

# An Appraisal of the Protection of National Minorities under the 1999 Nigerian Constitution: Lessons from Other Jurisdictions

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## Abstract

The protection of national minorities is a crucial aspect of most countries' constitutional law to ensure equal treatment of all citizens regardless of gender, birth or status. However, in Nigeria, such protection remains a mirage rather than reality. The Nigerian political structure is skewed in favor of the major ethnic groups based on demographic and geographic space offering vast opportunities to power and political dominance in an otherwise heterogeneous society. This paper investigated the provisions of the Constitution of the Federal Republic of Nigeria 1999 to protect national minorities. It utilized the doctrinal methodology and comparative approach to examine the efficiency of the different mechanisms put in place to protect national minorities in Nigeria, such as the federal character principle, local government system, National Youth Service Corps scheme and boundary adjustments. The paper also drew comparative lessons from other jurisdictions like South Africa, USA, Brazil, India, and Pakistan to conclude that Nigeria must follow these countries to meet international best practices in the protection of national minorities.

**Keywords:** National minorities, ethnicity, federal character principle, national integration, human right

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## 1. Introduction

Nigeria, a nation with diverse minority groups, is committed to defending the rights of its people. The Constitution guarantees core human rights such as life, dignity, freedom of expression, and freedom from discrimination. It also ensures equal representation by allocating a set number of representatives to each state in the National Assembly. To guarantee minority populations' representation and participation in local administration and public affairs, the Nigerian Constitution requires each state government to create a State Local Government Service Commission.

The Constitution makes use of the Local Government System, Federal Character Principle, Zoning principle, Boundary adjustments, and NYSC scheme in trying to protect minority interests although these procedures have been seen to be plagued with a lot of challenges. The constitution also recognizes the traditional rights of minority communities to land and natural resources within their borders while granting the state government ownership and control of the land. The Nigerian judiciary plays a crucial role in protecting the rights of minorities and ensuring that the constitution is followed. The government has ratified several international agreements that support minority and human rights.

Some of the rights of minority ethnic groups in Nigeria include historical and linguistic rights, political participation, religious liberty, equitable resource accessibility, prohibition of discrimination, and property and land rights. However, the protection of minority rights goes beyond making general laws to ensure equitable protection of everyone in society. Many scholars argue that the Constitution itself is discriminatory, as it made generic rights for everyone and only made particular provisions in favor of the majority ethnic groups.

Since its independence, Nigeria has faced numerous ethno-religious conflicts, with historians blaming various ethnic groups for these battles. These conflicts have resulted in the loss of lives and property, often involving riots, sabotage, assassination, armed struggles, guerilla warfare, and secession. The current rash of ethno-crises has become alarming, with attacks on police headquarters, police Zonal Headquarters, and rural agrarian villages. Bandits and terrorists disguised as herders have raped, killed, and kidnapped natives with reckless abandon across Southern states, with no recourse to justice.

Thus, an analysis is made on the efficacy of the use of the Local government system, NYSC, boundary adjustment and federal character principle to protect minority rights in Nigeria. Recommendations are made on how to ensure the enforceability of these methods to protect minority rights. A comparative analysis of the USA, India, Pakistan, Brazil, and South Africa to see how they have handled the issue of protection of minority rights in their respective countries and the effect of those methods employed by them.

## 2. Mechanisms for Minority Protection under the Constitution

Below is an analysis of the different mechanisms employed by the Constitution for protection of minority groups in Nigeria:

## 2.1 Local Government System

The Nigerian federal system comprises federal, state, and local government areas. Local governments have been incorporated into Nigeria's political landscape to address issues of ethnic domination, suppression, and discrimination.<sup>1</sup> However, legal hurdles, dissolution of councils by state governors, lack of fiscal autonomy, and political interference have hindered their purposeful governance and integration. The local government system in Nigeria began during British colonization and has evolved, with local governments serving as a means for ethnic minorities to participate in governance and control their affairs. The establishment of local governments in Nigeria has been a result of the belief that local people have the superior capacity to understand and conduct their affairs, unlike federal or state governments. The 1999 constitution<sup>2</sup> recognizes local government as a tier of government, with democratically elected councils and a focus on community interests, traditional associations, and administrative convenience. Local government councils are also responsible for economic planning and development.<sup>3</sup>

Local governments in Nigeria represent government at the local or community level, with their management involving representatives of communities and wards. The 1999 constitution ensures that leaders of these councils are elected by residents and indigenous persons, not administrators or caretaker committee members.<sup>4</sup> The first native authority ordinance recognized traditional rulers and leaders in northern Nigeria, but there was a problem in identifying who the authorities were in southern Nigeria. The Chiefs-in-Council was established, with the chief presiding at all meetings and acting by the majority opinion. This arrangement led to further agitation for reforms in native authorities and the need to look at self-governance at the local level. Between 1950 and 1955, the first elected local government council based on the British Whitehall model emerged in Lagos and the former eastern and western regions.<sup>5</sup> Between 1960 and 1966, there was a decline in the prestige and responsibilities of local authorities in Nigeria, particularly in the western and eastern regions. The regions were eliminated between 1969 and 1971, and states were established in their place.<sup>6</sup> The 1976 changes set the framework for local government councils as Nigeria's third tier of government, resulting in Section 7 being included in the 1979 constitution and retained in the 1999 CFRN (as amended).

Because the Nigerian federal setup allows local government councils to interact with state governments, state governments acting on matters reserved for local governments is illegal. Ethnic minorities have advocated for additional ethnically oriented local government regions, but constitutional limitations make this challenging. These initiatives have gone unnoticed by the federal government.<sup>7</sup>

Nigeria's political history has been divided into four republics, the first being the 1960–66 republic, the second between 1979–1983, the third between 1986 – 1993, and finally the fourth republic.<sup>8</sup> The fourth republic saw local government elections held in 1998, but elected officials.<sup>9</sup> The electoral law provided for a three-year term for local government chairman, but officials sought an extension to be on par with presidents and governors in other tiers of government. The National Assembly passed legislation that prolonged the tenure of local government officials, which some governors contested in court.

In *A.G. Abia & 2 Ors v. A.G. Federation & 33 Ors.*,<sup>10</sup> the Supreme Court ruled that no Act passed by the National Assembly can allow it to exercise supervision powers over elected local government officials. The Independent National Electoral Commission (INEC) was in charge of keeping voter records up to date and making them available to SIECs. However, INEC failed to prepare and make available the voters' registry, prompting governors to appoint caretaker committees to function for three months.

The forum of 36 governors convened in 2003 and decided to press for a constitutional reform that would allow state governors to pick council chairmen and councilors. As demonstrated in the case of *Governor of Akwa Ibom State & Anor v. Hon. Peter John Umah*,<sup>11</sup> the Supreme Court has frequently held that state governors' acts of dissolving local government councils exceed their jurisdiction.

To summarize, the dissolution of elected local government administrations in Oyo and Katsina states is illegal and unconstitutional because federalism offers a local institutional foundation based on tribal or group

<sup>1</sup> Thisdaylive, 'Analysing Ethnicity, Ethnicity Crises in Nigeria and its Management' (2021) <Analysing Ethnicity, Ethnic Crises in Nigeria and its Management - THISDAYLIVE > Accessed 24 September 2023

<sup>2</sup> 1999 CFRN (as amended)

<sup>3</sup> Thisdaylive, note 1.

<sup>4</sup> Otivie Igbuzor, 'Local Government Reform and Constitutional Review in Nigeria' *JPLS* (2007) 1(1).

<sup>5</sup> Francis Oniekoro, 'Local Government Administration in Nigeria' in Maxwell Gidado (ed.) *Nigeria Beyond 1999: Stabilizing the Polity Through Constitutional Re-Engineering: Constitutional Essays in Honour of Bola* (2004) Chenglo Publishers

<sup>6</sup> Oyeleye Oyediran and Alex Gboyega, *Local Government and Administration*, in Oyeleye Oyediran (ed.) *Nigerian Government and Politics under military rule 1966 – 1976* (Macmillan Publishers, London 1979).

<sup>7</sup> Francis Oniekoro, 'Local Government Administration in Nigeria' in Maxwell Gidado (ed.) *Nigeria Beyond 1999: Stabilizing the Polity through Constitutional Re-Engineering: Constitutional Essays in Honour of Bola* (2004) Chenglo Publishers.

<sup>8</sup> Nathaniel Inegbedion and Job Odion, *Constitutional Law in Nigeria* (Ambik Press, Benin City, 2011).

<sup>9</sup> Alex Gboyega, 'Democratizing Local Government in Nigeria' *Greenhill Journal of Administration* (1981) 5(3 & 4).  
<sup>10</sup> (2002) 6 NWLR (Pt. 763) 254.

<sup>11</sup> (2002) 7NWLR (767) 738 at 771, 776-777.

emotions. Local government areas are vital in a heterogeneous country like Nigeria.

The 1999 CFRN<sup>1</sup> differentiates between the legislative authorities of the National and State Houses of Assembly, with Section 4<sup>2</sup> outlining both. The establishment of new local government regions cuts across both legislative houses, allowing them to operate without regard to constitutional limitations. Local government councils should not be dissolved by state governments because they foster grassroots democracy and defend different interests. Full autonomy for councils, including elections by the Independent National Electoral Commission (INEC), is required to prevent governors from seeking to abolish councils in the future. Courts overturn executive dissolution of elected councils, and any disgruntled official whose tenure is terminated in violation of the 1999 Constitution can seek legal remedy in court.

## 2.2 Boundary Adjustment in Nigeria

The 1999 Constitution<sup>3</sup> (as amended) specifies state and local government boundaries. The National Boundary Commission (NBC)<sup>4</sup> is in charge of intervening and resolving conflicts between Nigeria and its neighbors, as well as defining and delimiting borders, monitoring trans-border ties, and fostering cooperation and border region development.<sup>5</sup> To address these challenges, NBC established a department of internal boundaries,<sup>6</sup> which is responsible for enabling equitable utilization of shared border resources, developing policies and programs, implementing resolutions, and distributing information to the public. Correspondence with affected communities, searching for relevant documents, conducting independent investigations, requesting additional inputs, convening joint meetings, conducting fieldwork, articulating findings, convening meetings, acting on directives, advocacy visits to disputed border communities, participation in boundary tracing and provisional demarcation, and organizing workshops and seminars are all part of the department's activities. The role of NBC is critical in preventing major ethnic groups from dominating ethnic minorities by claiming their areas because of population size. However, the procedure's mandated nature places a burden on ethnic minorities attempting to safeguard their territories. Several stages are involved in the procedure, including presenting a proposal to the House of Assembly as well as the joint houses of the House of Representatives and Senate.

## 2.3 Federal Character Principle

Nigeria is a multiethnic, multi-religious, and multiregional nation.<sup>7</sup> More than half of the population belongs to the ethnic groupings of Hausa-Fulani, Yoruba, and Igbo.<sup>8</sup> With a sizable Christian population in the North-Central region, the northern region dominated the nation's federal structure. There were Muslim and Christian populations in the South-South, South-East, and South-West regions. Because of its lack of self-will, the federal government lost credibility in the eyes of Southerners. To ensure equality across borders, the federal government was tasked with drafting a new constitution in 1975. The Federal Character Principle was established in the 1979 Constitution<sup>9</sup> to stop states, ethnic groups, and sections from gaining too much authority. According to the notion, everyone must be treated fairly, and ethnic groups must be represented at all levels of government<sup>10</sup>. The idea was upheld in the 1999 constitution, ensuring that the structure of government and how it functions reflect Nigeria's federal structure and advance national cohesion.<sup>11</sup>

Nigeria's 1999 Constitution places a strong emphasis on the necessity of national unity and outlaws discrimination based on divisions along racial, religious, or sectarian lines. To ensure that national allegiance triumphs over sectarian loyalty, the state is tasked with helping the citizens of the Federation feel a feeling of involvement and belonging. However, the country's ethnic, religious, and political mix plays a significant role in the differences between its northern and southern regions.<sup>12</sup>

It has been challenging for succeeding governments to accomplish political goals due to conflicts and hostility in the South-West and South-East geopolitical zone<sup>13</sup>s, which are home to the Yoruba and Igbo ethnic

<sup>1</sup> 1999 CFRN (as amended).

<sup>2</sup> 1999 CFRN (as amended).

<sup>3</sup> First Schedule, Part 1 of the 1999 CFRN (As Amended).

<sup>4</sup> The National Boundary Commission Act 1987 now National Boundary Commission (Establishment) Act 2006.

<sup>5</sup> Section 7 of National Boundary Commission Act.

<sup>6</sup> Section 9 of NBC Act.

<sup>7</sup> Abdul Raufu Mustapha, 'Institutionalizing Ethnic Representation: How Effective is the Federal Character Commission in Nigeria?' *Journal of International Development* (2009) 561–576.

<sup>8</sup> The Nation, "South -South, South East governors decry federal presence in regions" *The Nation News* (2017) <<https://thenationonline.net/south-south-south-east-governors-decry-federal-presence-regions/>> accessed on 14 October 2023.

<sup>9</sup> Decree Number 25 of 1978.

<sup>10</sup> Helen Chapin Metz, "Nigeria: A Country Study. Washington" GPO for the Library of Congress, (1991) <Nigeria (countrystudies.us)> accessed on 26 September 2023.

<sup>11</sup> Abdul Raufu Mustapha, 'Institutionalizing Ethnic Representation: How Effective is the Federal Character Commission in Nigeria?' *Journal of International Development* (2009) 561–576.

<sup>12</sup> Mustapha, A. R., 'Institutionalising ethnic representation: How effective is the Federal Character Commission in Nigeria?' *Journal of International Development*, (2009) 561–576.

<sup>13</sup> Lary Diamond, *Class, Ethnicity, and Democracy in Nigeria. The Failure of the First Republic* (Syracuse University Press, 1988).

communities. The country's historical tri-polar structure has bred discontent, particularly among ethnic minorities that were assimilated under bigger ethnic groups after the country attained independence in 1960. Despite constitutional protections for racial and ethnic minorities, both the federal and state governments continue to show a general disrespect for these communities.

The Sani Abacha military administration formed the Federal Character Commission (FCC) in 1996,<sup>1</sup> and it was later made one of the 14 independent federal executive agencies in 1999<sup>2</sup>. A chairman, 37 commissioners—representing 36 states and the Federal Capital Territory—and a secretary are included in its membership. The commissioners are appointed by the president after being nominated by the state governments and approved by the National Assembly. The FCC is helped by civil employees who are in charge of data collection, administration and monitoring.

The FCC is empowered by the Constitution of 1999<sup>3</sup> to create an equitable methodology for allocating positions in the public sector, the military, government security services, government-owned businesses, and parastatals.<sup>4</sup> Geopolitical zones, states, local government councils, and electoral wards are all included in the distribution formula's rigid geographic basis.<sup>5</sup> Each year, the FCC compiles information on Ministries, Departments, and Agency nominal rolls and generates a report for the President and the National Assembly. Additionally, it keeps an eye on hiring processes, highlighting which states should be given preference in hiring based on an examination of the nominal roll.

Despite the FCC's best efforts, there hasn't been much progress in addressing the historical inequalities in Nigeria's civil service. The FCC's operations are nonetheless hampered by legal concerns, administrative restrictions, persistent underfunding, and political reliance. Taking care of these problems will assist the FCC in acquiring the authority and legitimacy required to carry out its mandate.<sup>6</sup>

The FCC Act gives the commission the authority to work toward and implement the distribution of socioeconomic benefits across the nation, with a concentration on youth development, commerce and industry, telecommunications, electricity, and health. The commission's role and impact on society could be strengthened by the second mandate, which calls for the distribution of socioeconomic benefits by the federal character concept. This would help to ingrain fairness, justice, and equity as societal norms.

The 1999 Constitution of Nigeria mandates that the government support equitable and sufficient education, battle illiteracy, and provide free, universal, and mandated education. To do this, the government imposed quota initiatives to close the educational gap between states with and without developed educational systems and catchment areas.

A quota system and academic merit are used by the Nigerian government to determine which students are accepted to universities.<sup>7</sup> 20% goes to areas with less development in education, 25% goes to catchment regions, and 10% is discretionary. This policy, which seeks to ensure equity and justice in university admissions procedures, is supported by the National Universities Commission (NUC).<sup>8</sup> Regardless of ethnicity or gender, the quota system and catchment area rules seek to encourage equal representation and engagement for all citizens. To promote equal representation of states and local government areas, these policies encourage public authorities, governmental organizations, educational institutions, and the corporate sector. According to the Federal Character Commission, this means decreasing the entry requirements for states or catchment areas that are thought to be underprivileged. These laws are essential in Nigeria's multiethnic society because they guarantee equal chances for all individuals without regard to their educational background at all levels. The federal character rules in place for school entrance, job appointments, and resource distribution are seen as being represented through the quota system and catchment area policies.

In Nigeria, the Federal Character Principle (FCP)<sup>9</sup> has several difficulties, including problems with record-keeping, an imbalance in the representation of geographical zones, and the justiciability of essential goals and guiding principles. Annually, the FCC compiles employment figures of Nigeria's MDAs, although there are questions concerning integrity and accuracy because these records are not consistently stored at the FCC library or online.

The representation of six geopolitical zones in Nigeria's federal public service between 1996 and 2004 has also caused problems for the FCC because it was unable to correct historical imbalances. As a result, the Federal Character Commission was founded and the Federal Character Principle was introduced. Furthermore, the FCC's

<sup>1</sup> Rotimi Suberu, *Federalism and Ethnic Conflicts in Nigeria* (USIP Press, Washington, DC 2001).

<sup>2</sup> *Ibid.*

<sup>3</sup> Sections 14(3) and (4) of 1999 CFRN (as amended).

<sup>4</sup> Section 8(1) of 1999 CFRN (as amended).

<sup>5</sup> Section 8(1) of 1999 CFRN (as amended).

<sup>6</sup> Rotimi Suberu, *Federalism and Ethnic Conflict in Nigeria*, (United States Institute of Peace (USIP) Press, Washington DC 2001) 23-24.

<sup>7</sup> Abdu Rauf Mustapha, 'Institutionalising Ethnic Representation: How Effective is the Federal Character Commission in Nigeria?' *Journal of International Development* (2009) 572.

<sup>8</sup> *Ibid.*

<sup>9</sup> Victoria Ojeme, "Federal character not required in appointment of service chiefs – FCC" Vanguard News (2018).

data shows that imbalances at the geopolitical and state levels have not been corrected over time, and there are also significant imbalances across states in the zones.

Courts have ruled time and time again that parts of the constitution that deal with overarching goals and guiding principles of government policy are not justiciable and cannot be enforced. The inclusion of Section 14(3) for the President's compliance in Section 147(3) has, nevertheless, made Section 14(3) regarding Ministerial Appointment justiciable.

Courts must be purposeful in how they interpret the Constitution's provisions to successfully carry out their constitutionally mandated duties. To secure the validity of the principles and to ensure that the principles are applied in the actual practice of government, courts must interpret the provisions of the Constitution.

In Nigeria, the Federal Character Commission (FCC) has trouble upholding the Federal Character Principle, especially when it comes to vetting political appointments. The commission's information on political appointees is incomplete and not updated regularly. Given that the president picks its members and approves its budgets, the FCC's power to hold presidents responsible for breaking the law is in doubt. Because the commission concentrates on geographic representation and recruitment standards for each institution, there is also a concern that it is unable to resolve inequalities in the public sector. Another difficulty is the power dynamics between the FCC and MDAs.<sup>1</sup>

The Philippine Constitution has a variety of difficulties, including the non-justiciability of Chapter Two, the number of commissioners, rivalries between the Federal Civil Service Commission and the FCC, and a lack of sufficient finance. The FCC's ability to enforce adherence to the federal character concept is constrained, and its mediating function is viewed as a weakness. Due to frequent funding shortfalls, the FCC has been sued for failing to ensure the application of the federal character principle.<sup>2</sup>

## 2.4 Zoning Principle

Zoning has been a big problem in Nigeria because it is utilized to deal with interethnic conflict and the dominance of minor ethnic groups.<sup>3</sup> The 1975 Constitution Drafting Committee first rejected the idea, but the National Party of Nigeria (NPN) later embraced it in 1978 to lower interethnic tensions.<sup>4</sup> The PDP, the All Nigeria People's Party (ANPP), and the Alliance for Democracy (AD) all endorsed the zoning principle in response to the need for a transfer of power.<sup>5</sup> The zoning formula was fully institutionalized among the political parties and the polity, and the practice has since permeated the nation's political system. Since 2015, however, the zoning formula has not been properly followed, in part because the party in power does not have a substantial following throughout the various zones of the nation. The distribution of electoral offices and the zoning formula, while not supported by the law, have grown to be crucial components of Nigeria's political system.

Due to their population, geographic dispersion, and electoral importance, minority ethnic groups have frequently been disregarded in appointments throughout Nigeria's political history. Zoning has been used to correct this imbalance, even though it is not expressly stated in the constitution.<sup>6</sup> Zoning has always been a component of Nigerian politics because it is based on ethnicity and religion. The federal character principle and the requirement to elect and appoint political office holders based on their ethnicity as a way of achieving systemic balance are recognized by the Constitution. Zoning has had drawbacks, though, such as undermining nationalistic aspirations and allowing incompetent leaders to be elected and appointed, which solidified terrible leadership.<sup>7</sup>

Since many Nigerians tend to identify more with their tribal distinctiveness than with the nation, ethnicity is a key component of that country's politics. Due to corruption and nepotism, the zoning and rotating policies intended to promote fair and equal representation have been undermined. The fair distribution of political power through the electoral process is based on Rawls' idea of justice, which supports a liberal democratic society.<sup>8</sup>

## 2.5 National Youth Service Corps (NYSC)

After the Nigerian Civil War, which lasted from 1967 to 1970, the federal government founded the National

<sup>1</sup> Abdu Rauf Mustapha, 'Institutionalising Ethnic Representation: How Effective is the Federal Character Commission in Nigeria?' *Journal of International Development* (2009) 572.

<sup>2</sup> *Ibid.*

<sup>3</sup> Oxford University press, "A Dictionary of African Politics" Oxford University (2019) <<https://www.oxfordreference.com/display/10.1093/acref/9780191828836.001.0001/acref-9780191828836-e-367#:-:text=The%20principle%20of%20zoning%20is,Civil%20War%20of%201967%E2%80%9370>> Accessed 26 September 2023.

<sup>4</sup> Rotimi Suberu, 'The Travails of Federalism in Nigeria' *Journal Of Democracy* (1993) 4(4) 39.

<sup>5</sup> Nkwachukwu Orji, *Power Sharing, The Element of Continuity in Nigerian Politics* (PhD thesis Central European University Department of Political Science 2008).

<sup>6</sup> Adagbo Onoja, 'Politics of Zoning in Nigeria' <<http://www.naijapals.com/modules/naijapals/politics/zoning>> accessed 21 January 2022.

<sup>7</sup> Rotimi Suberu and Lary Diamond, 'Institutional Design, Ethnic Conflict-Management and Democracy' in Andrew Reynolds (ed.) *The Architecture Of Democracy: Constitutional Design, Conflict Management and Democracy* (Oxford University Press, Oxford 2002).

<sup>8</sup> US Library "Nigeria- The Second Republic, 1979 – 1983", US Library of Congress < <https://countrystudies.us> > accessed on 29 August 2023

Youth Service Corps (NYSC) as part of its strategy. The order aims to promote harmony and tolerance among Nigeria's many ethnic groupings. Decree No. 51 took its place after the 1990 amendment, repeal, and repeal in 1993. The Federal Republic of Nigeria's 1999 Constitution (as amended), Section 315, provided for the codification and incorporation of the decree into the Laws of the Federation (LFN).

The NYSC Act intends to foster national cohesion and togetherness among Nigerian youth, as well as to do away with prejudice and ignorance. The service corps makes sure that members are distributed fairly, places them in occupations in states other than their home state, guarantees that Nigeria is accurately represented, and exposes them to other lifestyles to accomplish these goals. The NYSC program, however, hasn't always been implemented consistently. Due to insecurity and religious intolerance, some people choose to serve their mandatory youth service in their home states, disregarding the program's intended goals. Additionally, some people have been able to obtain discharge certificates while not participating thanks to fraudulent NYSC officials' efforts. Despite these difficulties, the NYSC Act offers recent graduates in Nigeria the chance to gain knowledge of the customs and people of the numerous ethnic groups in the country, promoting harmony and avoiding discrimination. Following the goals of the NYSC Act strives to promote understanding and tolerance-based peaceful coexistence.<sup>1</sup>

### 3. Protection of the Minorities in Other Jurisdictions

#### 3.1 South Africa

South Africa is a multicultural nation with a population that is multiracial, ethno-linguistic, and religious.<sup>2</sup> South Africa is a multicultural nation with a population that is multiracial, ethnolinguistic, and religious. Due to the country's tumultuous history of splits and the manipulation of group membership under apartheid, its democratic constitution has been controversial.<sup>3</sup> The Inkatha Freedom Party (IFP) and the National Party (NP) emphasized the necessity for institutional accommodation of many constituent groups' identities and interests, while the African National Congress (ANC) argued for a unified state structure and majoritarian democracy in the Westminster tradition. South Africa understood that protecting national, religious, and ethnic minorities against prejudice should go beyond simply allowing people to identify with their organizations. The idea that all citizens are entitled to the same rights is challenged by a recent study on unique minority rights. Individuality, diversity, multiculturalism, and pluralism are valued rather than pushed to the margins.

Numerous problems that minority communities in South Africa face imperil their rights, welfare, and social status. These challenges are the outcome of recent problems, past injustices, and social inequalities. Minority communities still experience prejudice and marginalization because of their ethnicity, color, and language. Their livelihoods and health are impacted by inadequate educational opportunities, inequities in healthcare, political underrepresentation, security challenges, and environmental problems.

The 1996 South African Constitution<sup>4</sup> with its comprehensive and forward-thinking approach to protecting minority rights serves as a model. It includes the Bill of Rights, which encourages nondiscrimination, equality, and diversity.<sup>5</sup> The Bill of Rights forbids discrimination on several different grounds, acknowledges cultural, religious, and linguistic diversity, permits affirmative action programs, values traditional leadership, ensures that minorities are represented in the national legislature, establishes Equality Courts, and incorporates global responsibilities.<sup>6</sup>

The Constitutional Court of South Africa has been essential in interpreting and upholding these rights because South Africa is a signatory to international agreements and treaties that safeguard minority rights.<sup>7</sup> To give minority communities the chance to participate in discussions that could have an impact on their rights, public involvement, and consultation are also prioritized in decision-making processes.

With its post-apartheid constitution addressing anti-discrimination laws, cultural and linguistic safeguards, and affirmative action clauses, South Africa has made tremendous progress in preserving minority rights. Compared to Nigeria's constitution, which might not offer comprehensive protection, this is a considerable advance. Additionally, South Africa has formed specialized Equality Courts, started land restitution and redistribution programs, and recognized the rights and cultural legacy of indigenous people. Additionally, it collaborates with global organizations and has a robust civil society network. Both nations continue to deal with

<sup>1</sup> John Ayoade, 'The Federal Character Principle and The Search for National Integration' in Kunle Amuwo, Adigun Agbaje *et al* (eds.), *Federalism and Political Restructuring in Nigeria* (Spectrum Books Ibadan, 1998).

<sup>2</sup> Dersso, Solomon A. "Chapter VI – South Africa's Constitutional Design for the Accommodation of Diversity" in *Taking Ethno-Cultural Diversity Seriously in Constitutional Design*, (Leiden, The Netherlands: Brill | Nijhoff, (2012).

<sup>3</sup> Najma Moosa, "Promoting minority rights in the context of economic, social and cultural rights in South Africa", University of the Western Cape <<https://journals.co.za/doi/pdf/10.10520/EJC27388>> Accessed 27 September 2023.

<sup>4</sup> Constitution of the Federal Republic of South Africa No. 108 of 1996.

<sup>5</sup> Najma Moosa, above note 4.

<sup>6</sup> *Ibid*.

<sup>7</sup> Anne Smith, 'Equality Constitutional Adjudication in South Africa: focus: twenty years of the South African Constitution' *African Human Rights Law Journal* (2001) 14(2).

challenges and complications in this areas.

### 3.2 Brazil

Brazil, a multicultural nation with many minority groups, has seen extensive colonialism and European infiltration. With up to 5 million Africans imported as slaves, the slave trade resulted in the largest immigration of African slaves into the Americas.<sup>1</sup> Social inequality in Brazil was created by this large intake of slaves and an economy built on slavery. In 1888, Brazil became the last country in the Western Hemisphere to abolish slavery, but it did not equalize the status of white landlords and Afro-Brazilians.<sup>2</sup>

Due to Brazil's "branqueamento" (bleaching) immigration strategy, around 5.2 million Western Europeans went there in the early 20th century. The ruling class felt that a country's race explained whether it had developed into a civilized or uncivilized nation. The whitening of the Brazilian people was encouraged by this racist discourse, and it was decided that free labor would be imported based on racial criteria.<sup>3</sup>

In Brazil, the concept of "racial democracy" evolved and was celebrated as a national success. However, due to persistent structural discrimination and historically ingrained patterns of discrimination, Afro-Brazilians continued to be severely marginalized. By dedicating the state to eradicating prejudice and discrimination based on race, ethnicity, gender, religion, or any other element, Brazil's Constitutional Protection of Minority Rights emphasizes the concepts of human dignity, social equality, and non-discrimination.

To rectify historical injustices and promote the inclusion of historically disadvantaged groups, such as ethnic minorities and Afro-Brazilians, Brazil has established affirmative action legislation, particularly in the public sector. Public defenders are mandated by Articles 133 and 134<sup>4</sup> to aid persons who cannot afford legal representation, such as minority communities living in ecologically vulnerable areas. Indigenous land demarcation ensures the preservation of the territorial rights of Indigenous groups. Brazil has put affirmative action laws into place, including quotas for employment and education, to support minority rights. The rights of indigenous peoples are recognized by the constitution, including access to ancestral lands, the preservation of their cultures, and involvement in local decision-making. The constitution of Nigeria does not, however, provide any special protections for minorities. The Quilombola Community is guaranteed autonomy and the preservation of its cultural heritage by the constitution of Brazil. In contrast to Nigeria, which has no provisions, it also gives marginalized people access to legal aid services. More efforts are required to ensure equal protection of minority rights because Brazil and Nigeria each face distinctive historical, cultural, and political contexts. Brazil's dedication to minority rights is a result of the country's multicultural society and aspiration for a more inclusive and equal country.<sup>5</sup>

### 3.3 United States of America

The United States has faced numerous issues affecting minorities and other disadvantaged groups throughout its history, including the struggle over slavery, the extension of equality principles to gender and non-racial forms of discrimination, and recent efforts to include sexual orientation among privacy rights. The protection of minorities and other disadvantaged groups has been inspired by practical concerns of self-interest, as prejudice against one group may lead to attacks on other target groups.<sup>6</sup> The battle to abolish slavery and its remnants has been the most frustrating and time-consuming of these campaigns. The nation's first African-American Supreme Court justice, Thurgood Marshall, asserted that members of his race had little cause to rejoice at the ratification of the first Constitution. Instead, he said, African Americans should be appreciative of the 13th, 14th, and 15th Amendments to the Constitution, as well as the restrictions on slavery and discrimination in voting and other areas of public life that were put in place during the Civil War and Reconstruction.<sup>7</sup> The Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Home Act of 1968 are just a few examples of the significant barriers that the White House and Congress have erected against this type of discrimination. However, discrimination against Hispanics in employment, housing, and education has resulted from linguistic barriers and widespread concerns about illegal immigration, particularly from Mexico.<sup>8</sup>

The US Constitution provides a framework for defending the rights and liberties of minorities, including freedom of speech, press, assembly, and petitioning the government. Court rulings and legal challenges, particularly those from federal courts, have been crucial in interpreting and preserving minority rights. Minority

<sup>1</sup> Valentina, Rudenko et al., 'Constitutionalization of National Minority Rights in BRICS Countries (Brazil, India and Russia)' *BRICS Law Journal* (2021) 8(3).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Brazil 1988 (rev. 2017) Constitution – Constitute.

<sup>5</sup> Valentina, Rudenko, note 49.

<sup>6</sup> Tinsley Yarbrough, 'Protecting Minority Rights' *Democracy Papers* (2017) <<https://web.archive-2017.ait.org.tw/zhtw/DOCS/Demopaper/dmpaper11.html>> Accessed 28 September 2023.

<sup>7</sup> Tinsley Yarbrough, 'Protecting Minority Rights' *Democracy Papers* (2017).

<sup>8</sup> *Ibid.*

groups have legal rights due to anti-discrimination laws like the Civil Rights Act of 1964 and the Americans with Disabilities Act, which forbid discrimination on the grounds of race, color, religion, sex, national origin, disability, and other protected characteristics.<sup>1</sup>

Nigeria's federal character principle, also known as the Quota System Policy, is constitutionally provided for and applies to all government establishments and the public sector. It recognizes ethnic nationalities and equal treatment of citizens, including non-discrimination. However, the rights provided are non-justiciable, and no citizen of Nigeria can challenge the government's failure to comply with the provisions of the Constitution. The federal character principle is deeply rooted in the educational sector, with the Ministry of Education creating special treatment for less developed states. However, the standard applied is not general and does not cut across the board. The government aims to reflect the ethnic character of Nigeria in every sector under government control, not allowing one section of the country or ethnic group to dominate any sector. The affirmative action policy in the US is justiciable, while the federal character principle is constitutionally provided for and does not allow a sect or part of the citizenry to dominate others. However, the federal character principle downplays merit to accommodate less disadvantaged ethnic groups, and there is no record of the commission's intervention leading to successful arrest, prosecution, and conviction.

In conclusion, the US has a unique approach to minority protection, with a long history of civil rights legislation and anti-discrimination laws. However, the US still faces challenges related to minority rights, such as systemic racism, disparities in healthcare and education, and incidents of hate crimes and discrimination.

### 3.4 India

A crucial step in assuring the protection of minority interests was taken by the 1947 resolution on minorities' rights passed by the Indian Constituent Assembly. The Advisory Committee on Fundamental Rights and Minorities was created by the Assembly to examine the kind and scope of protections provided to minorities by the Constitution<sup>2</sup>. The Drafting Committee outlined the rights of minorities in ten articles, including the appointment of Anglo-Indians to the Lok Sabha and State Legislative Assemblies, consideration of the claims of Muslims, SCs, STs, and Christians from the State of Madras and Bombay, and reservation of seats in these bodies for them<sup>3</sup>. However, the split's events significantly impacted minority rights and fundamentally changed the attitude of the country. Rajkumari Amrit Kaur opposed the free "practice" of religion out of worry that it may legitimize anti-social habits and erode secular accomplishments, while Sardar Patel suggested that the advisory committee's first suggestions respecting minorities should be reevaluated. To ensure that the right to freely practice religion would not impede the State's ability to enact legislation promoting social welfare and reform, Alladi Krishnaswamy Ayyar proposed an exemption clause.<sup>4</sup>

The Supreme Court of India has produced judicial precedents on minority matters and is essential to the constitutionalization of national minorities' rights. In the *Re Kerala Education Bill* case, when the court rejected the idea that a state's entire population must identify a minority, the subject of "who is a minority" first surfaced in 1957. The court has established a similar standard for identifying minorities, mostly based on the size of a group that makes up less than 50% of the state's overall population. This straightforward procedure might not, however, ultimately produce the expected outcomes.<sup>5</sup>

To protect minority rights, India and Nigeria must overcome special obstacles. In contrast to Nigeria, which lacks such protections, India has a comprehensive legislative framework that includes affirmative action programs and reservations in public employment and education. Religious and linguistic minorities in India are permitted to open educational institutions, and their rights are recognized and protected. Nigeria doesn't have comparable constitutional clauses or all-encompassing linguistic diversity initiatives. Through cooperation and the exchange of best practices, both nations are attempting to overcome these problems and advance minority rights internationally.<sup>6</sup>

### 3.5 Pakistan

The rights of minorities in Pakistan are protected by the constitution in several ways, including religious freedom, equal access to public jobs, equal citizenship, and freedom of religion. These safeguards, nevertheless, are challenged by things like prejudice, marginalization, and persecution. These safeguards are criticized for being too narrow and for failing to appropriately safeguard minority communities. Abusive blasphemy laws frequently target religious minorities, undermining their fundamental rights to freedom of religion. Minority communities

<sup>1</sup> Tinsley Yarbrough, above, note 55.

<sup>2</sup> The Constitution of India 1950, available at <<https://www.refworld.org/docid/3ae6b5e20.html>> accessed 28 September 2023.

<sup>3</sup> Valentina, Rudenko, above note 49.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*



are also underrepresented in positions of power inside government.<sup>1</sup>

The government might solve these problems by enhancing the efficiency and independence of the judiciary, reorganizing the police, and combating corruption. Laws could be altered to better protect minority rights, for instance by altering the Constitution or modernizing blasphemy laws. Affirmative action initiatives and public awareness campaigns could help boost minority community representation, among other policy improvements. Social interventions like neighborhood-based programs and interfaith dialogue could be effective in reducing prejudice against minority populations. The protection of minority rights under Pakistan's Constitution is a critical issue that necessitates strengthening the rule of law and funding social interventions.<sup>2</sup> The legal and constitutional protections for minorities differ between Pakistan and Nigeria, each having its difficulties and achievements. Pakistan's constitution includes provisions for religious freedom, distinct electorates, Minority Rights Commissions, and the protection of minority languages in addition to reserved seats for religious minorities. Nigeria's laws and methods for resolving conflicts with minority rights may be different from those in other countries. Both nations need to keep working to address minority rights because they face persistent difficulties that require public education, enforcement, and advocacy.

#### 4. Conclusion

For Nigeria's future, stability, and social cohesion, the inadequate constitutional protection of ethnic minority rights is a major concern. The 1999 Constitution, although affirms diversity and some rights, has shortcomings in several crucial areas, including ambiguous and unenforceable clauses, the concentration of power, and a lack of clarity addressing the rights of racial and ethnic minorities. Case studies have demonstrated the real, frequently disastrous effects of Nigeria's constitutional shortcomings on ethnic minority groups, including marginalization, discrimination, and violence. Concerns regarding abuses of fundamental freedoms and rights are raised by the unsettling discrepancy between Nigeria's constitutional provisions and global human rights norms revealed by human rights views.

Decentralization of power to support local autonomy and resource sharing, constitutional reforms that provide clearer, enforceable protections for ethnic minority rights, and education and awareness campaigns as essential tools for promoting tolerance, inclusivity, and interethnic dialogue are all recommended as policy measures. The federal character principle, local governance, the zoning and rotation principle, the NYSC program, and the use of boundary adjustment are some of the strategies the Constitution has used to try to address these issues.

As seen, Nigeria is not the only country suffering from the issue of minority rights protection due to the multiplicity of its ethnic groups. However, other countries have taken active steps to solve this problem by properly guarding against it in their constitution and ensuring enforceability.

In conclusion, Nigeria's inadequate constitutional protection for the rights of ethnic minorities presents a serious problem that needs to be addressed right away. Nigeria must begin the process of constitutional reform and policy changes that place a high priority on equity, justice, and inclusion for all of its numerous ethnic groups.

#### 5. Recommendations

Nigeria's diverse political landscape and the North-South dichotomy have led to issues of exclusion, discrimination, and marginalization. To address these issues, it is crucial to adopt the principle of distributive justice, which involves the just allocation of opportunities and amenities. Two approaches to this principle are the 'welfarist' and 'meritorian' approaches. The Welfarist approach focuses on the distribution of powers, benefits, and resources according to the aspirations of ethnic groups, while the Meritorian approach treats individuals based on their ability based on skill, merit, and competence.

These two approaches can effectively be entrenched into the Nigerian Political System, addressing issues of ethnic marginalization and perceived ethnic exclusion. The diversity in Nigeria ranges from population size, ethnicity, unequal education, economic attainments, and political opportunities. These imbalances have hindered the achievement of political stability and continue to threaten the nationhood status of the country. To strengthen the Nigerian Political System, it is suggested that there should be a restrained application of the zoning and rotation principle, as it attacks meritocracy, professionalism, and standards. Lowering the standards just to achieve political correctness and national integration has its concomitant effects. Devolution of power to the lower tiers of government will provide the needed economic growth and political stability. Before a political

<sup>1</sup> HAMZA HAROON, "Protection of Minority Rights in Pakistan's Constitution: Adequacy, Discrimination and Marginalization" *Courting the Law* news (2023) <<https://courtingthelaw.com/2023/08/23/commentary/protection-of-minority-rights-in-pakistans-constitution-adequacy-discrimination-and-marginalization/#:~:text=Article%2037%3A%20This%20article%20guarantees,to%20protect%20their%20legitimate%20interests>> Accessed 28 September 2023.

<sup>2</sup> *Ibid.*

party is registered, it should have members cutting across at least two-thirds of states in Nigeria and must have the zoning and rotation principle enshrined in its constitution.

The adoption of systems to suit the nation's history, religious, and ethnological realities should be evolved and developed. Adopting any unitary method in tackling any national issue will be seen as marginalized, ethnically biased, and dominant. Zoning and rotation have proven over time to be a panacea in addressing the issue of integration and have proven to sustain Nigeria's political stability.

Nigeria's Federal Character Commission (FCC) has been mandated since 1996 to monitor and enforce the constitutional principle of federal character in government employment and public expenditure, focusing on the distribution of socio-economic amenities. However, imbalances in public service employment and the distribution of socio-economic activities have largely remained the same since the inception of the FCC.

To make the federal character principle enforceable, the provision of the constitution that provides for the federal character principle should be moved from Chapter II of the Constitution (fundamental objectives and directive principles of state policy) to Chapter IV (fundamental human rights). This will allow persons who have been victimized or affected by an infraction of the federal character principle to enforce their rights.

Reasons that have undermined the functioning of the FCC include slow turnover of personnel in public service, lack of opportunities in the private sector, and educational inequalities between developed and less-developed states. To strengthen the FCC, complete and accurate records of government personnel should be kept, including allowing the FCC direct access to the records of MDAs on a real-time basis. Additionally, the requirement of a state governor's approval for the FCC to operate in a state should be dispensed with.

Finally, the FCC should be treated like the Independent National Electoral Commission (INEC) under Section 160(1) of the Constitution, without being politically dependent. This will allow the FCC to make its own rules or regulate its procedures without being subject to the approval or control of the president.

In conclusion, Nigeria's diverse political landscape necessitates proactive measures to address issues of exclusion, discrimination, and marginalization. By adopting the principles of distributive justice and implementing effective strategies, Nigeria can work towards achieving political stability and promoting a more inclusive society.

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