno-regional allocation, zoning and rotation of political offices and party posts though constitutionally unrecognized (Suberu & Diamond, 2002). The 1995 Constitution provided for the rotational presidency between the north and south, a tripartite vice-presidency, the establishment of a Federal Character Commission, and the proportional representation in the Federal Executive of all parties winning up to ten percent of national legislative seats (FRN 1995a, 65, 69, 71, 98) of the Constitution of the Federal Republic of Nigeria 1995. The Gen. Abacha 1995 Constitution constitutionalize the principle of zoning and rotation (Suberu & Diamond, 2002).

Indeed, the national electoral agency requires that all prospective parties under the Abacha transition project to accept the principle of power sharing and rotation of political offices as enshrined in Chapter VI Rotation or zoning of political party offices resurfaced as an

autonomous convention of party politics, rather than an explicit principle of constitutional stipulation (Suberu & Diamond, 2002). S223 (1a & b) and (2a & b) of the 1999 constitution demands that the members of the executive committee or other governing body of the political party must reflect the federal character which should be made at regular intervals (on a rotational basis) not exceeding four years and they must belong to different states for that arrangement to be deemed to adhere to the federal character principle. From the standpoint of this provision one can assert that the federal character principle sits as the foundation of rotation/zoning of political positions by political parties.

Rotation or zoning of political position provide a consociational or accommodative complement to the integrative emphasis of formal constitutional rules (Suberu & Diamond, 2002). Geopolitical principle of rotation/zoning is also used as a yardstick for the distribution of the country's resources and appointments to ensure that no section is neglected or assumes perpetual domination (Oviasuyi & Uwadiae, 2009). The complexities of the Nigerian political space and shaky integrity of Nigerian politicians had informed the various political parties to insert rotation/zoning in their constitutions. Specifically, Article 7(2)(c) of the PDP Constitution states that: reaffirm the party's resolve to adhere to, and enforce the implementation of the policy of rotation and zoning of party and public elective offices, and the appropriate executive committee at all levels in the spirit of equity, justice and fairness. The APC constitution also has similar provision in Article 7 emphasized its goal of promoting national unity while Article 20(ii) and (iii) specifically listed geopolitical spread and rotation of offices as much as possible to ensure balance.

It is because of the party's commitment to the rotational/zoning principle inherent in the APC constitution that Bola Ahmed Tinubu from the south emerged as the APC presidential flagbearer and was eventually declared the winner of the 2023 presidential election. This outcome confirms the party's adherence to the zoning and power sharing arrangement (Premuim Times Feb, 23, 2022; Vanguard, Feb 26, 2018). In essence, the principles and strategies of ethno regional power sharing, outside of the formal constitutional framework, have developed in Nigeria (Suberu & Diamond, 2002). The demise of President Umaru Yar'Adua, tested the PDP will to adhere to the zoning principle but it failed by allowing the then vice president Goodluck Jonathan to contest for 2011 presidential election which he won. Ideally, under the zoning principle the Northern region should have been allowed to present another candidate of Northern extraction to contest for the presidency. On the contrary, the top party hierarchy led by Bamanga Tukur held that zoning was not relevant, hence, it should be jettisoned to enable President Goodluck Jonathan to contest the 2011 election even though he was from the South. The changing of the zoning arrangement and election President Goodluck Jonathan was an outright violation of the zoning that is inherent in the PDP constitution and the party had hitherto zoned the position to the North.

From the beginning in 1999 zoning was strictly adhered to as all three parties (PDP, AD and APP) zoned their presidential nomination to the south and their party chairmanship positions to the north. In the event, the two candidates for president in the February 1999 election were both Yorubas from the southwest, Obasanjo of the PDP and Olu Falae of the APP/AD Alliance, who paired with vice- presidential candidates Abubakar Atiku (northeast) and Umaru Shinkafi (northwest), respectively (Suberu and Diamond, 2002). In 2023, the PDP again failed the crucial test to adhere to the zoning principle. This time the presidency was to go to the South based on party arrangement but Atiku who is from the north-east in alliance with the PDP national chairman Iyorchia Ayu and former Governor Tanbuwal worked to

overturned the nomination for the presidential election in favour of Atiku Abubakar who is from the Hausa/Fulani ethnic majority against Nyesom Wike from a minority ethnic group South-South, Nigeria who was the leading contender against Atiku Abubakar in the PDP.

This unfairness instigated the G5 governors' agitation led by governor Nyesom, Wike of River State to withdraw their support for the PDP's 2023 presidential flag bearer. Unlike the PDP, the APC, irrespective of opposition from some quarters in the party, the party reserved its presidential candidate party nomination to the south and refused to throw its open. With this development the G5 group argued that since Atiku had become the party presidential candidate it is only but reasonable in the spirit of fairness and zoning upheld by the party that the PDP reassign the party's chairmanship position to the south as Iyorchia Ayu is from the north (the same zone with Atiku) to reflect the spirit of zoning. The refusal of the party's Chairman, Iyorchia Ayu and the Atiku group to accede to the G5 groups demand for justice and fair play created deep irreconcilable division within the party. The failure of the PDP to win the 2023 presidential election is a direct consequence of the party's refusal to adhere to the zoning principle.

The practice of allotting the six topmost political position by the major political parties across the six geo-political zones, namely, northwest, northeast, north-central, southwest, southeast and south-south in line with the zone principle in Nigeria has been on since 1999. This is to ensure that no region is left out at the highest level of government decision making. The pattern of distribution of those offices is hierarchical beginning first with the president and then flows downward as reflected on table-1 below:

Table 2: Distribution of Political Post by the PDP: 1999 – 2015 & APC: 2015 – 2024) by Geopolitical Zones in Nigeria

S/N	Position	1999-2007: PDP	2007-2010: PDP	2010-2011: PDP	2011-2015: PDP	2015-2019: APC	2019-2023: APC	2023-APC
1	President	SW	NW	SS	SS	NW	NW	SW
2	V. Pre.	NE	SS	NW	NW	SW	SW	NE
3	Sen. Pre.	SE	NC	NC	NC	NE	NE	SS
4	SHoR	NW	SW	SW	NW	NE	SW	NW
5	SoGF	SS	NE	NE	SE	NE	NE	NC
6	HoS	NC	SE	SE	NW	NE	NC	NC

Source: Awopeju, Adelusi & Oluwashakin, 2012; Eziebe (2016) and updated by the authors

We must also accept that other factors listed below that are mostly human induced have combine with the constitution's defect to weaken the effective operation of the FCP law. Those factors are: (a) political interference and manipulation by the ruling class; b) government choices based on primordial criteria such as ethnicity and nepotism rather than rationality; (c) lack of institutional autonomy and statism (Shodunke & Subair, 2020) rather than placing the blame solely on the constitution. Obliviously, the 1999 Constitution continue to generate controversy. Much of this controversy is made visible by bad implementation (George, Yusuff & Cornelius, 2017). This is due partly to the absence or failure of effective monitoring mechanisms, government officials deliberate abuse of the FCP law and that such flagrant infraction of the FCP law have not been subject to judicial action to ensure its faithful application (Jinadu, 2002).

Concluding Remark

All organized states depend on the constitution to regulate and resolve issues arising from social, economic and political relations between groups. The constitution does not only prescribe the duties and responsibilities of each unit of government but places a limit on government while is also protecting the citizens from arbitrary decisions of powerful groups. The constitution professes fair representation of diverse ethnic group interests in government by ensuring that all actions of the government irrespective of who governs the state is situated within the general principles that uphold equal treatment of all people and that the actions of government irrespective of circumstances will not be arbitrary neither will it be based on personal connections or pay-offs (Shively, 2008).

Efforts to create an environment where equality and inclusion resides has remained problematic. The introduction of the FCP was presumed to be a cathedral of hope but it has been ineffective given that the Nigerian legal framework and institutional environment for addressing equality, diversity and inclusion is weak (Adeleye, 2019). The presence of conflicting constitutional provision and the inability to correct those defects; weakened institutions unable to function autonomously; the lack of credible, disciplined, accountable and responsive political leadership at all levels of governments coupled with biased institutional heads whose only focus is to promote self and group interest have combined to rob Nigerians of the benefits of FCP law. The continuation of ethnic regime has continued to disrupt the smooth operation of the federal state given the inability to construct an inclusive bureaucracy in Nigeria. This may not be unconnected with the contradictions arising from the operation of the 1999 centrist constitution (Suberu & Diamond, 2002) that it is very weak and short to strengthen or serve as a viable mechanism for effectively mobilizing Nigerians for the construction of a tolerant inclusive society (Ihonvbere, 2004).

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