

Institutionalising ethnic representation: How effective is the Federal Character Commission in Nigeria?

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Abstract

Nigeria, South Africa and Namibia, all divided societies, have affirmative action programmes aimed at bridging the profound inequalities between different segments of their population. Many other African countries have milder versions, such as parliamentary quotas for women. This study examines the necessity for affirmative action and the effectiveness of the Federal Character Commission (FCC), set up in Nigeria to oversee the process. It examines the historical connections between ethnic inequalities, governance and conflict in Nigeria and the various efforts at reforming the entrenched ethnic imbalances in the Nigerian public sector. It advances both philosophical and instrumentalist arguments in defence of affirmative action and, against this background, examines the effectiveness of the commission. A core argument is that the commission should be evaluated on both its intended and unintended effects on Nigerian public life. If this wider standard is used, then the commission has contributed positively to the management of ethnic inequalities in the Nigerian public sector. Some of the challenges facing the commission are also highlighted.

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1. Why do societies like Nigeria need affirmative action and build institutions to carry it out?

Nigeria, South Africa and Namibia, all divided societies, have affirmative action programmes aimed at overcoming the profound inequalities between different segments of their populations. Many other African countries have milder versions, such as parliamentary quotas for women. This study examines the necessity for affirmative action in Nigeria and the effectiveness of the Federal Character Commission (FCC), set up there to oversee the process.¹

1.1 Ethnic inequalities, governance and conflict

Nigeria's population is estimated at 140 million.² The country has between 250 and 400 ethnic groups depending on the criteria used. A total of 374 ethnic groups were identified by the eminent sociologist Otite (1990). These ethnic groups are broadly divided into ethnic 'majorities' and ethnic 'minorities'. The numerically – and politically – majority ethnic groups are the composite Hausa-Fulani of the north, the Yoruba of the southwest, and the Igbo of the southeast. The three majority ethnic groups constituted 57.8% of the national population in the 1963 census.³ That census has the Hausa (without the Fulani) at 11,653,000 (20.9%), the Yoruba at 11,321,000 (20.3%), and the Igbo at 9,246,000 (16.6%) (Jibril 1991). Eleven of the largest ethnic minorities put together constituted 27.9% of the population in the 1963 census (Afolayan 1983). The numerical and hegemonic strength of these three ethnic groups within the Nigerian federation has meant that Nigeria has a tripodal ethnic structure, with each of the three majority ethnic groups constituting a pole in the competition for political and economic resources. The ethnic minorities are forced to form a bewildering array of alliances around each of the three dominant ethnicities. Tripodal ethnic structures are inherently unstable, especially compared to countries like Tanzania which has a fragmented ethnic structure. In Tanzania, no ethnic group constitutes more than 12% of the population (cf. Nyang'oro 2006), so alliance building is the norm in politics. By contrast, ethnic politics in tripodal Nigeria is often conflictual as each of the three hegemonic groups tries to build up sufficient alliances to ensure its preponderance in government, or to prevent its being marginalised by competing alliance.

The interplay between this tripodal ethnic structure on the one hand, and administrative divisions and communal identities on the other, has led to eight major cleavages in Nigerian political life (Mustapha 1986), the most important of which are: the cleavages between the three majority groups; between the three majority ethnic groups on the one hand and the 350-odd minority ethnic groups on the other; between the north and south⁴; between the 36 states of the federation and the six zones – three in the north and three in the south – into which they are grouped; and finally, between different religious affiliations. Some of these cleavages overlap: for example, the southeast zone overlaps with Igbo ethnicity and Christian religious affiliation, while the northcentral overlaps with northern ethnic minorities.

¹ A different pattern of institutionalisation took place in South Africa where parliament passed the Codes of Good Practice on Broad-Based Black Economic Empowerment (BEE) and then left it to private verification agencies, supervised by the Department of Trade and Industry, to certify the compliance of particular companies to the BEE Code.

² Provisional figures for the 2005 census.

³ Ethnicity and religion were omitted in the 2005 census.

⁴ In the 1953 census, the North constituted 54% of the population and the South 46%. In the 2005 census, the corresponding figures are 52.58% and 46.4% respectively.

The ethnic, regional, and religious cleavages in Nigerian society are made more problematic by systematic and overlapping patterns of inequalities that correspond to the cleavages. These inequalities are caused by a complex range of factors, including history, geography, cultural orientation, religious affiliation, natural resource endowments, current government policies, and past colonial policies.

Starting from the colonial period, there has been a structurally embedded pattern of *educational inequalities* which persist to this day. The situation in 2000 is reflected in Table 1.

Table 1: Post-Primary primary institutions and admissions to Nigerian universities by zone of origin, 2000/2001

Zone	% of National Population (2005 Census)	Number of all post-primary institutions in 1989 & (%) of total.	Number admitted to universities	Percentage of total university admissions
Northwest,	25.56	567 (9.7%)	2341	4.7
Northeast	13.55	343 (5.9%)	1979	3.9
Northcentral	13.47	1022 (17.5%)	5597	11.1
Southwest	19.7	1575 (27.0%)	8763	17.4
Southeast	11.7	1208 (20.7%)	19820	39.4
Southsouth	15.0	1114 (19.1%)	11734	23.3

Source: adapted from www.jambng.com; Federal Republic of Nigeria (FRN), 2001; *Tell*, November 14th 1994, p. 15.

These long-standing patterns of educational inequalities have been reproduced in the inequalities in manpower and human capital development across the country. It was reported in 2003 that the northern zones with 53% of the population had only 10% of engineers, 15% of professors, 10% of architects, 25% of lawyers, 8% of bank executives, and less than 2% of insurance practitioners (Adamu 2003).

Economic inequalities are another feature of Nigerian national life. For example, in 1986-90, 70% of the registered companies in Nigeria were located in the southwest, with 16% in the three northern zones and 14% in the two other southern zones (Hamalai 1994). By 2001, 46% of the industries located in the northern zones had closed down as a result of infrastructural and macro-economic difficulties; de-industrialisation, associated with economic liberalisation, has disproportionately affected the north (Adamu 2003). Another index of economic inequality is the preponderance of Lagos in banking operations. Lagos accounted for 48% of all deposits and 69.96% of all loans in 2006, while the three northern zones combined accounted for only 10.75% of deposits and 8.5% of loans (Soludo 2007).

Economic inequalities may be due to differences in drive, motivation, cultural disposition and geographical opportunities. But they may also be due to intended and unintended effects of public policy. While the effects of macro-economic liberalisation may have unintended polarisation effects, discriminatory practices by the state or its officials, which give some groups unfair access to economic resources, could also fuel inequalities. There are many examples of complaints of economic bias in Nigeria. For example, many Igbo elites complained that the indigenisation of the 1970s, shortly after the Civil War, was hurriedly carried out so that the Igbo, destabilised in the aftermath of the war, would not be able to take full part in the exercise. Similarly, Niger Delta activists like Ken Saro-Wiwa complained bitterly about well-connected northerners lifting oil under the dictatorships of Babangida and Abacha, when they did not have similar access to the oil wealth from their area. More recently in 2006, Northern Elders raised an alarm claiming 'a systematic edging out of the region and its peoples from the command sectors of the economy like oil/gas, telecommunications, banking and energy.'⁵ As theorists like Horowitz have suggested, when

⁵ 'North Being Edged Out from Oil, Other Sectors – Northern Elders', www.Thisdayonline.com, 15/07/2006.

state policies threaten the individual economic interests of elites whilst at the same time creating group apprehension, the consequence is likely to be inter-group conflict and even separatism.

Table 2: Social indicators, zonal percentages, 1995/6

Zone	% of Household using stream or pond for water	% of HHold without electricity	% of children 6-11 yrs in school	% of children 12 + in school	% of Literate adults, 15+	% of women using family planning	% of pregnant women using clinics	% of new born children NOT immunised
N/west	13.6	79.8	34.2	35.2	20.7	2.6	25.3	65.9
N/east	26.4	78.3	42.3	47.6	25	1.4	39.4	60.7
N/cent.	44.4	61.2	69.8	73.7	44.7	4.5	66.8	54
S/west	22.6	30.4	94.6	88.9	68.9	12.1	74.7	29.1
S/east	61.4	47.7	88.3	89.6	75.8	14.9	84.8	29
S/south	50.4	55.7	90.9	87.6	77.2	9.1	60.7	56.9

Source: adapted from FOS, 1995/6.

Structurally embedded *social inequalities* correspond to the educational and economic inequalities. Within the context of widespread national poverty, it can be rightly argued that extreme poverty and ill-being are a distinctly northern phenomenon as shown in Tables 2, 3, and 4. As these tables show, Nigerians born into different ethno-regional groups can expect very different qualities of life, materially undermining the basis for a common citizenship.

Table 3: Maternal mortality rates (per 100,000 live births) by zones/countries (2006?)

Southwest	165
Southeast	286
Northwest	1025
Northeast	1549
All Nigeria	800
South Africa	340
Zimbabwe	610

Source: Galadanchi (2007).

For example, in the Northwest of Nigeria only 25% of pregnant women use clinics compared with 85% in the Southeast, and the maternal mortality rate in the Northeast is 939% higher than the level in the Southwest.

Table 4: States with highest and lowest shares of poverty (2006)

10 States with Highest Incidence of Poverty		10 States with Lowest Incidence of Poverty	
State	%	State	%
Jigawa	95	Bayelsa	20.0
Kebbi	89.7	Anambra	20.1
Kogi	88.6	Abia	22.3
Bauchi	86.3	Oyo	24.1
Kwara	85.2	Imo	27.4
Yobe	83.3	Rivers	29.1
Zamfara	80.9	Enugu	31.1
Gombe	77.0	Ogun	31.7
Sokoto	76.8	Osun	32.4
Adamawa	71.1	Edo	33.1

Source: adapted from Soludo (2007).

While all the 10 states with extremely high levels of poverty are from the three northern zones (NW, four; NE, four; NC, two), all the states with relatively low levels of poverty are from the three southern zones (SW, three; SE, four; SS, three). Most Nigerians may be poor, but some are poorer than others, leading to a strong and damaging sense of relative deprivation.

As might be expected, the combination of: (a) a tripodal ethnic structure; (b) deep cleavages; and (c) systematic educational, economic, and social inequalities have led to a conflict-

ridden political system with *political and bureaucratic inequalities*. Nigeria never developed a common nationalist movement or a single nationalist icon like Nkrumah in Ghana or Mandela in South Africa. Instead, Nigerian nationalists kept one eye on the British colonialists and the other on their ethnic and regional competitors from other parts of the divided country. According to Kirk-Greene (1975: 19):

Fear has been constant in every tension and confrontation in political Nigeria. Not the physical fear of violence, not the spiritual fear of retribution, but the psychological fear of discrimination, of domination. It is the fear of not getting one's fair share, one's dessert.

This constant fear of being short-changed by competing alliances has led to what some have referred to as 'aggressive ethnicity' (O'Connell 1967). From the terminal colonial period when it was clear that the British were leaving, competition for succession heated up between the different ethno-regional groups in the country. Shut out of the upper segments of the bureaucracy by colonial racism, the prospects of independence invoked a strong desire within the Nigerian elite for inclusion in the bureaucracy:

Observers had indeed noted the preoccupation of colonials with bureaucratic office, and had characterised it as being even more central to their concern than party and political reform. Throughout the British Empire the natives were restlessly pursuing their claim to self-administration or at least to participation in the administration of their country.

(Krislor 1974: 16-17)

The period from 1945 therefore witnessed a scramble for bureaucratic appointments along with many confrontations over the ethno-regional composition of various government agencies. The North was deeply suspicious of southern domination, even of the Northern Regional bureaucracy, and developed a strategy of political containment. To protect themselves in the North, Northern politicians promoted the 'Northernisation' policy in the 1950s, when official colonial policy was 'Nigerianisation' (Kwanashie 2002). At the Federal level, northern politicians sought to inject northern civil servants into the federal bureaucracy, usually at the higher levels. At the same time, there was intense conflict and competition between Igbo and Yoruba elites for access to various federal institutions. While Azikiwe asserted that 'the God of Africa has especially created the Ibo [Igbo] Nation to lead the children of Africa from the bondage of the ages...' ⁶, a Yoruba politician accused the Igbo of 'striving might and main to penetrate the Western [Yoruba] economy thereby exploiting our wealth and riches for the benefit of themselves.' ⁷ In federal institutions and agencies, accusations and counter-accusations of nepotism and 'tribalism' between the two groups were rampant. For example, it was suggested that 'out of a grand total of 431 names on the current staff list of our Railway Corporation, 270 are Ibos [Igbos] and 161 belong to other tribes.' ⁸ The Chairman was Igbo. Nigeria's post-colonial experience is clear proof that 'social cleavage has bureaucratic consequences.' (Krislor 1974: 73).

Bureaucratic inequalities by the mid 1990s are illustrated by Table 5. Northern zones are best represented in the directorate or senior cadre, precisely because official policy has encouraged northern inclusion through the Federal Character principle.

⁶ Cited in Ayandele (1974: 121).

⁷ Statement by Chief Taku Onibaje, cited in Post and Vickers (1973).

⁸ Cited in Agbaje (1989: 111-2).

Table 5: Ethno-regional tendencies in the staffing of Federal Bureaucracies

Zone	Percentage in all the Bureaucracy	Zone	Percentage in all the Bureaucracy
NW(25.6% of pop)	10.4	SW(19.7%)	24.9
NE(13.6%)	8.6	SE(11.7%)	16
NC(13.5%)	18.4	SS(15.0%)	20.7
	<i>Percentage in the Directorate</i>		<i>Percentage in the Directorate</i>
NW	16.8	SW	24.4
NE	12.7	SE	13.4
NC	16.4	SS	15.8
	<i>Percentage in the Technocracy</i>		<i>Percentage in the Technocracy</i>
NW	7.9	SW	30.5
NE	5.3	SE	21.5
NC	12.8	SS	21.6
	<i>Percentage in the Police</i>		<i>Percentage in the Police</i>
NW	12	SW	14
NE	12.7	SE	12.4
NC	22	SS	26.1

Sources: adapted from Federal Character Commission, 2000, p.2; Official list of all Directors in the Federal Civil Service as of 1998; Federal Character Commission advertorial in *Weekly Trust*, 1-7 October 1999, p.23; Federal Character Commission, 1999, p.25.

Because of the limited capacity to change the ethno-regional composition of the Federal bureaucracy, northern strategy also included the domination of the *executive* arm from independence in 1960 as a counter-force to perceived southern bureaucratic domination. Northern domination of the executive arm, both in terms of numbers and in terms of the clout and influence of various offices occupied, is shown in Tables 6 and 7.

Table 6: Ethnic composition of various Nigerian cabinets, 1960-2004, in percentages

Regime	Hausa-Fulani	Igbo	Northern Minorities	Yoruba	Southern Minorities
Balewa 1960	60	13	0	20	6.7
Gowon 1967	21	0	21	36	21
Murtala 1975	25	0	35	35	5
Shagari 1983	38	8.8	20.5	14.7	17.6
Buhari 1984	35	10	25	20	10
Obasanjo 2004	30	15	18	18	18

Sources: Osaghae, 1989, 158; Nigerian Army Education Corp & School, 1994, 330-349; list of Obasanjo's ministers in 2004.

Table 7: Ethnic distribution of very important and less important portfolios, 1960 – 2004

	Hausa-Fulani	Northern Minorities	Igbo	Yoruba	Southern Minorities	Total Numbers
Very Important Portfolio	49 (33%)	37 (25%)	17 (11.6%)	24 (16%)	20 (13.6%)	147
Less Important Portfolios	6 (13%)	5 (11%)	10 (22%)	13 (28.9%)	11 (24%)	45

* Very Important Portfolios are: Finance, Agric, Internal Affairs, External Affairs, Educ, Fed Capital Territory, Defence, Works, Transport, Communications, Petroleum, & Mines and Power. Less Important Portfolios are Labour & Productivity, Information, Science & Tech, Sports & Social Development, Women's Affairs, and Culture & Tourism. Due to incomplete data, the second Abacha cabinet, the Abdusalami cabinet and the first (1999) Obasanjo cabinet have not been included. Their inclusion is unlikely to change the picture fundamentally.

However, the *legislative* arm has tended to be more balanced in composition in most years, possibly because of the more direct nature of representation implicit in the electoral process and constituency delineation. The *judicial* arm was, up to the mid 1980s, largely dominated by foreigners and southerners. High levels of ethno-regional confrontation and conflict over this skewed distribution of bureaucratic and political offices up to 1966 contributed in no small measure to the eventual collapse of the First Republic in 1966 and the Civil War in 1967.

1.2 The need for reforms

From the first coup in January 1966, reform became an imperative within the Nigerian political system. The Federal Character Commission (FCC) is the final outcome of one strand of these reforms; the introduction of a quota system and the subsequent constitutional entrenchment of affirmative action.

We often think of representation when we are considering institutions responsible for policy judgements like legislatures and juries, and not when we are thinking of institutions responsible for policy implementation and action, such as executives, judges and administrators (Krislor 1974). When we think of the latter category of functionaries, we invariably think in terms of merit or their specialist skills and capacities. Yet Nigeria's post-colonial experience confirms the truism that 'parts of government other than elected representatives serve representative functions' (Pennock 1968: 4). It is the recognition of this dimension of bureaucracies, particularly bureaucracies of colonial origin, that invariably led to affirmative action.

A major task of governance is to gain social acceptance of policies with minimum resistance from the governed:

No matter how brilliantly conceived, no matter how artfully contrived, government action usually also requires societal support. And one of the oldest methods of securing such support is to draw a wide segment of society into the government to convey and to merchandise a policy.

(Krislor 1974: 4-5)

This need for the 'administrative penetration' of society is even more acute in countries like Nigeria where bureaucrats exercise enormous discretionary powers through which they take small and not-so-small decisions concerning the citizens. In such situations, 'an administrative directive can be as far-reaching [in its effects] as a statute' (Krislor 1974: 7). For such a bureaucracy to have the trust and support of the population, it must address demands for accountability, responsibility, inclusivity, and representativeness. Complex modern bureaucracies therefore need the legitimation of representativeness.

In Nigeria and elsewhere, the need for bureaucratic representativeness is particularly acute in bureaucracies created by colonialists where some groups, often socially marginal groups for example the Copts, Chinese, Parsees and Sinhalese in former British colonies, were disproportionately recruited to the exclusion of majority groups. In Nigeria, as we have seen, it was the disproportionate recruitment of southerners. Within these colonial contexts, independence is often marked by heightened calls for bureaucratic representation by various groups as 'the practice of most imperial powers made representation a most salient issue' (Krislor 1974: 18). For these reasons, we begin to hear demands, not for 'equal opportunity', but for 'compensatory opportunity'; the concerns of representative bureaucracy therefore 'seem universal – perhaps, in reality, timeless' (Krislor 1974: 19).

Critics of compensatory opportunity argue that state institutions should be 'colour-blind' or blind to ascriptive group affiliation. Ascribing rights – for example through affirmative action – to such groups is seen as morally arbitrary and inherently discriminatory. But 'it is now widely recognised that difference-blind rules and institutions can cause disadvantages for particular groups' (Kymlicka and Norman 2000: 3-4). Many culturally diverse societies have therefore moved towards affirmative action, that is, 'planning and acting to end the absence of certain kinds of people – those who belong to groups that have been subordinated or left out – from certain jobs and schools' (Bergmann 1996: 7). Such affirmative action is often defended on three grounds:

- to offset past discrimination;

- to counteract present unfairness; and
- to achieve future equality.

The first is often referred to as 'compensation,' the second 'a level playing field,' and the third 'diversity' (Cahn 2002: xiii).

In Nigeria, all three motives for affirmative action were implied in the drive for reforms. Alleged victims of nepotism and 'tribalism' wanted action to correct past discrimination; champions of ethno-regional interests wanted to counteract present unfairness; while ardent nationalists wanted the stability and effectiveness that would result from the promotion of diversity. There are two distinct waves of reforms, culminating in the creation of the FCC.⁹

The first wave of reforms started in 1967 and included dismantling the old regional institutional framework and replacing the regions with smaller states, making ethnic mobilisation more difficult. The objectives were to: (a) deny regional elites the institutional framework for ethno-regional politics; (b) create administrative cleavages within ethnic majorities; (c) give administrative autonomy to ethnic minorities; and (d) tilt the balance of power away from the regions in the direction of the centre.

Another set of reforms in this period sought the deliberate creation of a *national* – as opposed to the erstwhile *regional* - political dynamic, again tilting the centre of gravity away from the regions. This was achieved through the deliberate dismantling of relics of Native Authority power in the north and the concerted effort to defeat Biafran secessionism. Finally, there was the introduction of informal quotas as the basis for representation within the federal cabinet and in the admission process in federal educational institutions.

The second wave of reforms started in 1979 with the introduction of a majoritarian presidency that must: (a) get a national majority of votes cast; and (b) cross a threshold of not less than 25% of votes cast in at least two-thirds of all the states. This phase also witnessed the introduction of pan-ethnic rules for the formation of political parties, and the entrenchment of consociational power-sharing rules (Federal Character). These were all institutional designs aimed at forcing politicians out of their ethno-regional cocoons towards the promotion of diversity. It is this reform process that led ultimately to the creation of the FCC. Has the FCC lived up to the promise of fighting discrimination, and promoting fairness and diversity?

2. Federal Character Commission as an institution: Legal powers, structures and method of operation

2.1 Powers and rules

Emphasis on representation and power-sharing was given constitutional backing in 1979 under the Federal Character principle. The drafters of the constitution were of the opinion that the fear of domination or exclusion were salient aspects of Nigerian politics, and that it was essential to have specific provisions to ensure that there was no predominance of persons from a few states or from a few ethnic or other sectional groups in the composition of the government and its agencies.¹⁰ Accordingly, Section 14, Sub-section 3, of the 1979 Constitution stated:

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 manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to

⁹ Nigeria is often not given the credit it deserves in the struggle with managing these reforms and the consequent elaboration of federalism, consociationalism and statecraft.

¹⁰ Report of the CDC Vol. I, 1977, p. ix.

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.¹¹

This section of the Constitution was non-justiciable. However, other justiciable sections which reiterated the Federal Character principles were: (a) Section 135, which stipulated that the president must appoint at least one minister from among the indigenes of each state; (b) Section 157, which compelled the president to take due regard of the Federal Character of Nigeria in appointing persons to such offices as the secretary to the federal government, ambassadors, permanent secretaries of federal ministries, and the personal staff of the president; (c) Section 197 (2), which stipulated that the officer corps and the other ranks of the armed forces must reflect the Federal Character of Nigeria; and (d) Section 199, which called for the establishment of a body to ensure that the composition of the armed forces complies with the Federal Character principle.

In section 150 of the 1989 Constitution, many new institutions, such as the governing bodies of state-owned companies and the governing councils of the universities, were brought under the purview of the Federal Character principle. The National Constitutional Conference convened by Abacha in June 1994 went furthest in promoting consociational power-sharing in Nigeria¹² and also came to the conclusion that a Federal Character Commission was to be established, to 'monitor and enforce Federal Character application and proportional representation'.

By the time the FCC was established by Decree No. 34 of 1996, its powers, including the powers (Section 4, Subsection 1c) to prosecute heads of ministries and parastatals for failing to carry out its instructions, were enormous. And the scope of its operations had been extended beyond governmental bureaucracies, to address the inequalities in social services and infrastructural development, along with the inequalities in the private sector (Section 4, Sub-sections 1di and 1dii). It also had powers: (a) to work out a formula for the redistribution of jobs; and (b) to establish, by administrative fiat, the principle of proportionality within the Federal Civil Service (FCS) (Federal Character Commission 1996). Though it argued that the Commission 'must not be used as a lever to elevate the incompetent' or associated 'with the lowering of standards' (Federal Character Commission 1996: 30-1), it nevertheless established that within the FCS:

The indigenes of any State shall not constitute less than 2.5% or more than 3% of the total positions available including junior staff at Head office.

(Federal Character Commission 1996: 33)

Where there were only two posts, one must go to the north and the second to the south; where there were six posts one must go to each of the six geo-political zones of the country. In short, the FCC leaned heavily towards one model – the quota model – out of four potential models of affirmative action:

(1) showing preference among equally qualified candidates (the 'tiebreaking' model), or (2) preferring a strong candidate to an even stronger one (the 'plus factor' model), or (3) preferring a merely qualified candidate to a strongly qualified candidate (the 'trumping' model), or (4) cancelling a search unless a qualified candidate of the preferred sort is available (the 'quota' model).

(Cahn 2002: xiii)

¹¹ Section 14 (3), 1979 Constitution.

¹² Cf. Ekwueme, Alex, 2005, 'What Nigeria Lost By Abacha's Untimely Death', Sunday Guardian, www.ngrguardiannews.com, May 29th.

In the Nigerian case, where a state cannot find a candidate to fill its slot, that fact is officially noted and a candidate from another state in the same zone must be sought. Indigenes of a zone should constitute a minimum of 15% and a maximum of 18% of the senior-level positions in each establishment. At the level of state bureaucracies, senatorial districts, local government areas and wards are the functional units used to distribute posts. In theory, under no circumstance is an unqualified candidate to be short-listed: 'no institution wants to employ someone who *lacks merit*' (Bowen and Bok 2002: 176).

While arithmetic quotas were easily understood and implemented, they nevertheless shifted emphasis to the group and geographical zone represented, and away from the relative qualifications of the candidates under consideration. The individual establishments handle all technical questions about the competence and the short-listing of candidates. However the FCC expects the establishments to take Federal Character into account even at this early stage of the recruitment process, sorting the applicants by state of origin.¹³ What is often lacking in practice, however, is any effort to establish the most qualified candidate *within* each state, and to systematically relate the qualifications of applicants *across* states so as to monitor and manage the tensions between equity and merit. The FCC formula does not, therefore, ensure that the best candidate from a state is chosen. Concern for the relative qualifications of the candidates would have moved away from the pure 'quota model', more towards the 'trumping model'. However, in the course of this research, I came across only one instance in which an effort was made to balance the pulls between equity and merit.¹⁴

It is also important to note that the geo-political quota based on states and zones is explicitly silent about ethnicity and religion, two critical cleavages in Nigeria. It is therefore technically within FCC rules for a Yoruba from the southwest to be a director in an establishment, with another Yoruba from the northcentral as another director in the same establishment. Meanwhile, many minority ethnic groups remain unrepresented. Similarly, it is possible to have Hausa-Fulani directors from the three northern zones. This means that the silence on ethnicity works out in favour of the majority ethnic groups spread across states and zones, and against the ethnic minorities, most of whom are contained in particular states or zones. And whilst the FCC may not be counting the religious affiliation of candidates for office that does not mean that other Nigerians are not counting, as a pamphlet released at a meeting of the Nigerian Supreme Council for Islamic Affairs in March 2005 made clear:

When Obasanjo constituted the cabinet for his second term in office, he appointed 42 ministers, comprising 16 Moslems (38.1 per cent) and 26 Christians (61.9 per cent). In the whole of Kwara, Kogi, South-West, South-East and South-South, there is not a single Moslem (minister).¹⁵

The simple arithmetic quota is therefore deficient in not taking into consideration important variables like ethnicity, religion and relative merit. It also fails to take into account issues such as the relative population size of states, the number of ethnic groups in a state, the ethnic structure of the state, or the level of educational attainment by various groups within the state. It seeks to advance equity but not

¹³ Modes of recruitment are central to achieving a representative bureaucracy. Cf. Krislor (1974: 128).

¹⁴ Early in 2005, the Nigerian National Petroleum Company (NNPC) recruited over 30 professionals, chosen from just seven states. Complaints from the excluded states led to FCC intervention. It turned out that the other states did not have manpower with the requisite training and skills. In one instance where someone with such skills existed, he was approached to apply for the job but declined. The NNPC was let off the hook, partly because of the recognition of the technical nature of its operations.

¹⁵ 'Jokolo accuses Presidency of role in deposition', www.ngrguardiannews.com, Monday June 6th, 2005.

proportionality. Moving beyond the comfort zone of the arithmetic quota is a major challenge facing the FCC and the National Assembly in the implementation of affirmative action in Nigeria.

The powers of the Commission can be summarised as: (a) working out a formula for sharing posts and services; (b) monitoring compliance; (c) enforcement of compliance through the courts; (d) demanding and receiving data on staffing; and (e) instituting investigations. It is an offence in law to forward false information to the FCC or withhold information from it, or supply it with incomplete information. Along with these procedural offences is the substantive offence of failure to apply the Federal Character principle. More recently, the FCC has been campaigning for new powers so that it can cancel any faulty recruitment exercise and order a fresh one. In case of repeated failure, the FCC is seeking powers to carry out the recruitment itself and surcharge the establishment for the exercise. Currently, the FCC cannot initiate legal action without the authorisation of the attorney-general. It is seeking new powers to allow it to initiate legal action without recourse to the attorney-general's office.

2.2 Structures and operations.

The FCC is supposed to be an independent commission recognised by the constitution. In reality, it functions as a presidential commission under the presidency. The president appoints members of the Commission, subject to the ratification of the Senate. The president also appoints the executive chairman and the secretary; where the chairman comes from the north, the secretary must come from the south, and vice versa. The legislature has oversight functions with regard to the FCC, with both the Senate and the House of Representatives having committees on Federal Character. Sometimes, these committees receive complaints, hold public sittings and investigate cases, virtually duplicating some of the functions of the FCC. In 2002/3, the FCC had about 303 staff in the Abuja headquarters and another 230 staff in the state offices.

With 37 full-time commissioners who spend three weeks of each month in Abuja and the last week in the states they represent, the FCC faces huge operational bills. Funding is a major constraint, particularly, for the monitoring and investigation of parastatals outside Abuja. There have been calls to reform the FCC by appointing one commissioner for each of the six zones, and one for the Federal Capital Territory, Abuja, thereby reducing the commissioners from 37 to seven. The law setting up the FCC is silent on the functions of the commissioners. The states have state coordinators, monitoring officers and statisticians. These state officers send annual reports on the composition of their state bureaucracies to Abuja.

2.2.1 Composition of the Secretariat

The composition of the Secretariat also reflects the Federal Character principle; the choice of directors and deputy-directors of the six departments within the FCC (Legal and Enforcement, Finance and Accounts, Planning, Research and Statistics, Administration and Supplies, States Operations, Personnel and Training) must conform to FCC rules. Secondly, the share of each state in the total staff of the FCC must conform to the approved formula.¹⁶

The commissioners are divided into 12 functional committees monitoring different parts of the federal bureaucracy, as shown in Table 8. Though the line ministries are staffed through the Federal Civil Service Commission, many of the parastatals have their own boards, with powers of appointment. It is now at the level of these parastatals – not the main civil service

¹⁶ This is no mean task as the equivalent body in the USA, the Equal Opportunities Commission, did not have a balanced representation even within its own internal bureaucracy for many years, a situation described as 'hardly an inspiring example.', Krislor (1974: 123).

per se – where most of the breaches of Federal Character take place. The committees have three basic operational functions: (a) monitoring the sections of the bureaucracy under their surveillance; (b) taking steps to avoid breaches of FCC rules through dialogue with chief executives of federal establishments of public bureaucracies at all levels; (c) investigating alleged breaches; (d) and recommending remedial/punitive actions to the Commission in case of proven breaches. A legal officer is attached to each of the 12 committees. These legal officers are proactive in guiding the committees in their monitoring functions, and in reigning in and educating any errant chief executive of a parastatal

Table 8: 12 Functional committees of the FCC

Committee	Number of Parastatals
Agriculture, Water Resources, & Environment	53
Communications & Broadcasting	34
Defence & Police Affairs	12
Economic (Industries, Finance, & Commerce)	55
Education	38
Employment, Labour & Productivity	21
Judiciary	22
Health	69
Power & Energy	42
Science & Tech, Women's Affairs, Youth & Sports	53
Tertiary Education	47
Transport	24

Source: Federal Character Commission.

2.2.2 Monitoring

FCC rules stipulate that job advertisements must be inserted in two major national dailies, one widely read in the south, and the other in the north. Applicants must also be given at least six weeks to reply, so that applicants in remote corners of the country are not disadvantaged. Monitoring involves the constant surveillance of newspapers to keep an eye on all recruiting activities. The FCC also monitors political appointments. Lists of political appointees are often sent to the FCC for analysis. Under the chairmanship of Adamu Fika, the FCC alerted the president to some unfair political appointments. In 2002, for example, the FCC monitored the recruitment exercises in the organisations shown in Table 9:

Table 9: Recruitment exercises with FCC involvement in 2002

Organisation	Source of Information	Vacancies Filled	Method of Assessment	Outcome of the Exercise
Nigeria Meteorological Agency, Abuja	Invitation	Several	Written and Oral Interviews	FCC Guidelines adhered to
National Productivity Centre, Abuja	Invitation	Several	Written and Oral Interviews	Ditto
Federal College of Agriculture, Ishiagu, Ebonyi State	Invitation	Several	Oral Interview	Ditto
Federal Medical Centre, Umuahia, Abia State	Invitation	Several	Oral and Written Interviews	Ditto
Federal Medical Centre, Owerri, Imo state	Invitation	Asst. Director, Admin.	Written and Oral Interview	Ditto
National Institute for Policy and Strategic Studies, Kuru – Jos	Invitation	Top Management Positions	Oral Interview	Ditto
Nigerian Nuclear Regulatory Authority, Abuja	Invitation	Several	Oral Interview	Ditto
Ajaokuta Steel Company, Ajaokuta	Invitation	Several	Written Interview	Not concluded

Source: Federal Character Commission.

2.2.3 Intervention

Intervention often took place, at the initiative of the FCC, where recruitments were to take place and the FCC suspected that its rules were not being respected. The objective of intervention is often to ward off a potential breach of the rules. Chief executives of institutions are also regularly invited to the FCC to sensitise them to the stipulations of the law and draw their attention to priority states for consideration in future appointments. In some instances, intervention was in the form of investigations, often launched after complaints by aggrieved parties, be they individuals or communities. In 2002, the FCC carried out the investigations listed in Table 10.

Table 10: FCC investigations, 2002

Complaint/ Petitioner	Establishment Complained Against	Nature of Complaint	Findings	Action Taken
Adamu Mohammed	Institute of Chemical and Leather Technology, Zaria	Alleged violation of FCC Guidelines and Formulae	Press release by complainant in breach of Public Service Rules	Institute advised to ensure compliance with Guidelines and Formulae; complainant advised to adhere to PSR in future
Kantiyok John	Director-General National Maritime Authority	Alleged breach of FCC Guidelines and Formulae in assignment of job schedules to certain officials of the Authority	No breach of FCC Guidelines and Formulae	Petition dismissed
Representatives of Ekiti South Senatorial District	The Nigerian Defence Academy (NDA)	Alleged lopsidedness in admission of students from Ekiti State	No violation of FCC Guidelines	Petitioners advised accordingly
Anambra State Office of the Commission	Some employees of Local Offices of certain Federal Establishments in the State	Alleged falsification of states of origin by employees	Allegation is of criminal nature	Advised to notify the employers of the affected staff for appropriate sanctions
Some staff of Nigeria Football Association	Management of Nigeria Football Association	Alleged wrongful dismissal in breach of FCC Guidelines and Formulae	No breach of FCC Guidelines and Formulae	Petitioners advised accordingly
Mr. Osadumme	Wrongful Retirement from service	FRSC	Wrongful retirement not within FCC mandate	Petitioner referred to Public Complaints Commission
Mr. Victor Okuba	Federal Polytechnic, Oko	Alleged breach of FCC Guidelines on staff recruitment	There was internal advert for vacancies; no breach of the Guidelines	The institution was advised to base future recruitment on FCC Guidelines
Staff Union	Nigeria Investment Promotion Commission (NIPC)	Violation of FCC Guidelines in staff recruitment	Investigation in progress	Under investigation

Source: Federal Character Commission.

As Table 10 shows, individual, workers unions, and community groups have sufficient trust in the FCC to bring their sundry complaints for investigation and redress. Complainant Osadumme should rightly have gone to the Public Complaint Commission – an inefficient organisation – but chose instead to go to the FCC. Though it has not been possible to do follow-up interviews with any complainant, the general impression is that the FCC provided a peaceful and accepted channel for addressing grievances which otherwise would have ended on the pages of newspapers in screaming partisan headlines.

2.2.4 Enforcement

This is a very problematic aspect of the FCC's work. Though the FCC has both constitutional and legal backing, and penalties are clearly stated for the breach of its formula, the FCC is very reluctant to go to court. This is partly due to limited legal and financial resources, but is also due to the highly politically charged nature of its work. It must, however, be noted that the FCC has exploited its constitutional standing and limited legal strength to ensure wider compliance even when its political strength is questioned. Emphasis is placed on the prevention of breaches and the admonition of erring officials, with the implied threat of stiffer action if heed is not taken. For example, the Egbema General Assembly, on behalf of the Ijaw of Egbema Kingdom in Warri North Local Government Council, petitioned the FCC through the presidency:

They claimed that though the council was made up of 20 wards with the Itsekiri having 11 wards and the Ijaw nine wards, the entire 413 workers of the council were Itsekiri. According to them, of the 41 public officers (political appointees) available to the council area from the three tiers of government, the Itsekiri occupy 35 and the Ijaw six. They stated that the trend is not only contrary to the mandatory provisions of Section 14(3) and (4) of the 1999 Constitution, but that it was a serious threat to 'peace, order and good governance in the area.'¹⁷

Still in connection with the inequities in Warri North, the Chief Judge of Delta State, Judge Rosaline Bozimo, had stated that the FCC's 'inability to enforce compliance was a grave dereliction of duty'. In response to these pressures, the FCC gave the chairman of Warri North Local Government Council three weeks to redress the imbalance in the distribution of power between the Itsekiri and Ijaw. The FCC warned the local government official that it 'retains its inherent powers and capability to compel compliance with the law'. Ambassador Isaac Sagay, FCC Commissioner representing Delta State, added that 'the era of the commission looking the other way would soon be over'.¹⁸ Had the FCC been deliberately looking the other way previously?

2.2.5 Data collection and analysis:

A major and important function of the FCC is the collection of fairly reliable data on the composition of the core federal bureaucracy. Since the 1950s, partisan political groups are wont to bandy around whatever data suits their political objectives. Passions within the general population were often inflamed by media publication of selective data on the ethnic composition of different branches of the bureaucracy. The partisan data were invariably of dubious validity and reliability. A major function of the FCC, therefore, is the systematic collection of reliable data on the ethnic composition of bureaucracies in a manner which commands the respect and acceptance of all. This is an important achievement, for we can now have an informed discussion of the problem without buying into partisan ethnic or political agendas. The data collected for 2003 is shown in Table 11.

¹⁷ 'Federal character panel seeks balanced Itsekiri, Ijaw representation', www.ngrguardiannews.com, 04/08/05.

¹⁸ The author intends to find out if any action was indeed taken to redress the situation.

Table 11: Data collection by the FCC 2003

Name	Total No. of Staff
The Presidency	2,242
Office of the Head of Service of the Federation	2,389
The Nigeria Police Force	6,474
Federal Ministry of Agriculture	10,222
Federal Ministry of Aviation	688
Federal Ministry of Education	25,480
Federal Ministry of Commerce & Industries	2,194
Federal Ministry of Communication	720
Ministry of Defence (Civilian Staff)	17,247
Federal Ministry of Culture & Tourism	503
Federal Ministry of Employment, Labour & Productivity	1,865
Federal Ministry of Environment	2,702
Federal Capital Territory	9,081
Federal Ministry of Finance	
a. Headquarters	992
b. Customs & Exercise Service	16,388
c. Office of the Accountant-General of the Federation	
d. Federal Inland Revenue Service	3,239
	7,833
Federal Ministry of Foreign Affairs	2,578
Federal Ministry of Health	4,598
Federal Ministry of Information	4,666
Federal Ministry of Internal Affairs	13,194
b. Nigerian Immigration Service	12,503
c. Nigerian Prisons Service	27,880
Federal Ministry of Justice	915
National Planning Commission	924
Federal Ministry of Petroleum Resources	383
Federal Ministry of Police Affairs	1,985
Federal Ministry of Power & Steel	1,032
Federal Ministry of Science & Technology	381
Ministry of Solid Minerals Development	2,332
Federal Ministry of Sports & Social Development	1,845
Federal Ministry of Transport	732
Federal Ministry of Water Resources	1,305
Federal Ministry of Women Affairs & Youth Development	497
Federal Ministry of Works & Housing	20,231
Extra Ministerial Departments	
a. National Assembly Bureaucracy	2,804
b. Office of the Auditor General of the Federation	1,614
c. Federal Civil Service Commission	850
Federal Judiciary	
a. The Supreme Court	878
b. The Court of Appeal	1,273
c. The Federal High Court	1,298
d. High Court of the FCT	1,413
	220,263

Source: Federal Character Commission.

Data on employment from the nominal roll of federal establishments contain information on state of origin and salary levels. The FCC tries to cover all 44 line ministries and about 450 agencies and parastatals. FCC mandate includes all companies where government has dominant shares. Most of these companies have, however, refused to cooperate but the intervention of the Ministry of Justice has been sought. The statistical division of the FCC monitors the composition of the different institutions, categorising the states into: NR (not represented), 0%; GUR (grossly under represented), under 1.5%; UR (under represented), between 1.5% and 2.4%; AR (adequately represented), between 2.5% and 3%; OR (over represented), between 3.1% and 3.9%; and GOR (grossly over represented), above 4%. From 1996, we now have the empirical basis for public policy in this important sphere of national life.

3. An Evaluation of the FCC

3.1 Philosophical opposition

The FCC has been the subject of many attacks in Nigeria. Some assert that 'federal character is tribal character,' (Oyovbaire 1983: 19) while others condemned it as 'geographical apartheid' (Suberu 2001: 111). The major thrust of this criticism is that the Federal Character principle is inherently discriminatory and counter-productive. By implication, the FCC serves no defensible purpose. As I have tried to argue in Section 1 above, in culturally or racially divided societies with entrenched inequalities, difference-blind social policy is itself discriminatory *in practice*. It is not by accident that countries like the USA moved from 'equal opportunity' (treating everyone alike) to 'compensatory opportunity' (helping the neediest).¹⁹ Group-based affirmative action is a legitimate concern of modern governance in highly divided societies, either for reasons of correcting for past discrimination and nepotism, or for advancing the public good through the promotion of diversity. A society that values its peace and relative cohesion cannot condone structurally embedded inequalities. That is why many European countries advance policies for 'social inclusion'. For example, a Conservative Party politician recently advocated the introduction of quotas for ethnic minorities in some state schools in England because the prospect of racially segregated schools was to him 'unacceptable.' The values of social cohesion and integration dictated that society take drastic action to contain a potential threat.²⁰

The fact that it might be an unavoidable necessity is not to suggest that affirmative action is costless for individuals and groups. Without challenging the principle itself, it is right to demand that the costs and benefits be properly managed:

Like painful surgery, affirmative action can be legitimately advocated only as a means of improving a bad situation. ... In surgery, one person suffers the costs and reaps the benefits. However, in affirmative action, the benefits and costs go to different sets of people ... This means that we must pay particular attention to the problem of fairness between individuals.

(Bergmann 1996: 29)

On the other hand, it can also be argued that the whole of society benefits from affirmative action, even if the costs are disproportionately shared. We only need to ask what price society is prepared to pay in conflict, potential violence, instability, and disrupted development, if long-term inequalities are allowed to fester unaddressed.

A second strand of criticism suggests that Federal Character encourages 'mediocrity in positions of power' (Oyovbaire 1983: 19). This concern for merit is often at the core of criticisms of the FCC, with some calling for a constitutional change to repeal the Federal Character principle.²¹ According to an influential Nigerian newspaper, Federal Character through the quota model has led to a situation in which:

Inevitably the public service became a dumping ground for incompetent, ill-motivated servants from different parts of the country. It became [a] bedrock of corruption, nepotism and inefficiency...²²

¹⁹ Christopher Jencks, cited in Krislor (1974: 1).

²⁰ 'LGA chief calls for ethnicity quotas in schools', EducationGuardian.co.uk, October 12, 2006. The politician in question is Lord Bruce-Lockhart, former Tory leader of the Kent County Council.

²¹ Ambassador Segun Apata, 'Federal character and the public service', www.ngrguardiannews.com, Monday, January 2nd, 2006.

²² 'Federal character and the public service', www.ngrguardiannews.com, Monday, January 2nd, 2006.

Since 1999, both the World Bank and the UK's Department for International Development have also investigated the FCC with an eye to closing it down on the grounds that it promotes inefficiency.

It is true that the quality of manpower and service in the public sector *across* Nigeria is regrettably low. But this weakness is not limited to any part of the country; the public bureaucracies in educationally advanced states are not any better than those in educationally disadvantaged states. Federal Character might therefore be only of marginal significance in explaining these deficiencies. It is therefore illogical to blame Federal Character for a situation which applies even in circumstances in which Federal Character is not a factor.

Much of the argument about merit also suffers from the equating of paper qualifications with skills and efficiency. Studies across the world have shown that previous experience, education and training, and 'paper-and-pencil' tests are only weakly related to actual performance on the job (Krislor 1974: 135). And according to the eminent American professor of law and two-time president of Harvard University, Derek Bok, 'merit' must be defined in terms of the objectives of the institution in question, and not in terms of any abstract criteria. He argues that the promotion of diversity and social cohesion are legitimate concerns of an educational institution, which dictates that affirmative action be an intrinsic part of the definition of 'merit' in the institution (Bowen and Bok 2002:178). The same arguments can be made for public bureaucracies in countries like Nigeria. The history of the Australian bureaucracy shows clearly how the objectives of institutions affect their definition of 'merit':

This egalitarian society frowned upon university degrees, and established a 'closed bureaucracy' with initial recruitment at age 16, with promotion from within for the administrative class. University degrees were required only for doctors, lawyers, and engineers, and university recruitment was deliberately eschewed for other posts. Limited recruitment of graduates was finally achieved in the 1930s and then expanded ...

(Krislor 1974: 49)

The Australians valued social egalitarianism over paper qualification, and consistent with Bok's argument, defined the 'merits' they sought in new recruits accordingly.

Yet another fallacy of the merit argument is the implied assumption that if you did not have affirmative action, then the best candidate would be automatically chosen. In real life this is often far from the case, particularly in a country like Nigeria. In some American universities, many people will accept the admission of a relatively less-qualified student because he will strengthen the sports team, yet the same persons will complain of 'lowering standards' when it comes to offering the same advantages to African-Americans and women (Bergmann 1996: 24-25). It has always been understood in the USA that the president must include people from different regions in his cabinet. This is regarded as being fair to all. However, efforts at tackling gender and race exclusion immediately raise opposition because the women and the racial minorities are often thought to be inferior and lacking 'merit' (Bergmann 1996: 5)²³

A third criticism of the FCC is that Federal Character is directly responsible for the divisive indigene/settler syndrome which has blighted Nigerian national life (cf. Mamdani 2005). While it is true that under current conditions, Federal Character legitimates group prerogatives throughout society and thereby encourages group cohesion and elite

²³ Roger Pearon represents this school of thought when he argued against affirmative action: 'Demands for affirmative action, redistributive taxation, ..., are all rooted, ..., in the dogma that poverty is due to exploitation ... never in any significant part to cultural deficiencies or lower IQ.' Cited in Cokorinos (2003: 1).

manipulation, it is *not* the foundation for the malignant indigene/settler split. It only reinforces indigeneity through the use of indigene certificates issued by local governments. Similarly, women married to Nigerians from other states and zones continue to be seen under FCC rules as indigenous in their natal states, denying them representation in the states and zones where they live and work. If the constitutional criteria for state citizenship are modified to include residency rights in one form or another, this problem will be taken care of without doing damage to the principle of affirmative action.²⁴

3.2 Practical opposition

It has also been argued that *trend analysis* within the bureaucracy does not justify the heavy political and fiscal investment of setting up the FCC. Tables 12 and 13 show the trends within the federal bureaucracy since the inception of the FCC.

Table 12: Trends in representativeness of federal bureaucracies (all categories) 1996-2004 in %

Zone	% in (2005) census	1996	1997	1998	1999	2000	2002	2003	2004
NW	25.56	12.3	10.4	10.4	10.9	10.4	9.5	10.1	9.5
NE	13.55	8.2	8.3	8.6	9.9	8.6	8.1	8.8	8.6
NC	13.47	18.3	18.3	19.3	21.0	19.3	17.1	17.6	17.6
SW	19.7	24.5	24.9	24.7	20.7	24.9	25.9	24.2	24.4
SE	11.7	16.8	16.1	16.2	14.9	16.0	18.8	18.7	19.4
SS	15.0	20.0	22.1	21.0	22.3	20.8	20.6	20.2	20.6

Source: Federal Character Commission.

Table 12 shows that the three northern zones – which were to be the main beneficiaries of the FCC – have a smaller percentage of the bureaucracy in 2004, compared to 1996 when the FCC was created. Similarly, Table 13 shows that a *smaller* number of states – not greater – are meeting FCC targets of between 2.5% and 3% representation in the senior bureaucracy when figures for 2004 are compared to 2000. On the basis of these records, the FCC is clearly performing below expectation, incurring the wrath of its opponents without actually changing the situation of the marginalised.

Table 13: Trends in representativeness of federal bureaucracies (GL 08 and above, i.e. managerial cadre) 2000-2004 measured against FCC Formula

	2000	2002	2003	2004
% Representation	Number of States			
4 & above	9	9	9	9
Btw. 3.1-3.9	4	5	5	5
Btw. 2.5-3.0	5	1	3	3
Btw. 1.5-2.4	8	10	8	8
No. of States	37	37	37	37
No. of Min. & Parastatals	42	30	42	44
No. of Staff	59,302	38,356	74,932	75,855

Source: Federal Character Commission.

The explanation for these trends is often that there was no new recruitment into the Civil Service between 1999 and 2005, so the FCC has just been tinkering at the margins of already lopsided bureaucracies. Furthermore, movements to Level 08 managerial posts have largely been through internal promotion, a process outside the control of the FCC. The idea is not to remove federal employees from over-represented states, but to start a process of corrective balancing at the entry point, working with the Federal Civil Service Commission and the ministries to make sure there is a balance at the entry point from now on. It was only

²⁴ In March 1958, a Moslem Fulani from Sokoto, Mallam Umar Altine, was elected mayor of the Christian Igbo city of Enugu. There is no reason why today, an Emeka cannot be in the cabinet of either Lagos or Kano states.

with the recent Civil Service reforms and the creation of new positions for 1,000 graduates that the FCC has been able to influence the composition of appointments.

Whatever the explanation given, the fact is that the FCC has faced a credibility crisis on account of this poor showing. Apart from Justice Bozimo, cited above, who accused the FCC of 'dereliction of duty', other prominent Nigerians have openly expressed frustration at the FCC performance so far. Respected elder statesman, Alhaji Shettima Ali Monguno:

argued that despite the existence of the Federal Character Commission (FCC), some forms of marginalisation do exist and needs to be redressed, adding that he had once addressed what he saw as 'Yorubalisation' in the appointments made into top political offices by this [Obasanjo] administration.²⁵

In a similar vein, the Human Rights Committee of the 2005 National Political Reforms Conference argued that the FCC should be changed to an 'Equal Opportunities Commission' because 'the constitution and operations of the present FCC was lopsided and strongly was in favour of the major ethnic groups in the country.'²⁶ Implied is a criticism that the FCC is yet to create 'equal opportunities' for all Nigerians, particularly from the ethnic minorities. Others argue that FCC rules do not address the discrimination in the sensitivity and clout of particular offices, leading to the domination of particular important offices by some groups, while others are consigned to inferior portfolios. For his part, the influential Igbo politician, Chief Emmanuel Iwuanyanwu, 'took a swipe at the activities of the federal character commission'²⁷, challenging it to ensure that the Federal Character principle was extended to the allocation of federal projects:

It should apply also (sic) on projects that means if you award a contract for a dam project costing N50 billion or so in a zone, you must compensate other zones with other projects costing about the same amount. So we want equity in the distribution of resources.²⁸

Iwuanyanwu's intervention touches on the sore point of discretionary – and some would say, discriminatory – allocation of *federal* resources, projects, and grants, outside of the normal federal/state revenue-sharing process, which has characterised fiscal federalism in Nigeria, particularly since the military dictatorships of the 1980s.

Assailed on all sides by both foes and friends alike, the FCC's effort to date resembles Ambrose Bierce's definition of patronage as 'the process of creating nine enemies and one ingrate'²⁹. The FCC, jointly with the National Assembly and the executive, need to review and reform the Federal Character principle and the FCC itself. But this must be done based on a proper understanding of the failures *and achievements* of Federal Character and the FCC, and the challenges they both face.

3.3 The challenge of representativeness.

How we evaluate the performance of the FCC depends on our expectation of its role. Many expect the organisation to promote 'equal representation' within the federal bureaucracy. The arithmetic quota adopted by the Commission encourages this perception. What is invariably ignored is the real difficulty in achieving representativeness in bureaucracies all over the world. All modern bureaucracies are inherently unrepresentative and cannot be a microcosmic reproduction of their societies; bureaucracies seek to approximate

²⁵ 'Yorubalisation of Federal appointments real – Monguno', www.sunnewsonline.com, April 15th 2005.

²⁶ 'Northern delegates at conference charge governors to empower citizens', www.ngrguardiannews.com, Wednesday May 25th, 2005.

²⁷ 'Iwuanyanwu backs resource control', www.champion-newspapers.com, Monday April 25th, 2005.

²⁸ *Ibid.*

²⁹ Cited in Krislor (1974: 5).

representativeness, even when they never fully achieve it (Krislor 1974: 63). The reason for this difficulty is because of the nature of representation and the nature of the bureaucracy; the two do not mix easily. Representation can be of three types: (a) political (i.e. with the express intention of changing policy outcomes); (b) symbolic (abstract representation with no policy connotations and may even be performed by an inanimate object); and (c) descriptive: 'representation by persons who, as much as possible reflect the complexion of the constituency' or '... morons should be represented by morons!' (Krislor 1974). Nigerians tend to expect the FCC to promote descriptive representation, yet this is practically impossible once you combine it with the nature of bureaucracies.

Bureaucracies, by their very nature, perform specialist functions. Membership of the bureaucracies is based on a 'selection' process that sifts those with the ability to perform those functions from those without. Since the skills needed are not evenly distributed in any society, it follows that bureaucracies, by their very nature, are biased towards those with the requisite skills. For various historical, cultural, familial, and structural reasons, personal, ethnic, regional and religious biases are a feature of the distribution of these skills in most societies. As a consequence, the bureaucracy is heavily dominated by the middle classes in most societies. Therefore, 'the concept of a "representative bureaucracy" is an oxymoron' (Krislor 1974: 22). Bureaucracies do not sit easily with representativeness; in some cases, bureaucracies even find it necessary to *distort* representativeness. The police force, for example, has certain minimum height requirements because this is directly related to its efficiency, although this might justifiably be seen as discriminatory by ethnic groups whose members predominantly have lower-than-average height.

These qualifications of representativeness do not mean that societies stop aspiring towards it. However expectations of what can be achieved must take these difficulties into consideration. Instead of the current fixation with quotas and numbers in Nigeria, emphasis should shift to the promotion of *both* inclusive diversity and a deeper concern with interest articulation: 'Analytically, the test of representation is whether, in public policy-making, the demands or interests of every relevant definable public have been effectively articulated' (Krislor 1974: 37).

3.4 Achievements of the FCC

The FCC may not have brought the bureaucracy to an adequate level of representativeness, and it is fair to demand that it should try harder. It has, however, a number of important achievements which should also be taken into consideration. Firstly, it has succeeded in creating new norms and procedure for the non-violent resolution of conflicts over ethnic and regional access. The Egbema Ijaw and all those listed on Table 10 did not have to resort to violence to get their concerns heard and neither did they have to resort to the usual media sabre-rattling. Instead, the FCC provided an impartial and professional platform, trusted by all, through which the complaints could be addressed. In a country in which trust in democratic institutions is low and recourse to violence common,³⁰ this is an important achievement. Secondly, the FCC is increasingly generating the data through which the nagging national problem of representation can be objectively assessed, monitored, and pronounced upon, away from the screaming headlines of ethnic entrepreneurs. It is a credit to its professionalism that we know as much as we now do about trends within the federal bureaucracies. Previously, we would have been paralysed by the competing partisan claims of self-interested newspaper editors. Importantly, the pervasive *fear* of 'marginalisation' can now be calmed by a rational engagement with FCC data. Individuals and communities now go to the FCC both for concrete data, and for remedies; more openness, computerisation, and transparency will increase the level of trust and this calming effect of the FCC. Thirdly, the FCC has positively changed the culture and norms of bureaucratic recruitment in Nigeria

³⁰ These are some of the messages coming out of the CRISE sampling of mass attitudes through Perception Surveys conducted in Lagos, Borno, Delta, Cross-Rivers, and Kano States.

towards inclusive diversity. Gone are the days when a chairperson of a public institution can surround himself or herself with co-ethnics with reckless impunity. Chief executives are now more conscious of their obligation to strive for ethnic diversity, if not balance. The full impact of this change will only be felt many decades down the line, when the current ageing bureaucrats retire and new ones are appointed.³¹ In this regard, the FCC has laid an important and valuable foundation.

On balance, the FCC has had a positive impact on Nigerian ethno-regional politics. Nigerian political history is full of the antagonism and hostility generated by real or imagined 'domination' felt by groups not well represented in different spheres of national life. These have not disappeared, but new, more constructive channels are being opened up for their resolution. This is not to suggest that all is well with the FCC or the wider political calculus of Federal Character within which it operates. There is an urgent need to address the issues raised in the criticism of the FCC, but the objective should be to find ways of improving its performance in the short to medium term.

4. Conclusion: Policy implications

The Federal Character principle and the FCC are unavoidable necessities forced on Nigerian national life by the cleavages and inequalities that have scarred the nation. Carrying out the implied affirmative action demands, however, firstly that the policy be carried out fairly and transparently in the short to medium term, and secondly that in the long-term, efforts must also be made to overcome the inequalities which gave rise to affirmative action in the first place. Affirmative action and group prerogatives cannot be a permanent feature of national life; when they end is the stuff of politics and enlightened, compassionate political engagement. In the all-encompassing consociational model worked out at the Abacha constitutional conference of 1994, 30 years was the shelf life of the special arrangements for power-sharing written into the constitution.³² After that, Nigeria was to return to 'normal' politics. Incentives and sanctions – carrots and sticks - must be applied to ensure that every segment of society has the opportunity and the responsibility to contribute to removing or reducing the structural inequalities.

The FCC has particular responsibility for managing the short to medium-term agenda. All the deficiencies of the arithmetic quota noted in this analysis, from the bias in favour of majority ethnic groups to the limited concern for merit within states and the insufficient attention to ensuring a measure of fairness across states should be addressed. There is no reason why candidates currently disaggregated by state of origin cannot be further disaggregated by qualifications and experience, gender, ethnicity, religion, and urban or rural residence to ensure that the most qualified and the most diverse candidates are chosen from each state. The comfort zone of the simple arithmetic quota is fast becoming a liability which needs to be addressed in conjunction with the National Assembly. The FCC can also ensure greater openness and transparency in its operations. Data should be made available on the internet and the complaint procedure clearly worked out and spelt out. The relative roles of the FCC and the Federal Character committees of the National Assembly should be worked out to avoid confusion and possible conflict.

It is particularly disappointing that no work has been done yet on the persistence of deep socio-economic inequalities in the country. Since federal rules stipulate that junior posts (levels 01-06) should be filled with candidates from the 'catchment area' (location) of the federal establishment, affirmative action has been effectively reduced to 'senior service' or elite posts from Level 07. Much of the current concerns of the FCC are, strictly speaking,

³¹ Cf. 'Nigeria's workforce is ageing, says Adegoroye', www.ngrguardiannews.com, Friday, February 24th 2006; M. Yayale Ahmed (Head of Service of the Federation), 2005, 'The Reform Process and its Positive Effects on the Public Service'.

³² Cf. Ekwueme, Alex, 2005, 'What Nigeria Lost By Abacha's Untimely Death', Sunday Guardian, www.ngrguardiannews.com, May 29th.

restricted to elite concerns. This concern with elite political and bureaucratic interests to the detriment of issues that affect the wider population, such as health, education and livelihood, undermines the moral claims of those advocating affirmative action. In both South Africa and Malaysia, affirmative action was about both transferring wealth to the disadvantaged elite *and* improving the socio-economic circumstances of the majority of the disadvantaged, enabling them to perform better in open competition.

It is suggested that work has started within the FCC for working out indicators for the equitable distribution of social infrastructure. Some of those interviewed at the FCC conceded that this 'is a very difficult area'. It is inconceivable that electricity, water, schools and roads would be divided by an arithmetic formula of equalisation without regards to economic and social rationality, yet this difficulty does not justify the deafening silence on sharp socio-economic inequalities in the country and the fact that very little is done to address them. The need to bring in socio-economic indicators is another reason why the arithmetic quota should be reviewed.

In the long term, Nigeria also needs an exit strategy from affirmative action. Currently, Federal Character is about sharing existing educational and bureaucratic facilities. This narrow emphasis on 'sharing the cake' glosses over Nigeria's social history of communal and regional groups who strove to overcome educational and social disadvantages through collective action. In the 1920s and 1930s when the Igbo of the Southeast wanted to close the educational gap with the Yoruba Southwest, they carried out a massive community mobilisation to build schools and offer scholarships to their kin. Similarly, as independence approached in the 1950s, northern politicians, keenly aware of the educational gap with the south, invested heavily in education and mobilised the collection of donations to give scholarships to northern students to study in England. Unfortunately, contemporary Nigeria is driven by 'a concept of citizenship that is almost entirely about entitlements' (International Crisis Group 1996: 4).

Every segment of Nigerian society – governments, communities, families, and individuals – has a responsibility to contribute to eradicating the structural inequalities. The challenge is to develop policy with the right mix of encouragement, information, support, and sanctions to ensure that every segment plays its rightful part. Experience from elsewhere shows that there is in fact a connection between the short/medium-term agenda and the long-term agenda. Affirmative action, properly done, can become a motor for wider social change by having self-perpetuating positive effects on employment and economic growth, even when the initial policy prop has been relaxed (Krislor 1974, Boston 1999). The initial 'opportunity matters' (Boston 1999: 3), and the responsibility falls on the FCC to provide this in the most fair and efficient manner.

5. References

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