

**EQUALITY OF OPPORTUNITY IN THE CONTEXT OF STATE CHARACTER COMMISSION: A PROGNOSIS AND BALANCE OF FEDERALISM IN NIGERIA\***

**Abstract**

The return to civil rule in 1999 was one which quite excited many Nigerians occasioned by the protracted years of military rule. However, with the intermittent implementation of the 1999 Constitution, which was hurriedly decreed into existence by the then military regime of General Abdulsalam Abubakar, devoid of any rigorous debate or referendum sequel to decree No 24 of 1999. However, the obvious constitutional conundrum associated with the said implementation, especially as it relates to the concept of federal character principle which is a genre of equality of opportunity, made the above referenced euphoria not to last long. Therefore, to stem the noted constitutional tide, successive administrations responded vide integrative and accommodative paradigms inclusive of the establishment of Federal Character Commission as provided in section 153 (1) (c), and Third Schedule Part 1 of the 1999 Constitution, notwithstanding the express provision of section 2(2) of same Constitution. Conversely, since the subject matter of equality of opportunity is a human rights issue; and concomitantly, one of the most contested concepts. This disquisition adopted a doctrinal approach for the purpose of interrogating equality of opportunity within the Nigerian federalism. Consequently, it is the writer's contestation that since most states in Nigerian federalism are rainbow society in composition. Therefore, without the replication of Federal Character Commission at the state level just like the various Child's Rights Laws that have been passed into law by majority of State Houses of Assembly, as well as the Kano State Public Complaints and Anti-Corruption Commission that serves the purpose of EFCC, the purport and import of the said federal character principle as contained in section 14(3) of the Constitution, will remain inchoate.

**Keywords:** Equality, Federalism, Federal Character, Democracy, Divided Society, Nigeria

**1. Introduction**

The crisis of governance in Nigeria, like the rest of Africa is a complex one largely because it revolves around an organism called the state, so complex and sophisticated in nature. Although, the state is today a common-place term and a universal phenomenon, yet there is no universally agreed definition of it or what constitutes it, nor are the ideas underlying it widely understood<sup>1</sup>. However, notwithstanding the fact that the concept of state, and its concomitant apparatus was alien to most part of African pre-colonial society<sup>2</sup>, suffice to say that the concept of state in Nigeria, which came into existence in 1914 necessitated by Lugardian amalgamation of the Northern and Southern provinces<sup>3</sup>, has been fraught with myriad of challenges: ranging from fear of domination of one ethnic group, tribe or section of the country by another, mutual distrust and suspicion, perennial inter-communal conflicts, and above all, protracted religious fissures<sup>4</sup>. This is the more reason why the eggheads Mazrui and Ake of blessed memories by way of paraphrase stated that the concept of state in Africa, is a colonial invention<sup>5</sup>. So, armed with the above, and by way of logical construct, it could be argued that the crisis in which Africa, nay Nigeria is gripped with since independence is thus primarily a crisis of institutions, and only secondary one of human failures<sup>6</sup>. Consequently, the crisis of institution as noted above, that precipitated the failure of statecraft, and collaterally; the collection of issues associated with divided societies has exacerbated the issue of federal design in Nigeria as can be gleaned from the unabated ethnic and religious conflicts over the years in Nigerian federalism. This is because, the problem of peaceful co-existence among the diverse groups, and interest, the fear of domination of one ethnic group, tribe or sections of the country and the vexed question of who gets what, and how the national cake would be shared have inexorably become major national issues<sup>7</sup>.

Related to the foregoing, and from a vexed prism, scholars have strenuously debated the desirability of the dual paradigms of integration and accommodation within the wider meaning of federalism for the purpose of managing divided societies, especially as it relates to building enduring trust among the contending groups with a view to creating stability and maintenance of virile democracy<sup>8</sup>. That said, while integration and accommodation offer different versions of federal design, they both begin with the same reference point: ethnic divisions. Therefore, both display an institutional bias in favour of what might be considered politically relevant groups. That is groups that do not meet the threshold for political relevance, probably because they are too small, too territorially dispersed or because they do identify with the dominant ethnic divide, face exclusion during the constitutional design stage, and later in the process of governance<sup>9</sup>. So, being that the 1999 Constitution definition of who

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<sup>1</sup> Nwabueze B.O, *Crisis of Governance in Nigeria*, (John Archers Publication Ltd, Dugbe, Ibadan, 2016), p3

<sup>2</sup> Ibid

<sup>3</sup> Olanipekun, W, 'Nigeria What Manner of Federalism?' In *the Voice of Law and Social Change*, Vol 2, (Published by Josadeen Nig Ltd, 2011), p3

<sup>4</sup> Bello, M.L, 'Federal Character Principle as a Recipe for National Integration: The Nigerian Paradox', *International Journal of Politics and Good Governance*, Vol 3 no 33 Quarter 111, 2012) p1 <<https://semanticcholar.org>> accessed on 13<sup>th</sup> of June, 2024.

<sup>5</sup> Mazrui, A, *Violence and Thought: Essays on Social Tension in Africa*, (London, Longmans Green, 1969), Published online by Cambridge University Press, 11<sup>th</sup> November, 2008 accessed on the 16<sup>th</sup> of June, 2024. See also Claude Ake, *Democracy and Development in Africa*, (Published by Spectrum Books Ltd, 1996), p129

<sup>6</sup> Nwabueze B.O (n<sup>1</sup>)

<sup>7</sup> Bello, M.L, (n 4) p 2

<sup>8</sup> McCulloch, A, 'Federalism, Diversity and Inclusion: What about Others?' (50 Shades of Federalism) <<https://www.50shadesoffederalism.com>> accessed on the 14<sup>th</sup> of May, 2024

<sup>9</sup> Ibid

is an indigene for the purpose of effective implementation of federal character principle, as contained in section 14(3) of CFRN, 1999 appears to be inchoate. The said constitutional gap has been filled by the Federal Character Commission Act, which from all intents and purposes is local government situated<sup>10</sup>. However, same has not in any way address the contentious questions associated with indigeneship and settlers'hip conundrum within the Nigerian federalism

## **2. Federalism and the Origins of the Polity**

Since its beginnings political science has identified three basic ways in which polities come into existence: conquest (force, in the words of Federalist No.1), organic development (for the Federalist, accident) and covenant (choice). Though, these questions of origins are not abstract; the mode of founding of a polity does much to determine the framework for its subsequent political life<sup>11</sup>. Hence as can be deduced from 1914 Lugardian Constitution, 1922 Clifford Constitution, 1946 Richard Constitution, 1951 MacPherson Constitution, 1954 Lyttleton Constitution in that order, Nigerian federalism as a matter of fact, started by way of aggregation and later disaggregation<sup>12</sup>, though conquest in the first place, and subsequently covenant. Contextually, conquest can be understood to include not only its most direct manifestation of a conqueror gaining control of a land or a people, but also such subsidiary ways as a revolutionary conquest of an entrepreneur conquering a market and organizing his control through corporate means<sup>13</sup>. Again, organic development, involves the development of political life from its beginnings in families, tribes and villages to larger polities in such a way that institutions, constitutional relationships, and power alignments emerge in response to the interaction between past precedent and changing circumstances, with a minimum of deliberate constitutional choice. The end result tends to be a polity with a single center of power organized in one of several ways, like the classic Greek political thought that emphasized the organic evolution of polity and rejected any other means of polity building as deficient or improper<sup>14</sup>. Covenantal founding on the other hand, emphasize the deliberate coming together of humans as equals to establish bodies politic in such a way that all reaffirm their fundamental equality and retain the basic rights<sup>15</sup>. Therefore, as argued by many philosophers, theologians and political theorist in the western world, the federal idea has its roots in the Bible. Thus, the first usage of the term was for theological purposes, to define the partnership between man and God described in the Bible, which in turn, gave form to the idea of a covenantal (or Federal) relationship between individuals, and families leading to the formation of a body politic and between bodies politic leading to the creation of compound polities. The political applications of the theological usage gave rise to the transformation of the term 'Federal' into explicitly political concept<sup>16</sup>. Notwithstanding the fact that the term 'federal' is derived from the Latin foedus, which like the Hebrew term brit, means covenant<sup>17</sup>. It is important to point out that, any serious philosophical inquisition on federalism, especially if construed in its broadest sense is fraught with difficulties that are reflected in both theory and practice. This is because, same is connected with the fact that, the term 'Federal' has both an empirical and a theoretical resonance<sup>18</sup>. Furthermore, part of the difficulties associated with studying federalism is that, it is a microcosm of the problem with studying political science itself. Hence, the study of federalism has been so problematic for most scholars because it is multifaceted, and by way of corollary, by its very nature, it is constitutional, political, legal, social, economic, cultural, philosophical, and ideological<sup>19</sup>.

## **3. What is Federal Design Tend to Achieve?**

Without gainsaying, federalism is designed to achieve some degree of political integration based on a combination of self-rule and shared rule. Although its form may be used under other circumstances, it is appropriate only when and where that kind of political integration is sought. Political integration on a federal basis demands a particular set of relationships beginning with the relationship between the two faces of politics, albeit power and justice<sup>20</sup>. Again, another task of federalism is to harmonize human capacity with human weakness, to create institutions and processes that enable people to exercise their capacity for self-government to the maximum and even grow at that capacity. Related to the foregoing, it also attempts to prevent the abuse of power derived from inherent deficiency in human nature and, whatever possible, direct the results of those deficiencies to useful end<sup>21</sup>. In another development, it is important to also point out that, the subject matter of federalism deals simultaneously with fundamental moral questions as well as with amoral matter of fact issues. The former, like social diversity and individual, and collective identities are highly charged emotional questions for many people, while the latter, involve the routine pursuit of economic profit and security and reflect for the most part calculated and dispassionate self-interest<sup>22</sup>. Therefore, with respect to the fundamental moral questions of federalism, wherein, social diversity and individual, and collective identities are highly

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<sup>10</sup> See the 1999 Constitution, especially section 318(1), and part II of Federal Character Commission Establishment Act 1995 that defines who is an indigene to mean: 1(a). An Indigene of a local government means a person either of whose parents or any of whose grandparents, was or is an indigene of the local government concerned, or 1(b). Who is accepted as an indigene by the local government

<sup>11</sup> Elazer, D.J, Exploring Federalism, (Published by University of Alabama Press, 1999), p2

<sup>12</sup> Nwamara, T.A, *The Encyclopedia of the Laws of Federal Republic of Nigeria*, Volume 9, (Law and Educational Publishers Limited, 1992), pp 4-8

<sup>13</sup> Elazer, D.J (n 11). See also Siollun M, *What Britain did to Nigeria: A Short History of Conquest and Rule*, (Hurst & Company, London, 2021), pp 45-81

<sup>14</sup> Ibid, p3

<sup>15</sup> Ibid, p4

<sup>16</sup> Ibid, p5

<sup>17</sup> Burgess, M, *Comparative Federalism: Theory and Practice*, (Routledge, Taylor & Francis Groups, 2006), p14

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Elazer, D.J (n 11) p 84

<sup>21</sup> Ibid, p 86

<sup>22</sup> Burgess, M, (n<sup>17</sup>)

charged emotional questions<sup>23</sup>. Nigeria federalism is a text book definition of divided societies,<sup>24</sup> and resultantly, most divided societies are marked by three characteristics that make designing democracy particularly challenging: they exhibit ‘an obvious entrenched fault lines’ that has the potential for violence often ethnicity, but sometimes also language, natural identity and religion,<sup>25</sup> their politics is affected by ‘ethnic seepage’, that is political issues tend to cohere around the primary maker of division<sup>26</sup> and, they equally face a lack of consensus on the framework for the making of decisions<sup>27</sup>. This is partly because of the fact that political claims are refracted through the lens of ethnic identity and political conflict is synonymous with conflict among ethnocultural groups<sup>28</sup>.

#### **4. Democracy and Federalism in Divided Societies**

Democratization is a worldwide movement, but it is neither universal nor uniformly successful where it began. Some authoritarian or semi democratic states may be untouched by the democratic movement; others may find ways to thwart the movement at the outset; still others may move along a democratic path, only to have the changes aborted. There are many reasons of course, why democratization and democracies may fail. Among them, the resistance of entrenched civilian or military elites, the absence of conducive social or cultural conditions and inaptly designed institutions. In many countries of Africa, Asia, Eastern Europe and the former Soviet Union, a major reason for the failure of democratization is ethnic conflict<sup>29</sup>. Democracy is all about inclusion and exclusion, about access to power, about privileges that go with inclusion and the penalties that accompany exclusion. In severely divided societies, ethnic identity provides clear lines to determine who will be included and who will be excluded. Since the lines appear unalterable, being in and being out may quickly come to look permanent. In other politics, inclusion may affect the distribution of important material and non-material goods, including the prestige of the various ethnic groups and the identity of the state as belonging more to one group than another<sup>30</sup>. Since ethnically divided societies have a special version of the usual democratic problem of assuming decent treatment of the opposition, it is important to point out that two countervailing paradigms dominate the debate over constitutional design and conflict management in most divided societies, to wit: integration and accommodation<sup>31</sup>. However, because of its comparative characteristics, the dual paradigms of accommodation and integration agree in federalism as a viable democratic vehicle for managing the plural nature of most divided societies but differs in institutional configurations<sup>32</sup>. Thus a federalism inspired by accommodation design submits in such a way to secure self-rule for minority groups in their own units while maintaining shared rule between groups at the center, as in Bosnia and Herzegovina, Belgium and Canada. By contrast the subunits of integrationist federation consist of heterogeneous units that cut across group lines where possible. This form of federalism is advocated for its dispersal of power, and thus conflict, away from the ethnic divide and is inspired by federal practice in such diverse places as the United States and Nigeria<sup>33</sup>. So, since Nigeria has been practicing the dual concepts of integration and accommodation, as well as the nuances of inclusion and exclusion, interchanging the tripod majority and disparate minorities groups in the design of institutions. What then is the political, economic, cultural, and above all, democratic implications on focusing on the import and purport of section 14 (3) of the 1999 Constitution, without the replication of same at the state level, as can be gleaned from Child Rights Laws of the various states, considering the unequivocal provision of sections 2(2) and 160 (2) of CFRN, 1999 as well as paucity of funds, and manpower facing the Federal Character Commission?

#### **5. Nigeria’s Constitutional Design Measures for Inclusion and Implementation Mechanism**

Without contestation, Nigeria is the largest country in Africa, and situated on the west coast of Africa on the shores of the Gulf of Guinea. It is surrounded on the south by the sea, and on the north and west by Niger territory and Dahomey. Thereto, with an area of 373,250 square miles, Nigeria is four times the size of the United Kingdom as well as undoubtedly the largest single African political unit.<sup>34</sup> That said, it is sequel to the above facts that Nigeria, can easily be considered as Africa’s most populous, and by way of logical construct; the largest single black country in the world. This is because a national census conducted in 2006 put the total national population at 140,003,542 people and seventeen years later, Nigeria’s population is estimated to be about 200 million<sup>35</sup>. However, like many countries of Asia, Nigeria, lacks homogeneity; it is a conglomeration of diverse ethnic groups. The largest ethnic groups in the north of the country were the Muslim, traditional and socially conservative, Hausa and Fulani ethnic groups<sup>36</sup>. Inter-marriage and cultural assimilation had blurred the distinction between the two ethnicities, and Nigerians refer to them in compound form as the ‘Hausa Fulani’. The South on the other hand, was dominated by two competing ethnic groups: The proud and culturally rich Yorubas in the south-west, and the energetic and vibrant Igbos in the south-east<sup>37</sup>

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<sup>23</sup> Ibid

<sup>24</sup> Ejobowah, J.B, ‘Integrational and Accommodationist Measures in Nigeria’s Constitutional Engineering: Successes and Failures’ in Sujit Choudhry (ed) *Constitutional Design for Divided Societies: Integration Accommodation*, (Oxford University Press, 2008), p 254

<sup>25</sup> Adrian, G, *Politics in Divided Societies* (Cambridge Polity Press, 2012) p29

<sup>26</sup> Horowitz, D.I, ‘The Challenge of Ethnic Conflict: Democracy in Divided Societies’, *Journal of Democracy*, Johns Hopkins University Press, volume 4, Number 4 October, 1993, p 18

<sup>27</sup> Adrian, (n5) p32

<sup>28</sup> Ejobowah, J.B, (n 4) p 22

<sup>29</sup> Horowitz, D.I, (n 26) p 18

<sup>30</sup> Ibid

<sup>31</sup> McGarry John and Brenden D’Leary, Must Pluri-national Federations Fail? *Journal of Ethnopolitics*, volume 8, 2009, p 25

<sup>32</sup> Ibid

<sup>33</sup> MC Cullloch, A, Federalism, (n 8)

<sup>34</sup> Odumosu, O.I, *The Nigerian Constitution: History and Development*, (Sweet & Maxwell, 1963), p3

<sup>35</sup> Editorial, ‘Need for Accurate Census’ LEADERSHIP (11<sup>th</sup> August, 2022) {<https://www.leadership.org>} accessed on 23<sup>rd</sup> of May, 2024

<sup>36</sup> Siollun, M, Oil, *Politics and Violence: Nigerian’s Military Coup Culture (1966-1976)* (Algora Publishing New York, 2019), p12

<sup>37</sup> Ibid

However, if, and only if, all these ethnic groups in Nigeria, were homogenous in composition very little practical difficulty would have confronted the country. This is because each unit of the federation would have contained a truly homogenous community. Unfortunately, they are not, hence the perpetual ethnic and religious tension among the different ethnic groups. So, hemmed in between them were approximately another 250 desperate ethnicities. Some were millions strong and other had only a few hundred members<sup>38</sup>. Fundamentally, most of these groups had nothing in common with each other outside of their mutual suspicion and hostility, and the difference between them were accentuated by religion. The south of the country is predominantly Christian and the north predominantly Muslim. The general outlook of the people in the north and south is so different as to give them practically nothing in common and to make physical confrontation between them a virtual certainty.<sup>39</sup> For example, there is less difference between an Englishman and a Spaniard with their shared Latin-derivative languages and culture, than there is between a Muslim northerner and a Christian southerner, with their diametrically opposed religious, food, language, manners, dress and culture. The cultural differences between the ethnic groups made it virtually impossible for Nigerians to have any commonality of purpose<sup>40</sup>, especially as it relates to the dual concepts of nation building and national integration.<sup>41</sup> With a view to counteracting the protracted animosity between the tripod majority and disparate minorities vis-a-vis the dual concepts of integration and accommodation measures, in the words of Ejobowah, by way of paraphrase, Nigeria's constitutional engineering since the inception of 1979 Constitution, has been integrationist and accommodationist in measures. And such combination as a matter of fact, has been the mainstay of Nigeria constitutional devices mostly occasioned by the Biafran succession and the civil war of 1967-70<sup>42</sup>. Therefore, one of the integrationist and accommodationist measures introduced by successive government within the ambit of Nigerian federalism is the constitutionally provided federal character principle<sup>43</sup>. And by the way enforcement mechanism, the Federal Character Commission Act which is also constitutionally provided for in section 158(1) of the 1999 Constitution.

#### **6. The Federal Character Commission Act**

The Federal Character Commission of Nigeria (FCC), was created by decree in 1996 during the military regime of General Sani Abacha<sup>44</sup>. Informatively, the 1999 Constitution has included the FCC as one of the 14 independent federal executive bodies<sup>45</sup>. Suffice it to say that the FCC of Nigeria came into existence pursuant to the yearnings of Nigerians for a reform that would address the thorny issues of inequality and ethnic domination in federal agencies by ensuring the equitable representation of different groups in all tiers of government, as well as monitoring the implementation of those righteous objectives<sup>46</sup>. Therefore, the rising inequalities within and amongst countries which became more noticeable during the Covid-19 pandemic have revealed, and exacerbated pre-existing inequalities and deep-rooted discrimination. Consequently, same have become one of the defining challenges of our time, putting sustainable development at risk, stirring social unrest, undermining social progress, threatening economic, and political stability and undercutting human rights.<sup>47</sup> Plausibly, in anticipation of the preceding paragraph, the drafters of the 1999 Constitution structured the FCC in a way that would make it the custodian of the of federal character principle, and be given the responsibility of ensuring that all federal agencies and parastatals in Nigeria respect and adhere to this principle. As a result, the 37 Commissioners of the federation, and Abuja, the Federal Capital Territory<sup>48</sup>. Connected to the above, since the FCC has been likened as a Commission for equity and justice with the singular mandate to ensure fairness and equality in the distribution of post and social economic amenities, and concomitantly, support them to ensure unity in our great nation. Therefore, by virtue of section 5 of the FCC<sup>49</sup>. the Commission shall have the power to:

- (a) Formulate and provide guidelines for Government agencies and other employers and providers of services and social economic amenities.
- (b) Monitor compliance with the guidelines and formulate of Federal, State, Local Government and Zonal levels in the employment and provision of social-economic amenities
- (c) Enforce compliance with the guidelines and formulae in areas of the provision of employment opportunities, distribution of infrastructure facilities, social economic amenities and other indices
- (d) Compel boards of directors of government owned companies and other enterprises which are subject to the provision of the Act to comply with the guidelines and formulae on ownership structure, employment and of their products,
- (e) Demand and receive returns on employment and social economic indices from any enterprise or body corporate and penalize any enterprise which does not comply with a request from the commission
- (f) Undertake the recruitment and training of staff of government agencies or departments where desirable
- (g) Institute investigation into any matter relating to institution or organization where the institution or organization shall be required to bear the cost of such investigation, and

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ota, E.N, & Ahamefule, I.C & Odinaka, C, 'Nation-Building and National Integration in Nigeria: A Historical Study' *IOSR Journal of Humanities and Social Science*, Volume 25, Issue 6, Series 2, (June, 2020) pp 32 – 39

<sup>42</sup> Ejobowah, J.B (n 24) pp 239 – 246

<sup>43</sup> Bello, M.L, 'Federal Character as a recipe for National integration: The Nigerian Paradox,' *International Journal of Politics and Good Governance*, Volume 3, no. 3.3 Quarter 111 2012, pp 1 – 3 {<https://www.mlineresearchjournal.com>} accessed on the 22<sup>nd</sup> of June, 2024.

<sup>44</sup> Demarest, L, Langer, A & S Ukwo, U, 'Nigeria's Federal Character: Commission (FCG) A Critical appraisal,' (Oxford Development Studies, Vol. 48, 2020) P. {<https://www.tandfonline.co>} accessed on 5<sup>th</sup> of August, 2023.

<sup>45</sup> See Third Schedule Part 1 of 1999 Constitution

<sup>46</sup> Bala Ibrahim 'The Callous Character at the Federal Character Commission' Vanguard News, 6<sup>th</sup> December, 2021 <<https://www.vanguardnews.com>> accessed on 5<sup>th</sup> of August, 2023

<sup>47</sup> See Secretary-General's Nelson Mandela Lecture, 'Tackling the New Social Contract for a New Era' (as delivered) on the 18<sup>th</sup> July, 2020, United Nations Headquarter, New York <<http://www.un.org/sglen>> accessed on the 2nd October, 2024

<sup>48</sup> Bala Ibrahim, (n 47)

<sup>49</sup> Sec section 5 of the Federal Character Commission Act, 1995

- (h) Do anything which in the opinion of the Commission is incidental to its functions under the Act.

Again, by way statutory exposition vis-à-vis the provision of the Act which enables the Commission to formulate and provide guidelines for the government agencies and other employers and providers of service and social economic amenities<sup>50</sup>, the Commission in 1996 published the ‘The Guiding Principles and Formulae for the Distribution of Posts in the Public Service’ (hereafter known as Guiding Principles). The Guiding Principles provides for general principles under column A are as follows:

1. That each state of the federation is to be equitably represented in all national institutions and in public enterprises and organizations
2. That the best and most competent persons are recruited from each state and most competent persons are recruited from each state of the federation to fulfil positions reserved for the indigenes of that state.
3. That once a candidate has attained the necessary minimum requirement for appointment to a position, he/she should qualify to fill a relevant vacancy reserved for the indigenes of his/her state
4. That where the number of positions available cannot go round the states, the sharing should be on zonal bases but that in the case where two items only are available, they should be shared between northern and southern zones.
5. That in an ideal situation, posts to be distributed among the indigenes of the states and Abuja on the formula of equality would be 2.75% for the indigenes of each state after reserving 1% for the indigenes of Abuja. However, in the spirit of give and take, the Commission has decided to adopt a range so that the indigenes of any state should not constitute less than the lower limit or more than the upper limit of the range
6. That the six zones and the states they comprise are:
  - (a) North Central: Benue, FCT, Kogi, Kwara, Nassarawa, Plateau, and Niger States
  - (b) South – East: Abia, Anambra, Ebony, Enugu, and Imo States
  - (c) South-South: Akwa Ibom, Bayelsa, Cross River, Delta, Edo, and River State
  - (d) South West: Ekiti, Lagos, Ogun, Ondo, Osun, and Oyo States
  - (e) North East: Adamawa, Bauchi, Borno, Gombe, Taraba, and Yobe States
  - (f) North West: Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto, and Zamfara States.

However, with respect to powers and functions of the Federal Character Commission, in accordance with the express provision of paragraph 8(1) of the Third schedule Part 1-C of the 1999 Constitution, the Commission has the sole vires to give effect to section 14(3) and (4) of the 1999 Constitution. Put differently, it has the duty to enforce compliance with provisions relating to the concept of Federal Character Principle as provided in the 1999 Constitution.

#### **7. The 1999 Constitutional and The Indigenship Conundrum**

Though inelegantly, the 1999 Constitution provided the constitutional basis for the subject matter of indigenship. Specifically, for the purpose of constitutional definition of indigenship, section 318(1) paragraph (vi) of the 1999 Constitution, provides, viz: ‘Belong to or its grammatical expression when used with reference to a person in a state refers to a person either of whose parents or any of whose grandparents was a member of a community indigenous to that state’. Instructively, the above provision though inelegant, simply reinforces the fact that Nigerian citizens have no right to indigenship outside their states of origin. And by way of logical construct, same has continuously exacerbated the indigenship and settlership conundrum. This is the more reason why Bach, rightly observed that Nigeria’s younger generation are being socialized into indigenship, state and local government identity as crucial parameters for the definition of their future prospects<sup>51</sup>

#### **8. The Desideratum of States Character Commission within the Nigerian Federalism**

Axiomatically, Nigeria, is a federation of thirty-six states and the Federal Capital Territory<sup>52</sup>. However, unlike practices in other federations, Nigerian federation consists of 774 local government areas<sup>53</sup>. This is because, local governments are intended to serve as the lowest tiers of governance that will be most responsive to the needs of the people, as well as expected to enhance political participation at the grassroots. That said, notwithstanding the recent and famous Supreme Court judgement in the celebrated case of Attorney General of the Federation v Attorney General of 36 State SC/CV/343/2024, on local government autonomy, wherein Justice Emmanuel Agin, by way of lead judgement stated as follows:

It is the position of this court that the federation can pay local government allocations directly to the local government or through the states. In this case, since paying them though the states has not worked, justice demands that local government allocations from the federation account should henceforth be paid directly to local governments<sup>54</sup>

The said local government autonomy as granted by the apex court because of the overbearing influence of state governors especially as it relates to sections 7(1), 8 and above all, 197 of 1999 Constitution which does not provide for administrative and financial autonomy for local government, as well as State Independent Electoral Commissions, has made the said decision inchoate, hence the touted plan to still amend the 1999 Constitution by the 10<sup>th</sup> National Assembly members for the purpose of facilitating and giving more purpose to the said Supreme court judgement. Again, it is important to point out that aside the provision and definition of citizenship in section 25, 26 and 27 of the Constitution, the 1999 Constitution did not effectively define who is an indigene for the purpose of implementation

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<sup>50</sup> Sec section 5(1) of the Federal Character Commission Act, 1995

<sup>51</sup> Bach, D.C, *Indigeneity, Ethnicity and Federalism: In Transition without Ends: Nigerian Politics and Civil Society under Babangida*, (Vintage Publisher, Ibadan, 1997)

<sup>52</sup> Sec section 2(2) of 1999 Constitution and the case of *Attorney General Ondo State v Attorney General of the Federation* (2002) FWLR (Pt111) P1972 of 2132

<sup>53</sup> See the First Schedule Part 1 of the 1999 Constitution and the case of *Attorney General Ondo State v Attorney General of the Federation* (2002) FWLR (P111) P1972 of 2132.

<sup>54</sup> See *Attorney General of the Federation v Attorney General of Abia State & 35ors*, SC/CV343/2024 unreported.

of federal character principle as provided for in section 14(3) of CFRN, 1999. Thereby, making same inchoate. Instructively, the said legislative gap or better put, constitutional gap with respect to effective definition, has been statutorily filled by the Federal Character Commission Act, 1996, which definition of who is an indigene is local government situated. Specifically, Part III, Sections 1 & 2 of the Act defines indigene as: A person either of whose parents or any of whose grand-parents was or in as indigene of the local government concerned; or Who is accepted as an indigene of the local government, and An indigene of a state means a person who is an indigene of one of the local governments in that state<sup>55</sup>.

Thus, it is in the light of the foregoing that it is not just desirable, but indeed necessary to examine some of the powers and functions of the Federal Character Commission, as well as some of its lacunas with a view to making a strong case for States Character Commission vis-a-vis the concept of federalism as provided for in section 2 (2) of the 1999 Constitution. In the first place, by virtue of paragraph 8(1) of the Third Schedule Part 1-C of the 1999 Constitution, the Commission has the responsibility to give effect to section 14(3) & (4) of the Constitution. Put differently, it has a duty to enforce compliance with the provision relating to the concept of federal character as enshrined in the Constitution. However, the inclusion of section 14(4) of the Constitution gives the Commission jurisdiction over states of the federation. So, unlike the provision of the Act, the provision in the Constitution obviously omitted local governments. This may be connected to the fact that, notwithstanding the recent Supreme court decision on local governments autonomy, local governments are not still recognized within the Nigerian federalism as part of the federating units of Nigeria<sup>56</sup>. Therefore, it is obvious that the Commission powers do not cover local governments. And if, and only if, the Commission's power does not cover local government, then how can the concept of federal character be applicable or implemented in the local governments areas, especially considering the fact that most local governments in the Nigerian federalism are rainbow society in nature, or composition? So, since section 8 of the 1999 Constitution gives the federating states some semblance of constitutional control over local governments, it is only logical that the federating states should pass into law State Character Commission. Again, it is important to point out that the 1999 Constitution is federal in nature. Thus, the provision on Federal Character Commission that appears generic in coverage and application violates the principle of federalism in that, it is illogical to ponder a scenario where the president who is the executive head of the federal government which forms a unit of the federation should be saddled with the responsibility to put in place a Commission that would control appointments made by other component units<sup>57</sup>.

However, without equivocation, the function of the Commission pursuant to established principles of federalism should have been restricted to federal level<sup>58</sup>, just like the court of Appeal Asaba division in the case of FRSC v Ehikaam (2023) LPELR-60749(CA) that ruled that, with respect to traffic regulation, the Federal Road Safety Corps, is restricted to operating only on federal roads. Consequently, without intending to be unnecessarily cynical, the present situation has the capacity to promote inter-governmental disharmony, animosity and above all, will also negate the goal of the Commission which tends towards promotion of national unity and loyalty. This is because, where the Commission exercises its power over a state, it may be seen as federal government deliberately meddling in the affairs of the state<sup>59</sup>. Therefore, in order to obviate the intended or unintended constitutional conundrum, especially as it relates to possible clashes between the government at the center and those at the states, it is not just desirable, but necessary that a State Character Commission like other states bodies in the form of Kano State Public Complaints and Anti-corruption Commission, State Interdependent Electoral Commissions, State Emergency Management Agencies, etc. be set up, or better put, enacted into law by the federating states.

## 9. Conclusion

As can be gleaned from the above disquisition, it is not in dispute that pursuant to section 2(2) of the 1999 Constitution that Nigeria, is a federation consisting of States and a Federal Capital Territory. Again, it is not also in contention that the government of Nigeria, conceived, and adopted the concept of federal character principle with respect to accommodationist and integrationist paradigms for the purposes of nation building and national integration, as well as balancing activist complaints of inequality within Nigerian federalism occasioned by the fallouts of the Lugardian amalgamation of northern and southern protectorate in 1914, the Nigeria and Biafra civil war, and above all, arbitrary states and local governments creation, as well as boundary adjustment. Consequently, as can equally be deduced from the above disquisition, Nigeria, is a text book definition of divided society, hence the Federal Character Commission, (FCC) by way of short title, was created pursuant to the yearnings of Nigerians for a reform that would address the thorny issues of inequality and ethnic domination inexorably occasioned by the above reasons in federal agencies by ensuring the equitable representation of different groups in all tiers of government, as well as monitoring the implementation of this righteous objectives. Therefore, since most states and local governments in the Nigerian federalism, are "rainbow society" in composition, or better put, miniature Nigeria in nature, as well as the fact that, the definition of who is an indigene with respect to the FCC Act, is local government situated, and coupled with the fact that, the FCC Act, does not apply to local governments in Nigeria. Obviously, in the absence of the federating units, enacting into law state based constitutions as was the practice in section 5(1) & (2) of the 1963 Republican Constitution, and other climes, as well as following it up with States Character Commission for the purpose of proper monitoring and implementation vis-à-vis the import and purport of federalism globally, it is the writer's innocuous contestation that, notwithstanding the express provision of section 14(4) of the 1999 Constitution, the import and purport of section 14(3) of the 1999 Constitution will always remain inchoate.

<sup>55</sup> See part III, sections 1 & 2 of the Federal Character Commission Act, 1995

<sup>56</sup> See section 2(2) of the 1999 Constitution

<sup>57</sup> Babawale, T.A, *Federal Character Commission: An Evaluation* (Nigerian Law Guru, 2024), p7 <<https://nigerianlawquru.com>> accessed on 5<sup>th</sup> of October, 2024.

<sup>58</sup> See the 1999 Constitutional, especially sections 5(1) (a) & (b) & (2) (a) (b) as well as Second Schedule Part 1 & 2 of the Exclusive and Concurrent List.

<sup>59</sup> Babwale, T.A, (n57)