



THE HUMAN RIGHTS IMPLICATION OF INEQUITABLE SCHOOL ADMISSIONS IN
NIGERIA: THE CASE OF UNITY SCHOOLS

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ABSTRACT

The goal of this paper is to explore the human rights implications of the persistent discriminatory and non-transparent entry processes which allot spaces to children seeking high school admissions into the federal funded and managed unity schools in Nigeria. Data used in the analyses are mainly from secondary sources. The relevant statutory instruments and case laws are adapted into the legal analysis of the questionable quota system of school admission procedures. The paper opined that the subsisting biased school admission processes constitute a violation of the human rights of parents and students. It sustained the argument that, the beneficiaries of the national quota system are not perturbed by the agitations for improvement of the unpopular system.

Keywords: Education, Inequality, Federalism, Human Rights, Nigeria.

1. INTRODUCTION

Recently, the cut off marks for entry into Nigeria's Unity Secondary Schools was released. According to the then Minister of Education, Professor Ruquyyah Ahmed Rufai, states like Anambra, Imo, Enugu, Lagos and Delta, all Southern States, were assigned cut off points of 139, 138, 134, 133 and 131 respectively. These are the highest scores in the National Common Entrance into Federal Secondary Schools. At the same time, states like Yobe, Taraba, Zamfara, Sokoto and Kebbi all in the north, were awarded a cut off of 2,3,4,9 and 9 respectively.

The aforesaid has raised so much concern. The administering Education Ministry sees these scores as compared to those who scored 130 and above. A candidate from Imo State who scored 137 cannot get admission, but his counterpart from Yobe State who scored 2 marks is admitted. What defiles common logic is how a candidate who failed an examination by scoring 2 marks is given preference to the one who scored 137? In the view of a writer, "under what condition and with what expertise would a teacher handle students at the extreme in the same class? How will the dullards who scored 2 marks cope in the same class with the hot brains?"

This paper intends to appraise these seeming absurdity in the context of international human right law, and in so doing determine the legal status of concepts like federal character¹ and quota system as it relates to such norms accepted and practiced in civilized communities.

2. THE STATUS OF HUMAN RIGHTS IN NIGERIA

In the case of *Ransom Kuti v. A. G. of Nigeria, Kayode Eso JSC* (as to then was) succinctly described human rights as:

A right which stands above the ordinary laws of the land and which infact is antecedent to the political society itself. It is a primary condition to a civilized existence, and what has been done by our (Nigerian) Constitution since independence is to have these rights enshrined in the Constitution so that the rights could be immutable to the extent of the non-immutability of the Constitution itself.²

The definition acknowledges that human rights “stands above the ordinary laws of the land.” In hierarchy, the regime of human rights is in the class of front runners. But the definition was short of stating its position among the extra-ordinary set of laws. In *Abacha v. Gani Fawehinmi*³, the Supreme Court was reluctant, indeed, refused to accord supremacy to the African Charter on Human and Peoples’ Rights, even when the Charter had been domesticated through an enabling domestic Act.⁴ The expectation would have been, according to the learned Supreme Court Judge, since human rights were antecedent to the political society, Nigeria, any 9other law that contradicts these set of laws, to the extent of the inconsistency, should be declared void. But that court preferred to accord supremacy to a military decree in preference to the African Charter. Indeed the court declared that “the Decree of the Federal Military Government may override other municipal laws”⁵ even in this confusion, the definition secured the status of these rights by situating them as “a primary condition to a civilized existence.” By this, it broadly stated that differentiation exists between states-civilized and uncivilized, with those states who observe the tenets of human rights being classified as civilized. States who aspire to be civilized observe human rights in their domestic and international dealings.

The 1999 Constitution of Nigeria in section 42(1) guarantees the right to freedom from discrimination. By virtue of its incorporation into Nigeria law, the African Charter on Human and Peoples’ Rights has become part of our laws, though its exact legal status and application remains a matter of speculation. Since it was incorporated *holus bolus* and not selectively, some of its provisions like the economic, social and cultural rights are experiencing enforcement challenges. Chapter 2 of the 1999 Constitution of Nigeria labels the ESC rights with respects to its realization as “Fundamental Objectives and Directive Principles of State Policy.” These regime rights is unlike the Chapter 4 rights which are enforceable and enjoys a special enforcement regime.⁶

¹ Luke Onyekakeyah, “Nigeria: Where dullards are awarded scholarship” *The Guardian*, Tuesday June 25, 2013. p.99.

² (1985) 2 NWLR (Pt.6), 211, 229-230.

³ (2001) CHR 20

⁴ It was incorporated into Nigerian law as African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap. 10 of 1990.

⁵ *Supra*, p. 110, Paras. D-E

⁶ In Pursuance of section 42(3) of the 1999 Constitution, the then Chief Justice of Nigeria, Justice Fatai Williams, on the 5th of December, 1979 in a supplement to Official Gazette No.64 volume 66 made what is today known as the Fundamental Rights (Enforcement Procedure) Rules. In its nature, the said Rules will qualify as existing law under section 315 of the 1999 Constitution. Idris Legbo Kutigi, the

Nigeria as an active member of the international community maintains effective representation at the United Nations and other similar international organizations. She has equally contributed immensely in treaty making at the international and regional levels.⁷ Some of the international instruments she has signed, ratified and domesticated include the following: the International Covenant on civil and Political Rights (ICCPR)⁸ the International Convention on the Elimination of all forms of Racial Discrimination; (ICERD); the Convention on the Elimination of All Forms of Racial Discrimination against Women (CEDAW)⁹; the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT);¹⁰ The Convention on the Rights of the Child (CRC);¹¹ The African Charter on Human and Peoples' Rights;¹² Optional Protocol to the convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;¹³ The Optional Protocol on the Rights of the Child (CRC-OP-AC) on the involvement of Children in Armed Conflicts;¹⁴ etc. Observance of human rights in Nigeria though with great constraints, has become a legal culture. She has allied herself with accepted tenets of human rights internationally. At the regional level, Nigeria has outstanding records of active participation and development of human rights.

3. THE LEGAL PROTECTION OF THE RIGHT TO FREEDOM FROM DISCRIMINATION

By virtue of section 42(1) of the 1999 Constitution of Nigeria: (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion, or political opinion, shall not, by reason only that he is such a person:

(a) Be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religion, or political opinions are not made subject, or

(b) Be accorded either expressly by, or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria or other communities, ethnic group, place of origin, sex or political opinion.

It further states: “ No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth” ((section 42(1)(2) of the 1999 Constitution of Nigeria)).

former Chief Justice of Nigeria on the 11th of November 2009, in a supplement to Official Gazette No. 74 Volume 96, made the fundamental Rights Enforcement Procedure) Rules, 2009.

⁷ Nigeria has modestly ratified about 35 international human rights instruments: See Human Rights Law Journal (HRLJ), vol.28, No. 1-4 (2007), pp 139-160

⁸ This instrument is monitored by the Human Rights Committee

⁹ Nigeria signed it on 23 April, 1984 but ratified same on 13 June, 1985.

¹⁰ Nigeria ratified CAT on 28 July, 2011.

¹¹ Nigeria signed CRC on 26 January 1990, but ratified same on 19 April, 1991.

¹² See footnote 4.

¹³ 18 December, 2002 (United Nations, G.A.Res.A/57/199); entry into force:22 June 2006, 30 ratifications (excluding Nigeria).

¹⁴ 25 May 2000 (United Nations, A/RES/54/263); entry into force: 12 February 2002; III (excluding Nigeria).

The Nigerian Constitution¹⁵ should be the Supreme Law of the land, legally meaning that any other norm, rule or even precedent to the contrary, to such extent is null.¹⁶ The aforesaid section 42(1) and (2) prohibits all forms of discrimination in its entirety. It further goes in depth to forbid any “practical application of any law in force in Nigeria.” This provision puts any policy or rule, be it executive or administration at a great legal difficulty. Legally, the real intention of the Constitution is to abolish any form of discrimination in accordance with norms of international law, permitting of no exception that is not in the living spirit of the law.

The section 42 provision is doubly padded. On the one hand, it prohibits “disabilities or restrictions” that any citizen may be subjected to. It proactively protects any disadvantage a citizen may suffer on grounds of ethnic groups, place of origin, sex, religion, or political opinion. On the other hand, it abhors “any privilege or advantage” that may unduly accrue to a citizen that is not spread across the board, to other Nigerians, but are rather based on ethnic groups, place of origin, sex or political opinion. Any gain that is unjustly awarded and any deprivation that is unjustly suffered are abhorred by the supreme law of the land. Also, Article 2 of the African Charter on Human and Peoples’ Rights provides:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status.

This provision has a wider reach, it includes “fortune”, “language”, “any other opinion,” and “other status.” Since Nigeria has domesticated this instrument, it has become part of its laws though its status in the hierarchy of laws is yet to be firmly determined. But the combined effect of s.42 of the 1999 Constitution of Nigeria and Article 2 of the African Charter is to exclusively prohibit without exception any form of discrimination on any citizen of Nigeria.

It is a pivotal principle of international human rights law that no one shall be subjected to undue discrimination i.e., a right must not be vouchsafed or denied by reference to distinction “of any kind such as race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status.” This provision which prohibits “property” as a ground of discrimination is found in Article 2 of the Universal Declaration on Human Rights, 1948. Same prohibition is found in article 7 of the instrument when it provides that “all are equal before the law and are entitled without any discrimination to equal protection of the law.” Though the Universal Declaration of Human Rights, a declaration, was not initially a binding human rights instrument, the continuous representation of its provisions in almost all international, regional, and domestic human rights instruments has elevated it to customary international law, *jus cogens* of international law.

Again, the principle is endorsed in the Covenant on Civil and Political Rights. Article 3 binds states parties “to ensure the equal right of men and women” to the enjoyment of all its civil and political rights. Most importantly, this provision is found enacted in the UN Charter, the third purpose of the organization being defined to include “promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

¹⁵ The 1999 Constitution of Nigeria is merely an addendum Decree 24 of 1999 of a departing dictatorial military regime and is not a product of “We the People of Nigeria”

¹⁶ *Abacha v. Gani Fawehinmi* supra

The foregoing means that international law is breached whenever rights of universal application are denied through racism or on religious or any other “status” grounds. Essentially, this is because the UN Charter, just like many other human rights instruments both regional and international bind every state, and thus, the rule cannot be vitiated by state practice to the contrary. From the perspective of international law, where the discrimination is so widespread and consistent as to amount to either apartheid or genocide or have like consequences, the conventions make it clear that the international community may intervene either in concert or even individually.¹⁷ The rule against discrimination may come into play to determine whether other entrenched rights have been breached-as it did to characterize as regarding the racially discriminatory treatment of Asians holding British passports who were denied entry into Britain when they exoduced from Kenya and Uganda in 1973.¹⁸

4. FEDERAL CHARACTER, QUOTA SYSTEM AND STATE SANCTIONED DISCRIMINATORY PRACTICES

Since 1967, the quota system has been adopted for filling vacancies into federally owned schools and institutions. The Federal Character principle first emerged in the 1979 Constitution.¹⁹ It is allegedly meant to achieve equitable distribution of federal appointments to reflect Nigeria’s ethnic, regional and religious diversity. The quota system seeks to provide opportunities in education and employment to the so-called disadvantaged parts of the country. The Federal Character Commission is charged with working out an equitable formular for the distribution of all cadres of post in the civil and public services of the federation and of the states, to “promote, monitor and enforce compliance with the principles of proportional sharing” of all posts. The Commission is “to take such legal measures, including the prosecution of the heads or staff of any Ministry, Extra-Ministerial Department or Agency which fails to comply with any Federal Character Principle or Formular prescribed or adopted by the Commission.”²⁰

It may be misleading to equate the Nigeria’s Federal character principle and quota system to America’s affirmative action, which is essentially to correct past discriminations against blacks. Nigeria was engulfed in a civil war that ended in 1970 with a verdict of “no victor no vanquished.” The persons of the eastern extraction that hosted the war suffered a devastation displacements and forfeiture of properties which were regarded as “abandoned” After the said war, some of them that had bank accounts were given only £10 irrespective of the amount they had to their credit. For the majority, life had to be started afresh. The discriminatory federal character principles and quota system, which gained so much vigor after the said war would have applied to this set of Nigerians that suffered deprivations, but rather it is directed towards those who never suffered any discrimination whatsoever. At the risk of being verbose, may we cite at length the explanatory view of Prof. V.C. Uchendu in the vexed issue of quota system as it relates to placements into Federal Institutions:

¹⁷ The Convention on the Elimination of All Forms of Discrimination against Women, entered into force in 1981. It has been ratified by most states including Nigeria. Some states ratified with reservations which preserved for muslim countries the indelibly sexist legal regime of Sharia Law, and for the United States, the power to deny any women either an abortion or paid maternity leave. This position must be compared to the equivalent Convention on the Elimination of All Forms of Racial Discrimination which has been universally and deservedly ratified, thus, establishing an international law against systematic racism.

¹⁸ *East African Asians Case*, 3 EHRR 76(1973).

¹⁹ See Section 153 (1) (c) of the 1999 Constitution of Nigeria.

²⁰ See, Section 8 of the third Schedule, Part 1 of the 1999 Constitution of Nigeria.

“I have asserted that the administration of the quota access to Federal Institutions is unjust. What is the basis of the change? I want you to imagine a situation where the children of a University professor, those of a University Registrar, those of a Major-General or Brigadier, those of Justice of State High Court, of Doctors, Lawyers and Engineers, citizens of such ranks are treated by the policy as educationally disadvantaged children simply because, by official policy, their fathers happened to be born in a part of Nigeria defined as educationally disadvantaged.”

Further, in pursuing his presentation, he argued that:

Play this back against another scenario. Imagine the children of peasant farmers or fishermen, children of levels 1-4 officers, and of our petty traders who must suffer discrimination in educational access simply because they come from an area that is characterized as “educationally advantaged”²¹

Discrimination against citizens from other parts of a federation on the basis of the origin of their parents or grandparents is certainly against the letter and spirit of equal access to public property, facilities and services. Point back, a candidate from Imo State, who scored 131 cannot get admission while his counterpart from the northern part of Nigeria who failed with 2 marks is admitted. Implicitly, the query is – why should a candidate who failed an examination by scoring 2 be given preference to the one who scored 137? How can this entrenched discriminatory practice be justified in law?

In sparing a word for the classification disadvantaged states, who is disadvantaged between states whose candidates scored 2 marks and given admission with scholarship and the others whose candidates scored 137 and denied admission, talkless of scholarship? Consistently, over the years, different catch phrases have been manufactured and systematically used to edge out bright students from the south in favour of the few students from the north. Phrases like “catchments area” “environmental” and “educationally disadvantaged states” have been deployed as vehicles for accomplishing the sustained discrimination of the south educationally. It is enormously canvassed that by so doing, it will help the north catch up with the south. The truth indeed is that nothing takes the place of sacred fairness, rather, it will result to cabbage in, cabbage out, amounting to digging a small pit to fill a valley.

Recently, the U.S Supreme Court rendered its decision in *Fisher v. University of Texas*, at Austin,²² a challenge against affirmative action and the use of race in college admissions decisions. The decision was a narrow victory for Abigail Fisher, a white woman who claimed that the University of Texas unconstitutionally discriminated against her by rejecting her application under the race-conscious admissions programme. The Court affirmed its previous decisions establishing affirmative action as constitutional to further a state’s compelling interest in fostering student diversity but held that racial preferences are only permissible where there are “no workable race-neutral alternatives.” This *ratio* cannot compare with the brutish application of “Federal Character” and ‘quota system’ in Nigeria. Firstly, application for admission to higher institutions is predicated upon certain prerequisites, the main being scoring

²¹ Prof. V.C. Uchendu in his address “The Ambition of the Policy Sciences” to the second annual dinner of the Alumni Association of the National Institute for Policy and Strategic Studies, Owerri, Nigeria, 24 November, 1994.

²² Cited by Olatoye Akinbode, “Federal Character, Quota System and State-Sanctioned Mediocrity,” *Thisday*, 02.07.2013, p.12.

a pass mark in the qualifying examination. A candidate who failed the exam does not qualify for consideration since the candidate has not crossed that threshold. Secondly, having failed to qualify for the upliftment into a higher institutions, the issue of admission on whatever affirmative ground does not arise.

5. CONCLUSION

It is undeniable, discriminatory practices come at a cost, and it is at the cost of the victims. The governments of the beneficiaries of 'quota system' and like policies are not rising up to the challenge of improving education in their states. They are rather comfortable with the quota system that guarantees admission and scholarship for their indigenes, even when they failed. The quota system does not insist that spaces must be filled, even at the pain of fielding failed and unqualified candidates.

In the United States, there are community colleges where low grade candidates could be brushed up before proceeding to the next level of training. The consequences of a misplaced education policy afflicts the country as a whole. The principle of equality relates to individuals, not states. Moreso, a modern constitution should differentiate between permanent residents, citizens and aliens rather than state of origin as a basis for differential treatment. The state of origin syndrome is inconsistent with national unity and cohesion and indeed with merit and efficiency.

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