

## SOCIAL JUSTICE, FEDERAL CHARACTER AND TRANSITIONAL JUSTICE IN NIGERIA: THE NECESSITY FOR LEGAL COMPROMISE\*

### Abstract

Government is a necessity as man cannot fully realize himself except within an ordered society<sup>1</sup>. The federal character and social justice principles are incorporated into the Nigeria Constitution to ensure national unity, loyalty and prevention of predominance of persons from a few States or ethnic or other sectional groups in the government of Nigeria or any of its agencies.<sup>2</sup> Has the federation maintained any standard in relation to these two principles? Have these constitutional provisions been explored without limitation or in all fairness to her component units in promotion of her unity? Are there options open to the federation in the coming general elections to ameliorate any effects of the nature of implementation of federal character and social justice? The work focuses on reviewing the social justice provisions in the constitution in the face of federal character and further examines whether social justice application in the form of transitional justice will be panacea to the social unrest in the politico-legal milieu in Nigeria. The work found that fair exploration and application of these two basic constitutional principles will engender peace and security and provide a platform for negotiating the continued mutual co-existence of the ethnic nationalities within the federation.

**Keywords:** Social justice, Federal Character, Transitional Justice, Legal Compromise

### 1. Introduction

Much has been written on federal character and its effects on the Nigeria polity.<sup>3</sup> Majority of the themes centered on its negative effects especially in relation to discrimination within Nigeria and of her citizens. This paper however examines in some details the provisions of section 14 (1) and (3) of the constitution in the face of diverse constitutional issues affecting the continued existence of Nigeria. The aphorism that constitution has been accepted universally as a means of promotion of good governance and welfare of all persons based on freedom, equality and justice and to ensure unity of people<sup>4</sup> is sacrosanct, but is that universalism factual in Nigeria? Is this hallowed principle in constitutional democracies tenable in Nigeria? Section 14 (1) of the constitution of Nigeria provides as follows:

- (1) The Federal Republic of Nigeria shall be a State based on the principle of democracy and social justice;
- (2) ...
- (3) The composition of the federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the Federal Character of Nigeria and the need to promote national unity and also to command national loyalty, thereby ensuring that there shall be no predominance of person from a few States or from a few ethnic or other sectional groups in that government or in any of its agencies.

The federal character with principles of democracy and social justice application poses no problem. It is the political common weal to enter into compromise and harness the benefits of social justice and federal character that are lacking. Obviously there is no limitation on the application of federal character and social justice in the Nigerian constitution. We are not aware of any specific constitutional limitation of the application of these two principles even as it relates to the office of the president of the federation. Section 14(3) of the constitution of Nigeria essentially is meant to foster national unity and loyalty among other things.

The federal character principle as codified did not mention of election in any manner, whatsoever but section 14(1) emphasized on principles of democracy and social justice. What then is social justice? We may need to reiterate that democracy is usually based on election by voters or electorates irrespective of whether it is direct or indirect election and the steps, procedures and forms it may take. Democracy has been said to be government by the people, either directly or through representatives.<sup>5</sup> It need be pointed out that the government of the federation is personalized in the person of the president. If federal character is to be applied to the office of the president bearing in mind that there is no constitutional limitation to the office where it can be applied, what principle are

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<sup>1</sup> B Nwabueze, *Constitutional Democracy Africa* Vol. 1, Spectrum Books Limited Ibadan, 2003

<sup>2</sup> Section 14 (3) CFRN 1999

<sup>3</sup> DE Gberville & J Ibetan, 'Federal Character Principle and Administrative Effectiveness in the Nigerian Public Scene; challenges and prospects for sustainable development' <https://www.google.com/url>

<sup>4</sup> Paragraph 2 Preamble to constitution federal republic of Nigeria CFRN 1999 (as Amended)

<sup>5</sup> BA Garner (ed), *Black's Law Dictionary*, 7<sup>th</sup> edition, West Group, St. Paul, Minn. USA.

to be applied to ensure social justice principles are seen in the application or what steps are we expected to take to ensure that the principles of social justice codified in our law is not in vain?

Social justice refers to a political and philosophical theory that focuses on the concept of fairness in relations between individuals in society and equal access to wealth, opportunities, and social privileges in a society.<sup>6</sup> The main principles of social justice include access to resources, equity, participation, diversity and human rights. Social justice is a key factor for inclusive growth and political stability in the Middle East.<sup>7</sup>

## **2. The Federal Character Thus Far**

The implementation of the federal character principle has really not been working properly for the unity and progress of Nigeria. Federal character promotes ethnicity over and above qualifications and merit in Nigeria,<sup>8</sup> though the employment of personnel is not really the concern of this work. Ever since the federal character was introduced in Nigeria via the 1979 constitution no mention has been made of it in relation to the office of the president. If we are to relate federal character to election of the office of the president based on democratic principles, social justice must be analyzed. Equity, fairness, diversity, participation, are all components of social Justice. It may be argued that Nigeria federation is based on democracy and where one is unable to secure the required votes for any office, the person should be contented. This is not wholly so. The total exclusion of social justice from democracy is an invitation for anarchy. Democracy cannot endure without social justice.<sup>9</sup> The entire democratic state is likely to be lopsided. The Nigerian federation is based principally on actual compromises to achieve independence. The structure of the federation has suffered drastic changes following military usurpation of government powers up to and until 1999. That notwithstanding Nigeria is structured to the effect that another component unit will not be able to have anything approved either in the legislative chambers or elsewhere without tacit support and approval of the north of Nigeria. It is also unconscionable that any other person other than from northern Nigeria can secure votes enough to the office of the president without tacit support of the north of Nigeria. The application of federal character based on ethnic affiliations has left Nigeria more divided than during the period of slave trade.

The application of social justice and democratic principles requires compromises without losing democratic ideals. Social justice requires fairness and opportunity to be given to other regions to participate and hold the office of the president. This concept will foster unity, peace and renewed interactions in our already fractured society and provide platform for renegotiation for continued co-existence. The procedure for application of social justice and democratic principles lies in the hands of policy makers and political parties. It was the compromise arising from understanding of social justice that brought President Olusegun Obasanjo to power in 1999 to compensate the south west after annulment of June 12, 1993 general elections. This compromise that brought Olusegun Obasanjo to power is an indirect application of transitional justice to heal the wounds arising from the annulment of the elections and untoward events that trailed it.<sup>10</sup> It has also been argued that zoning and rotation would ensure fairness, equality, equity and justice.<sup>11</sup> The concept of fairness is what social justice is all about. Democracy and social justice concepts clearly support the rotation and zoning of elective office and especially as it relates to the office of the president of the federation for the purpose of fairness and good governance and well being of the people. It has been argued that one characteristic feature of fourth republic is that principle of rotational presidency though not captured in the constitution has been operative in Nigeria since 1990.<sup>12</sup> This certainly is our view in that regard. If the south east is excluded and schemed out from holding the office of the president of Nigeria either through non-registration of qualified voters and or disenfranchisement or howsoever, then the very principles of democracy and social justice in Section 14(1) of the Nigerian constitution has been applied differently as it concerns different citizens of the federation. This different application will not be arising out of limitation but by discrimination.<sup>13</sup>

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<sup>6</sup> <https://corporatefinanceinstitute.com/resources/knowledge/other/social-justice/>. Accessed March 13, 2022

<sup>7</sup> Friedrich Ebert Stiftung; democracy and social Justice Published online <https://Jordan.fes.de>. FES is a non-profit organization founded by government of Germany, Accessed March 13, 2022

<sup>8</sup> C U Okoye; Rotational Presiding as an imperative in 2023: *thisday online* March 13, 2022 <http://www.thisday.com>

<sup>9</sup> Y Osibanjo; [www.channelstv.com/democracy-cannot-endure-without-social-justice-says-osinbajo-in-kano](http://www.channelstv.com/democracy-cannot-endure-without-social-justice-says-osinbajo-in-kano), on 8/2/2022

<sup>10</sup> D Johnson et al; Rotational Presiding our fears of southern President Northern Elites—Vanguard online – <https://www.vanguardngr.com/2021>. Accessed March 13, 2022

<sup>11</sup> *Ibid.* Good governance and wellbeing of the people. It has been argued that one characteristic feature of the fifth republic is that principle of rotational presidency though not captioned in the constitution has been operative in the country since 1990.

<sup>12</sup> C U Okoye. *Ibid*

<sup>13</sup> See generally C E Okeke; Implementation and Enforcement of the Federal Character Principle in Nigeria, NAUJILJ 10 (2) 2019 for full details on Federal Character principle application

The policy makers ought and should make policy and or propose a Bill for an Act for Enforcement of Social Justice and Democratic Principles through Rotational Presidency. This may appear as a surplus to the constitution the matter having already been contained therein. It is certainly not over-emphases as the constitution merely provided for democratic principles and social justice without given details of how the social justice principles can be applied. The National Assembly can have resort to Section 6 (6) (b) of the constitution as an authority to make such law for application and implementation of social justice with democratic principles in Nigeria. It is of the essence that such law be made. The making of such a law will provide the legal compromise as well as be the much needed panacea for justice thereto partial playing ground for all ethnic nationalities in Nigeria political arena.

The several attempts at transitional justice in Nigeria apart from its indirect application that brought Olusegun Obasanjo to power were futile. Right after the civil war the reconciliatory programs of the government which came in different forms were in fact meant to heal the wounds of the civil war. The wounds were never healed through the transitional justice program created by General Gowon in form of different policy initiatives and implementations. The Reconstruction, Rehabilitation and Reconciliation (3R) policy was an abysmal failure. The persons that were meant to implement the policies were the very persons that have made statements voicing their opinions and positions in the affairs of Nigeria in the course of the war and thereafter. It was a policy that failed before any attempt at implementation.<sup>14</sup> The presidential election to be held in 2023 in Nigeria is another opportunity of real marriage of democratic and social justice principles with transitional justice by politicians and policy makers. The outcome of this marriage if ever considered and implemented will prove to be a panacea to the incessant political unrest and insecurity, the religious factor notwithstanding.

### 3. The Legal Framework of Application of Democratic and Social Justice Principles

The legal framework of application of the democratic and social justice principles can be deduced from Section 14 through Section 15 of the Constitution of Nigeria. The first principle is democracy and social Justice. Democracy is popular through direct or indirect voting but the concept of social justice has not been fully harnessed. Its application requires compromises to ensure marginalization in relation to office of the President is put at barest minimum without losing democratic principles and ideals. This will only create sense of belonging among all ethnic nationalities in the polity. Social justice and transitional justice were basically the indulging factors that brought Olusegun Obasanjo to power in 1999 through democracy. Same compromises can as well be reached now for a South Easterner to be elected to the office without losing democratic ideals.

Secondly, if Nigeria is yet to command national unity and loyalty she must ensure non-predominance of any person in the government. The federal government of Nigeria has been running the office of the presidency of Nigeria to the exclusion of Igbos from inception despite codification of social justice in our constitution notwithstanding that the original delineation of Nigeria into three regions was based on the population of the major ethnic groups within those regions. The reaching of compromise to pave way for Igbo participation in presidency will be the height of harmonization of the ideals of social justice, transitional justice and democracy. The wounds which the attempted transitional justice in the form of 'The Human Rights Violations Investigation Commission of Nigeria' (*Oputa Panel*) and The Reconstruction, Rehabilitation and Reconciliation (3Rs) of General Yakubu Gowon,<sup>15</sup> could not achieve could be achieved through this social justice principle compromise with far greater impact in the polity. The insertion of these words in the constitution is meant for the purposes of harmony. The state of Nigeria has not fostered a feeling of belonging and involvement among the various peoples of the federation.<sup>16</sup> The failure of the government in this singular issue has caused more fracture in the federation than corruption and incompetence put together. The continual attacks in different regions and states within Nigeria and failure of government in taking positive and decisive actions can conclusively be interpreted as a tacit support of the actions of the terrorist by the government of Nigeria.

Thirdly, the state of Nigeria has not fostered a feeling of belonging and involvement among various peoples of the federation.<sup>17</sup> This failure has constantly being causing and making people to raise more questions on their continued membership and relationship in and with Nigeria. The concept of nationalism has collapsed. The constant attacks on various parts of Nigeria without a single known conviction will continue to be the Nigeria *abattoir*. The principles of equity (participation, opportunities, wealth distribution) and social privileges embedded in social justice which when applied with principles of justice will have greater impact in the polity are in fact abandoned. It ought to be emphasized that section 14 (2) of the self-same constitution provides that sovereignty belongs to the people of Nigeria from whom

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<sup>14</sup> See generally A Iguh *et al*; Reflections on the Applicability of Transitional Justice in The Sit-At-Home Imbroglia in the South-East, Nigeria. LASJURE 2 (3) 2021

<sup>15</sup> For details on these attempted transitional justice in Nigeria. See A Iguh *et al*, *Ibid*.

<sup>16</sup> S. 15 (4)

<sup>17</sup> Section 15 (4) CFRN 1999

government through this constitution derives all its powers and authority. Besides, what efforts have the government been making to curb corruption and abuse of power from the polity?<sup>18</sup> The government fully realized the import and extent of power the people wields and that same government it appears is making efforts impliedly to disenfranchise some citizens of Nigeria and not much effort is put towards curbing corruption and abuse of power. In the course of corruption and abuse of power it has been realized by the wielders that therein lies the extra power and influence to sway one group against the other thereby inciting strife within the polity to the detriment of democracy and social justice.

#### **4. Effect of Disregard of Legal/Constitutional Framework**

It may be argued that Sections 14 and 15 are within Chapter two of the constitution of Nigeria which is not justiciable. This argument is in fact mundane. The justiciability of Sections 14 and 15 of the constitution has been laid to rest in *Olafisoye v FRN*.<sup>19</sup> However our concern is with principles of democracy and social justice which are part of the political objectives in the constitution. The total effect of disregard or application of Federal character in promotion of ethnicity and disregard of social justice are well captured in the following expressions: ‘Nigeria must make progress though tribe and tongue may differ. The only way to do this is by saying goodbye to ethnicity and hello to merit... consider the progress that Nigeria made before quota system (1960-66) and the retrogression we have made since 1960 till date. Quota system and federal character lead to a sense of entitlement in benefit and resentment in others’.<sup>20</sup> He further argued that federal system and federal characters have sparked dangerous rivalries between the centre and constituent parts. The fallout from this has been sporadic violence, ethnic strife, international tension and no holds – barred struggles between the various rival interest groups jockeying for nation’s power and purse.<sup>21</sup> The translation of social Justice through south east presidency in the next general elections will provide platform for renegotiations but its refusal will add impetus to the *IPOB* right of self determination. It ought to be noted that territorial integrity does not hold-forth any more as the major and most potent factor in determining right of self determination.

#### **5. Conclusion**

The continued agitation for Biafra has been argued to result from continued perception of inequalities and injustice in the distribution of power in the country. As part of the reconciliation government ought to correct this imbalance and injustice and strictly apply federal character principle in the distribution of political opportunities and amenities.<sup>22</sup> Achieving fairness and equal opportunities through compromise requires that a person of south east extraction will be given the opportunity through democratic and social justice principles in the form of transitional justice as in the case of President Olusegun Obasanjo if indeed the desired peace will be achieved. The exploration and application of the social justice provisions within democratic principles to the extent of its provision in the constitution will be akin to pursuing transitional justice indirectly for the purpose of calming the nerves of the agitators. It was this social justice through indirect application of transitional justice compromise that brought Gen. Olusegun Obasanjo to power in 1999. What will prevent similar compromises and indirect application of transitional Justice to the present circumstance and the Igbos of South East to ascend the office of the president of Nigeria? I see nothing in the constitution that limits the Igbos to that office save for the common weal of reaching that compromise. The degree of divergence in the polity is astronomical and for the purposes of acknowledging the injustice so far in the polity; transitional justice compromise with social justice application will provide the much needed acknowledgment.

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<sup>18</sup> Section 15(5) CFRN 1999

<sup>19</sup> 2001 LPELR 2553 SC

<sup>20</sup>A Kayode; Federalism and Federal Character Principle in Nigeria: A Dilution. RPAM Vol. 3 No.7, July 2015 Pp 32 – 44 @ p.41

<sup>21</sup> *Ibid*

<sup>22</sup>I M Alumona, S N Azom, E C Iloh; ‘The Nigerian State and the Resurgence of Separatist Agitations: The Case of Biafra’. <https://www.google.com/url>. Accessed March 13, 2022