



# ISSUES IN **CURRICULUM AND LANGUAGE EDUCATION**

Edited by:  
FOLAJOGUN V. FALAYE  
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ISSUES IN CURRICULUM AND LANGUAGE  
EDUCATION

Volume I

*Edited by*

Folajogun V. Falaye  
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## THE QUANDARY OF LEGAL RIGHT TO EDUCATION AND THE QUOTA SYSTEM POLICY OF TERTIARY INSTITUTIONS ADMISSION IN NIGERIA

*Marcus Ayodeji Araromi*

### **Introduction**

Education is the backbone of development in any society, and it is also opium of growth and creates avenue for information acquisition which can help to grease the wheel of progress in the society. Any society that does not promote education is heading for a doom and technical suicide or extinction. Various societies have seen the need to foster education and therefore developed various policies to shape education at different cadres. A policy is being regarded as a course or principle of action adopted or proposed by a government in addressing certain important issues. It is essentially a plan of action or guiding principles of governmental activities or proposed activities in any area or sector of the society. Hence, policy is a declared objective that government seeks to achieve. Nigeria, just as many other countries, also has certain policies in the educational sector for the purpose of shaping or tailoring its educational activities. Out of these humongous policies, the one that is particularly of interest in this work is the quota system policy in admission into tertiary institutions in Nigeria, especially at the federal level.

It should be noted that policy decisions may be shaped by the political landscape of the society concerned which may be due to constitutional provision or implementation of statutory dictates, or purely based on ensuring political balance in the society. The issue of tertiary education is also very important and fertile region of policy development to facilitate promotion of tertiary education in Nigeria. Preference for university education in Nigeria by prospective students is great, considering the astronomic demand for admissions into the university system each academic year. This high premium placed on this form of education puts university education in higher pedestal compared with other forms of tertiary education in Nigeria. The obsession with and preference for university education have made avalanche of admission seekers each

academic year to compete for the limited spaces available for admission into preferred academic disciplines (Okoroma 2008). This is without prejudice to the fact that tertiary education in Nigeria is an important form and level of education that cannot be swept under the carpet as there is a reflection of a surge in the number of applicants at all forms of tertiary institutions yearly. It is in a bid to have proper education at a higher level that prompt people to seek admissions into tertiary institutions in Nigeria. This factor has captured the interest of this writer to make a critical review of the policy on admission into federal tertiary institutions in Nigeria based on Quota System. The federal character principle and Quota System, no doubt, have a great influence on admission scheme in Nigerian tertiary institutions.

#### **Quota System and Federal Character Principle in the Nigerian Polity**

A proper understanding of any concept requires a vivid and adequate definition or explanation of such concept. Federal character principle is predicated on the recognition of the plural nature of a country and the need to do justice in recruitment, distribution of administrative and political offices, powers and the resources of the country amongst the federating units constituting the country. Nigeria is a conglomerate of multi-ethnic groups and the structural imbalance, political inequality and inadequate representation at the centre create political tension and instability in the polity. The marriage of inconvenience which pulled together people of diverse ethnic groups and political philosophies came as a result of the colonisation of this sub-Sahara region of Africa, especially in 1914 when the Southern and the Northern Protectorates together with the Lagos Colony were merged together by Sir Frederick Lord Lugard. This and other political structuring of Nigeria created unequal representation in governance and inequitable distribution of the nation's wealth. The essence of the principle of federal character is to ensure fairness in the composition and conduct of public institutions to reflect diversity (Obiyan & Akindele 2002). In as much as federal character principle could promote social justice and help in achieving political equilibrium in a heterogeneous society, it is equally important to recognise individual rights based on merit and to ensure the best treatment to everyone. Balancing the set aim of federal character principle in achieving political equilibrium and employing the best applicable materials to foster societal good and development is also a point for consideration in ensuring social justice. Whereas it is important that no group must be marginalised in a federal setup it is equally important to protect individual's rights.

Federal character principle was first developed for filling vacancies in federal government establishments in 1967; and it was first constitutionally recognized under the Nigerian 1979 Constitution to correct apparent distortions in the socio-economic, political, administrative, educational and other spheres in the Nigerian federal system and create national stability (Lambert 2010). It was an effort to resolve the structural imbalance and ethnic dominance in the country that called for this principle (Lambert 2010). Section 14(3) of the 1999 Constitution of the Federal Republic of Nigeria incorporates federal character principle in the participation of governance at the federal level and also in the federal agencies in a bid to promote national unity and national loyalty. As part of the efforts to ensure fair treatment and equal distribution of offices amongst the federating units of Nigeria, Federal Character Commission was set up under the 1999 Constitution of Nigeria to work out equitable formula for the distribution of all cadres of posts in the public service of the federation and of the states, the security outfits and government owned companies and parastatals of the States.

The idea of Federal character has come under heavy criticism in some quarters. One of the shortcomings of this principle is that it is a confused balancing of merit and the Quota System (Shuaib 2009). It was observed that admissions into federal unity schools and higher institutions are based on Quota System and not purely on merit which was adjudged to be counterproductive (Bodunrin 2003). Similarly, it was also asserted that for the Nigerian public service to attain its mandate of facilitating sustainable development the government has to reappraise the implementation of federal character principle to ensure merit anchored on public service reform initiatives that can galvanize human capacity and governmental institutions for sustainable development (Donasco 2014). Bello (2012) posited that the principle of federal character gives equal weight to two opposite principles which are "irrespectivity" (that no Nigerian shall have cause to feel aggrieved or excluded on the bases of his or her place of origin, religion, sex ethnic group) and "irreducibility" (ethnic equation in the main institution of the state). He stated further that federal character has pushed too far its "irreducible" principle thereby causing conflict between it and the "irrespectivity" principle especially in the spheres of education and economics.

When Nigeria became a federal system in 1954 the idea of Quota System was developed and reflected in the appointments and admissions into federal establishments. In line with the principle of federal character, though not too much a serious political issue, Alhaji Abubakar Tafawa

Balewa introduced the Quota System for admission of students into government schools, recruitment of police and military personnel, appointments into public and civil service, etc., which has been adopted by successive governments in Nigeria (Kayode 2015). The Quota System received a boost in 1967 and was also adopted in filling vacancies into federal owned schools and institutions (Oyadiran and Olorungbemi 2015). According to Okoroma (2008: 7), Quota System policy in respect of education provides for allocation of certain percentages of admission slots into Nigerian Universities based on populations, ethnic considerations and States of Origin. Yolo (1989) averred that the Quota System Policy, and other unpleasant policy considerations in education, are borne out of reasoned compromise and based on four elements, which are academic merit, educationally disadvantaged state, catchment area and discretion.

Part of the arguments for Quota System in Nigeria is that all states need to be represented in the admission process to higher institutions of learning, and special preference should be given to the educationally disadvantaged states which would encourage nurturing and grooming of opportunities for every Nigerian from every community (Adujie). The purpose of extending Quota System to education in Nigeria is to ensure that no State is left behind in this sector in promoting educational development in the country. It is not doubtful that the current imbalance in education achievement between the Northern and the Southern parts of Nigeria is due to the initial rejection of the western form of education by the North in preference for the Islamic/Qur'anic form during the colonial rule whereas the South embraced the western education which had long been practised and promoted in the Region before the North finally accepted it, perhaps imposed on it by the colonialists. The Northern predilection for Islamic education is not unconnected with the contact the Region had with the Islamic Jihadists led by Utman Dan Fodio about hundred years prior to the introduction of western education to Nigeria through evangelisation activities of the Christian missionaries in the middle of the 19<sup>th</sup> century.

In a bid to correct the educational imbalance between the two Regions several education policies were developed over the years by successive governments in Nigeria. These include:

- the take-over of schools and colleges from the missionary schools and other voluntary agencies;
- the creation of the National Universities Commission to regulate admissions to the nation's Universities and in this regard, the Joint Admission and Matriculation Board (JAMB) was established;

- quota admission to Federal Unity Schools in the country;
- quota admission to Navy, Army and Air-force schools;
- quota admission to the “Gifted school”, the Suleja Academy;
- establishment of nomadic education for migrants;
- establishment of National Teachers’ Institute, Kaduna to accelerate the training of Grade II teachers;
- Special grants to “disadvantaged” states in order to provide additional facilities for various levels of educational institutions;
- The 1976 Universal Primary Education Scheme (UPE)
- The setting up of the National Primary School Education Commission in 1988 that recommended grants to states for children not registered in school along with those registered in schools;
- the re-launching of the Universal Basic Education (UBE). (Okobia, 2002).
- The Al-Majiri education scheme established by the Federal Government in the Northern part of the country.

In tackling the mirage, perhaps a problem, aimed to be solved by Quota System in education sector, Okobia (2002) suggests that there is a compelling need to apply the positive and preventive measure of remedying the imbalance between the two Regions by increasing primary schools enrolments in the Northern Region “instead of the curative educational policies of federal character and quota admissions into secondary and tertiary educational institutions.”

The admission policy into federal tertiary institutions requires positive consideration of certain percentage of applicants from Educational Disadvantaged States (EDS) for less stringent admission requirements. In other words, the applicants seeking admission into federal institutions are not subjected to the same stringent conditions compared to the applicants from the educationally advanced states in Nigeria. This situation creates inequality and injustice on personal basis where someone who scores better grade is denied admission because he or she comes from an educationally advanced region whereas a person who has a lesser grade is privileged to be admitted because he is from an EDS. Regardless of the state where the prospective student actually grew up or sat for the examination preference is being given only based on his state of origin. This approach undoubtedly has a negative toll on the preserved right of individuals to education. Moreover, Okoroma (2008) posited that Quota System admission policy may be responsible for fall in the standard of

university education in Nigeria. In the same vein, Akani (1996) stated that Quota System policy in education is responsible for the reduction in admission standards and this allowed for poorly qualified candidates to be admitted into the universities whereas good candidates have no place. Application of Quota System in admission into public institution has a reflection of inequality of treatment, inequity, injustice and a policy summersault which sacrifices individual quality to regional balance based on quantity. The Quota System policy in admission process in Nigeria will now be considered vis-à-vis equal right of everybody to education with the aim of taking a legal approach or consideration of this policy.

### **Right to Education in Perspective**

Learning is a lifelong process and it involves acquisition of knowledge through programmed education at different stages. Right-based approach to education requires a life-cycle approach ensuring effective transitions from a stage to another (UNICEF 2007: 30). It is rather important to take a pre-emptive development and application of educational policy as citizen-centric matter than to make it a means towards achievement of pre-determined political ends. A writer once asked "whether policy is shaped by the broader vision set by 'right,' or whether the 'right' is seen as framed by dictates and limitations of existing policy processes and approaches" (Subrahmanian).

In a decided case of *Ransom Kuti v. Attorney General of Nigeria* (1985) Kayode Eso, JSC (as he then was) described human right as "A right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself." Right to education cannot be downplayed in the spectrum of rights that are available for the good and development of mankind. It is therefore imperative to accord the necessary reverence to such right under the laws of every democratic nation. It is only in a primitive, uncivilized or a despotic society that this right to education will not be promoted as an essential ingredient for individual and societal development. In a Supreme Court of India decision in a landmark case of *Unnikrishnan vs. State of Andhra Pradesh* (1SCC/645/1993), it was held that education is a fundamental component of a 'right to life' and hence the 'right to live with 'human dignity' thereby conferring a duty on the State in creating conditions for this right to be actualized.

It is apt to say here that policies which have not yet found expressions in the law carry lesser weights in comparison with enacted laws. Though such policies may have a force driving them through executive actions they must not run afoul of the legal expressions of the law.

Under the African Charter on Human and Peoples' Rights, an international document which Nigeria subscribed to, there is a provision that guarantees every individual's right to education (Article 17(1)). Article 2 of the Charter further provides that every individual shall be entitled to the enjoyment of rights and freedoms guaranteed in the Charter without discrimination of any sort such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. This robust provision assures equal right for every individual regardless of his peculiarities. In the same vein, Article 1 of the Universal Declaration of Human Rights (1948), which is an international instrument, provides that all human beings are born free and they are equal in dignity and in rights. Article 26(1) of the Declaration further states that "everyone has a right to education .... and higher education shall be equally accessible to all on the basis of merit." To establish the equality of rights, the Declaration provides that all are entitled to equal protection against any discrimination, are equal before the law and are entitled without any discrimination to equal protection of the law. Moreover, Article 2 of the Universal Declaration states that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR), which is also an international treaty, recognises the right of everyone to education. The parties to the convention agree that "education shall be directed to full development of human personality and the sense of its dignity, and shall strengthen the respect for human rights and economic freedoms." They stated further that education will enable all persons to participate effectively in a free society. In other words, an educated person is better equipped to know and exercise his or her rights in the society and to properly fit into the society.

Tertiary education has been described by Klaus (2006), drawing on UNESCO's International Standard Classification of Education (ISCED), as follows:

higher or tertiary education involves two stages: a first stage not leading directly to an advanced research qualification, and a second stage leading to an advanced research qualification. The former consists of programmes with an educational content more advanced than those of upper secondary education. Entry to these programmes normally requires the successful completion of upper secondary education. Education at this stage may either be theoretically based and intended to provide the qualifications for entry into advanced research programmes and professions with high skills requirements or practically oriented/occupationally specific and mainly designed for participants to acquire the practical skills and know-how needed for employment in a particular occupation or trade.

Tertiary education is therefore an important aspect of education that cannot be relegated to the background or whittled down in realisation of one's rights and pursuit of self-emancipation.

The international instruments considered above give equal rights to all and such rights must be accorded without discrimination. Access to tertiary education must be by merit and no prejudicial policy must be adopted to deprive any person of his rightful place in educational pursuit. Hence, a level playing field must be given to every prospective applicant to tertiary admission. It is also germane to assess the federal character and Quota System policy from the perspective of the Nigerian Constitution, which is the supreme law of the nation. Certain freedoms are considered to be fundamental to human existence and as such must be protected by law. Such fundamental freedoms or rights are entrenched in many international documents and also find expressions in the 1999 Constitution of the Federal Republic of Nigeria.

Under the 1999 Constitution of Nigeria, there is what can be called negative discrimination and positive discrimination which are forbidden under the law. Section 42(1)(a) of the Constitution provides that no citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall only by reason of being such a person 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 different affiliations or political opinion are not made subject. This provision prevents negative discrimination of persons based on their

peculiarities: in which case they are made to enjoy all benefits accruable to other citizens of diverse peculiarities. No person by virtue of his or her peculiarities should be denied benefits accruable to others who are of different peculiarities.

On the other hand, section 42(1)(b) of the Constitution provides that no person or citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall be accorded either expressly by, or in practical application of any law in force in Nigeria, or any executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of different affiliations or political opinions. The import of this provision is that no special benefits shall accrue to any citizen of Nigeria of a particular identity which does not ordinarily accrue to other citizens of different identities or particularities. Hence, everyone must be equally treated and must not be due for special benefits to the exclusion of others.

The constitutional provisions negating discriminatory treatment of the citizens of Nigeria are certainly a reproduction of the international legal standard for protecting equality of rights of everyone. The legal norm against discrimination entrenched in the Constitution impliedly makes the provision a superior law to any other norm, law or policy that is inconsistent with the provisions of the Constitution on discrimination. According to section 1(3) of the 1999 Constitution, which is a supremacy clause, any law that is inconsistent with the provisions of the Constitution shall to the extent of its inconsistency be void and those provisions of the Constitution shall prevail. Moreover, section 1(1) provides that the Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout Nigeria. It means therefore that no state actor can invent any law or policy that is not consistent with the provisions of the Constitution otherwise such law or policy will be void to the extent of its inconsistency.

It is fundamentally wrong therefore to deny an admission aspirant to a federal tertiary institution in Nigeria an opportunity to be admitted on a strange and inconsistent policy of Quota System or federal character in which case all the prospective students are not subjected to the same standards or conditions of treatment for admission. In accordance to the supremacy clause of the Constitution such policy is unconstitutional and should not have a place in the admission process in the polity. The Constitution vividly rejects any form of discrimination on whatever ground and this provision should have a strong force of law against any policy or law of the government that is against the philosophy of the constitutional provision.

### **Conclusion**

It is not doubtful that the demand for university education in Nigeria with over 170 million in population cannot measure up to the available resources, therefore the struggle for the limited available spaces. The need to equally distribute the wealth and opportunities in federal government of Nigeria has brought about the political hegemony of the federal character principle and Quota System policy. Extending the Quota system policy to education has greatly eroded the fundamental right of individuals to education, which makes such policy unconstitutional, and also creates discriminatory standards for admission into tertiary institutions. In tune with the politicising of education in Nigeria Willott (2011: 89) states that "Nigerian higher education is as much an arena of power struggles and political conflict as any other." If distribution of wealth or opportunities in the country is predicated on the principle of equality amongst the states making up the federation, individual merits for admission should not be compromised based on any frivolous political trade-off. Rights owned and bestowed by the law on the citizens should not be divested by any policy whatever, even though such policy tend to create political balance in the federation. It is unconstitutional to place two individuals on different standards for the purpose of enjoying the same rights or benefits. Section 42 of the 1999 Constitution stipulates the rights of the citizens against any form of discrimination on whatever ground of incompatibility with others in as much as they have the same qualifications for rational consideration. Moreover, Article 3 of the African Charter on Human and Peoples' Rights provides that everybody shall be equal before the law and shall be subjected to the same protection under the law. Likewise, Article 7 of the Universal Declaration of Human Rights provides that all individuals are equal under the law and are entitled without discrimination to equal protection of the law. In view of these legal provisions, it is submitted that the Quota System policy employed in the admission system to federal tertiary institutions is discriminatory and therefore unlawful. It is yet to be seen anyone who has challenged the application of the principle of Quota System in admission schemes into federal tertiary institutions in Nigeria in the court of law. This has made it rather difficult to appreciate judicial predisposition to this policy.

Preventing prospective students from gaining admission into higher institution of learning on the basis of a lopsided policy of Quota System can have demoralising effect on such admission seekers. Moreover, if academically better candidates are not given the opportunity to have tertiary education it will have a negative resonant effect on the crop of

graduates that will be turned out, which can adversely affect the development of the country through education. On the far end, Akpan (1990: 299) also stated that admission policy based on Quota System can be seen as an erosion of academic freedom and autonomy of universities. It is therefore suggested that the Quota System policy should be scrapped for admissions into tertiary institutions in Nigeria, especially at the federal level, as it is unethical, unjust and unconstitutional.

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