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PROBING THE JURISPRUDENCE AND CHALLENGES OF CITIZENSHIP RIGHTS IN NIGERIA

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Abstract

Across nearly all countries of the world, certain rights, privileges, benefits, duties and obligations predicate on national citizenship. Under the Constitutions of those countries, including Nigeria, the rights enjoyed by non-citizens or aliens differ from, and are usually inferior to those enjoyed by its citizens. This dichotomy seemingly threatens the global quest for non-discrimination, inclusion and integration of humanity. In probing the implication of differential rights vis-à-vis citizenship status, this paper explores the jurisprudence of citizenship rights in Nigeria, using a doctrinal approach. It particularly examines the law, the practice and associated challenges of citizenship rights flowing from the country's Constitution of 1999 (as amended). It argues that some citizenship-related issues in the Nigerian Constitution disconnect national integration and limit the quest for broad economic development in the country. Lastly, the paper makes recommendations, including Constitutional amendments, which may reasonably be applied to bridge identified gaps and promote inclusion, integration and accelerated development in Nigeria.

Keywords: Citizenship Rights, Jurisprudence, Challenges, Recommendations, Nigeria

1. Introduction

Citizenship is a thorny issue in the modern nation-states. Citizenship is also a fundamental issue which is entrenched in the national constitutions. In Nigeria, Chapter III of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) contains specific provisions on Citizenship while Chapter IV thereof contains a list of the justiciable fundamental rights which citizens are entitled to.[4] Additional rights (though non-justiciable) described as the Fundamental Objectives and Directive Principles of State Policy are contained in Chapter II of the said Constitution.[5]

Generally, Citizenship is predicated on and tied to rights, privileges, benefits and obligations different from and superior to those enjoyed by non-citizens. In Nigeria, citizenship may be acquired by birth, by registration, or by naturalization.[6]

Citizenship is ordinarily meant to sync with 'social justice'[7], that is, equality and inclusion, both of which promote national integration and development.[8] Despite the unquestionable interconnection of

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4 These includes civil and political rights such as rights to life and dignity; personal liberty; fair hearing; private and family life; freedom of thought, conscience and religion; freedom of expression, peaceful assembly and association, freedom of movement, freedom from discrimination, and acquisition and ownership of property.

5 O. V. Ikpeze (2015). Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development. *Developing Country Studies*, *5*(18), 48-56.

6 Aloy Ojilere (2004). Acquisition and Loss of Citizenship under the 1999 Nigerian Constitution. *Nigerian Journal of Legal Studies, V*, 50-59.

7 This concept simply means "an equitable distribution of fundamental resources and respect for human dignity and diversity, such that no minority group's life interests and struggles are undermined and that forms of political interaction enable all groups to voice their concerns for change." See: T. Basok, S. Ilcan, and J. Noonan. (2006). Citizenship, human rights, and social justice. *Citizenship studies*, *10*(3), 267-273.

8 E. E. Osaghae (1990). The problems of citizenship in Nigeria. *Africa*, 593-611.

citizenship, national integration, democracy and liberal political participation,[9] the current application of citizenship vis-à-vis the 'nation-building' project remains mere rhetoric in Nigeria, hence, the affirmation that the promise of common citizenship in the country has remained largely unrealised.[10]

Using the doctrinal methodology, this study examines the modes of acquisition of citizenship in Nigeria and identifies salient gaps in the law and practice in relation to Citizenship and allied rights in Nigeria. Lastly, it makes pertinent recommendations which may bridge identified gaps and promote inclusion and national integration. The paper complements existing scholarship on inclusion and human rights in developing countries.

2. Acquisition of Citizenship in Nigeria

It is the prerogative of any country to determine who will be its citizen. In Nigeria, citizenship may be acquired in any one of three ways, namely, by Birth, by Registration or by Naturalization under sections 25, 26 and 27 respectively of the 1999 Constitution.

2.1. Citizenship by Birth

Section 25(1) (a) of the Nigerian Constitution describes persons who are citizens of Nigeria by birth, namely:

> every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria: Provided that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents nor any of his grandparents was born in Nigeria; (b) every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and (c) every person born outside Nigeria either of whose parents is a citizen of Nigeria.

The import of section 25(1)(a) is that a person may become a Nigerian citizen by birth, first, if that person is born before Independence Day on October 1, 1960 to a parent who is a citizen of Nigeria or if the grandparent of such a person is a citizen of Nigeria.

Consequently, a person born before October 1, 1960 shall not be a citizen of Nigeria by birth pursuant to the said paragraph if neither of his parents nor any of his grandparents is born in a community in Nigeria.[11] A person who is not a Nigerian citizen by birth may however, acquire valid Nigerian citizenship by registration[12] or by naturalization.[13]

Remarkably, citizenship by birth cannot be deprived, lost or withdrawn, nor inherent privileges denied, on the ground only that such person is simultaneously a citizen of any other state/country other than Nigeria.[14] A Nigerian citizen by birth may therefore enjoy dual citizenship rights and privileges without forfeiture of either.[15] However, grantees of Nigerian citizens by registration or by naturalization, among other pre-conditions, must renounce their allegiance to any foreign country within twelve (12) mouths of the grant, or forfeiture the Nigerian citizenship.[16]

Malemi summarized the implication of acquiring any of the three forms of Nigerian Citizenship thus:

> The Nigeria Constitution allows dual citizenship for a foreigner who is a citizen of another country by birth to also be a citizen of Nigeria, by registration or by naturalization. Therefore, the Constitution and consequently Nigerian law does not permit dual citizenship for a foreigner who is not a citizen of another country by birth. Nigerian citizenship acquired by a foreigner by way

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9 E. Edosa. (2014). National integration, citizenship, political participation and democratic stability in Nigeria. *AFRREV IJAH: An International Journal of Arts and Humanities*, *3*(3), 61-82.

10 A. R. Mustapha (1998). Identity boundaries, ethnicity and national integration in Nigeria. *Ethnic conflicts in Africa*, 27-52; O. Alubo (2004). Citizenship and nation making in Nigeria: New challenges and contestations. *Identity, culture and politics, 5*(1), 135-161.

11 (1981) 2 NCLR 459.

12 S. 26, Constitution of the Federal Republic of Nigeria, 1999 (as amended).

13 S. 27, *ibid.*

14 *Ogbeide v. Osula* (2004) 12 NWLR (Pt. 886) 86 C A.

15 T. Faist, J. Gerdes, and B. Rieple (2004). Dual citizenship as a path-dependent process. *International migration review, 38*(3), 913-944.

16 A. K. Ehensiri, *General Principle of Nigerian Law* (1st edn, Delta: Simpliciter Publishers, 2012), pp. 3, 7, 8, 10, 12, 33.

> of registration, or naturalization may be lost, becomes void or forfeited, for instance, in the following circumstances; If upon attaining the age 21, or within 12 months of the coming into force of this constitutional provision the person: 1. Renounces his/her Nigeria citizenship; or 2. Acquires the citizenship of any other country; or 3. If there is ineffective renunciation of the citizenship of any other country acquired in any other means other than by birth; 4. Imprisonment for not less than three years; 5. Disloyalty to Nigeria by act or speech and so forth.[17]

Badru describes section 25 of the Nigerian Constitution as evoking the principle of *jus sanguinis* (the right of blood), that is, one which does not confer automatic citizenship by birth unless one's parent or grandparent is a citizen of Nigeria.[18]

Although section 25(1) (a) stresses the "indigeneship" of either parents or grandparents as a precondition for citizenship by birth, the Constitution fails to provide a valid interpretation of the term 'community indigenous'. As later discussed in this paper, this failure is one of the problems with citizenship in Nigeria.

Section 25(1) (b) of the Nigerian Constitution prescribes a second category of citizenship by birth, namely, every person born in Nigeria after October 1, 1960 either of whose parents or any of whose grandparents is a citizen of Nigeria by birth.

In this category, the citizenship of the parent or grandparent would suffice if it is simply by registration or naturalization and not predicated on "indigeneship" or birth.[19] This is unlike in the first category under section 25(1) (a) where the parent or grandparent must hail from a community indigenous to Nigeria and not otherwise.

Section 25 (1) (c) prescribes the third category of Nigerian citizen by birth, namely, 'every person born outside Nigeria either of whose parents is a citizen of Nigeria'. In *Shugaba v. Minister of Internal Affairs*[20], a member of the Great Nigerian Peoples Party (GNPP) and the majority leader in the Borno State House of Assembly was deported from Nigeria by the Federal Government and its agents on the pretext that he was not a Nigerian Citizen. An application was filed on behalf of the Plaintiff to enforce his fundamental rights and for redress of the violation. He established that although his father was a Chadian, his mother was a Nigerian of the Kanuri tribe, and sought, *inter alia*, a declaration that he is a Nigerian citizen. The Court upheld this contention and declared, *inter alia*, that the deportation of the applicant was unconstitutional, and that once a person proves that he is a Nigerian citizen by birth under the relevant provisions of the Nigerian Constitution, he cannot be deported from Nigeria.

In summary, a person is a Nigerian citizen by birth if both parents are Nigerian; if either parent is a Nigerian; and if any or one of the grandparents is a Nigerian. It is therefore correct to hold that *birth* is the simplest, natural and commonest means of acquiring citizenship in Nigeria.[21] This is however less liberal than the *Birth right citizenship*[22] in the Fourteenth Amendment to the United States Constitution which specifically confers citizenship and equal standing under the law to *all persons born or naturalized in the United States*.[23]

2.2. Citizenship by Registration

This is the second method of acquiring a Nigerian citizenship. Under section 26 (2) of the Nigerian Constitution, citizenship by registration may avail any woman who is or has been married to a citizen of Nigeria,[24] or every person of full age and capacity born outside Nigeria any of whose grandparents is a

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17 E. Malemi, *The Nigerian Constitutional Law*, Lagos: Princeton Publishing Co., 2006 p. 217.

18 F. A. Badru 'Ethnic Conflicts and Minority Interests in Nigeria: A Critical Perspective' (2000) 2 *Journal of Cultural Studies, Ethnicity and African Development*, 257.

19 *Ahmed v. Minister of Internal Affairs* (2002) 15 NWLR, (Pt.790) p. 239 CA.

20 (1981) 1 NCLR 459.

21 D. I. Ajaegbo and E. O. Ibezim, *Citizenship Education in Nigeria: An Interdisciplinary Approach* (1st edn, Onitsha: West and Solomon Publishing Company ltd, 2001) p. 1.

22 J. Feere (2010). Birthright Citizenship in the United States. *Center for Immigration Studies*. https://cis.org/sites/cis.org/files/birthright-final.pdf (6/4/2019).

23 U.S. CONST. amend. XIV, s 1 states thus: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

24 S. 26(2) (a).

citizen of Nigeria.[25] This prescription is not absolute but rather subject to three conditions which are compelling and not just desirable.[26]

Firstly, under section 26(1) of the Constitution, the President of Nigeria must be satisfied that such applicant is a person of good character,[27] has shown a clear intention of his desire to be domiciled or ordinarily based in Nigeria,[28] and has taken the Oath of Allegiance to the Federal Republic of Nigeria prescribed in the Seventh Schedule to the Constitution.[29] Secondly, under section 28(1), where citizenship by registration has already been granted, it shall be forfeited "forthwith" if the grantee "acquires or retains the citizenship or nationality of a country, other than Nigeria, of which he is not a citizen by birth." Thirdly, under section 28(2), a holder of Nigerian citizenship by registration or naturalisation shall "within a period of not more than five months from the date of such registration or grant" effectively renounce any previous citizenship or nationality except that of his birth.

2.3. Citizenship by Naturalization

This is the third mode of acquiring Nigerian citizenship. The grant of this form of citizenship depends essentially on the applicant's enterprise and long period of legal residence in Nigeria. Section 27(2) (a) – (f) of the Nigerian Constitution lists the preconditions. Thus, an applicant must satisfy the President of Nigeria that he is of full age and capacity,[30] of good character,[31] and with a clear intention of desire to be domiciled in Nigeria.[32]

Moreover, he must have made or is capable of making useful contribution to the advancement, progress and well-being of Nigeria,[33] and has taken the Oath of Allegiance prescribed in the Seventh Schedule to the Constitution.[34] Imperatively, and immediately preceding the date of his application, he must have resided in Nigeria for a continuous period of fifteen years,[35] or resident in Nigeria continuously for a period of twelve months and during the period of twenty years immediately preceding that period of twelve months has resided in Nigeria for periods amounting in aggregate to not less than fifteen years.[36]

The Governor of the State where the applicant resides or proposes to be resident must also certify that he is acceptable to the local community in which he is to live permanently, and has been assimilated into the way of life of Nigerians in that part of the Federation.[37]

Furthermore, and as stipulated in section 28(1), such a person shall "forfeit forthwith his Nigerian citizenship if, not being a citizen of Nigeria by birth, he acquires or retains the citizenship or nationality of a country, other than Nigeria, of which he is not a citizen by birth.

As prescribed in section 28(2) also, the grantee of a certificate of naturalisation shall, within five months thereof, effectively renounce the citizenship or nationality of any other country (other than his country of birth) held by him.[38]

This is the complex process by which any foreigner who has lived for a long time in Nigeria may become a naturalized Nigeria citizen. [39] However, despite claims that "both what is Nigeria and Nigerian citizenship, as enshrined in the constitution," is fundamentally based on "colonial experience,"[40] this

25 S. 26(2) (b).
26 *R v. Home Secretary* (1941) 1KB 72 CA; Bud v. Anderson (1941) 2 All ER 749.
27 S. 26(1) (a). Cf: *Joyce v. DPP* (1946) AC 347 HL.
28 S. 26(1) (b). Cf: *R v. Governor of Brixton Prisons* (1946) 2KB 742.
29 S. 26 (1) (c). Cf: *R v. Halliday* (1917) AC 260 HL.
30 S. 27 (2) (a).
31 S. 27 (2) (b).
32 S. 27 (2) (c).
33 S. 27 (2) (e).
34 S. 27 (2) (f).
35 S. 27 (2) (g) (i).
36 S. 27 (2) (g) (ii).
37 S. 27 (2) (d).
38 S. 27(1).
39 E. Malemi (n. 17).
40 T. Kazah-Toure (2004). A discourse on the citizenship question in Nigeria. *Democracy and Development: Journal of West African Affairs*, *4*(1), 41-63, at 47.

mode of citizenship is the most cumbersome and difficult of the three while citizenship by birth is judicially confirmed as the most liberal.[41]

3. Challenges of Citizenship Rights in Nigeria

This section examines salient issues relating to citizenship rights in Nigeria, particularly, dual citizenship, renunciation of citizenship, the practice of indigeneship in employment and appointments, citizenship education and life-long learning, deportation, and ethnicism.

3.1 Dual Citizenship

Dual citizenship means that a person is a citizen of two countries at the same time. By section 28(1) of the 1999 Nigerian Constitution, not all citizens of Nigeria may legally acquire dual citizenship.[42] It limits dual citizenshsip rights to citizens by birth and bar dual nationals from holding certain public offices.[43]

For instance, by 66 (1) (a) of the Nigerian Constitution,

> No person shall be qualified for election to the Senate or the House of Representatives if, subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, has made a declaration of allegiance to such a country.

Consequently, an applicant for dual citizenship must demonstrate that he is a citizen of Nigeria by birth and not otherwise or at least citizen of another country by birth.[44]

In *Ogbeide v. Osula,*[45] the Court of Appeal, per Aderemi JCA espoused the position thus:

> Section 28 deals with dual citizenship. It provides, subject to the other provisions of this section, a person shall forfeit forth with his Nigerian citizenship if, not being a citizen of Nigeria by birth he acquires or retains the citizenship or nationality of a country other than Nigeria of which he is not a citizen by birth. Section 29 deals with the issue of renunciation of a person's Nigerian citizenship while section 25 deals with categories of Nigeria citizens. In other words, a person who is a citizen of Nigeria by birth cannot have such citizenship forfeited … a person who is not a citizen of that other country by birth, his registration will be conditioned in the renunciation of his citizenship of that other country. In other words, renunciation of citizenship does not apply to citizens of that country by birth.[46]

The Court further observed that:

> [B]y virtue of the combined effect of the provisions of sections 25, 26, 27, 28, and 66, of the 1999 Constitution…a Nigeria citizen by birth does not forfeit his citizenship or becomes ineligible to contest election to the House of Representatives, simple because he is also a citizen of another country. On the other hand, a Nigeria citizen by either registration or naturalization who subsequently acquires the citizenship of another country or swears allegiance to that country in addition to his Nigeria citizenship automatically forfeits his Nigerian citizenship and ineligible to contest election to the House of Representatives.

Put simply, dual citizenship within the state or states of Nigeria is not permissible.[47] Also, a person who is neither a citizen of Nigeria by birth nor a citizen of any other country by birth shall in no way be a Nigeria citizen unless he renounces within the stipulated legal period, any other citizenship (by registration, naturalization or otherwise) which he holds.[48] Only this way may dual citizenship be legal in Nigeria.[49]

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41 *Ogbeide v. Osula* (n. 14).
42 *Ogbeide v. Osula, ibid.*
43 B. E. Whitaker (2011). The politics of home: Dual citizenship and the African diaspora. *International Migration Review*, *45*(4), 755-783.
44 See *Shugaba v. Minister of Internal Affairs and Ors* (n. 20).
45 *Ogbeide v. Osula* (n. 42).
46 *Ibid,* p. 126.
47 G. Ozuru and P. O. Nwajah (2019). Towards a human rights approach for the treatment of migrants in Nigeria. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, *10*(1), 91-100.
48 W. Adebanwi (2005). Contesting exclusion: The dilemmas of citizenship in Nigeria. *African anthropologist*, *12*(1), 11-45.
49 *Shugaba v. Minister of Internal Affairs and Ors* (n. 44).

Citizenship leans on place of birth, circumstance of birth or membership of a community or an area.[50] Section 28 is therefore pragmatically discriminatory and not in sync with human inclusiveness, contrary to section 42 (1) and (2) of the Nigerian Constitution which prohibit discrimination on grounds such as membership of a *community, ethnic group, place of origin,* or *circumstance of birth*.[51]

Rights, privileges and obligation conferred by Nigerian citizenship (whether by birth, registration or naturalization) should, therefore, be applied equally and without discrimination, for instance, by expunging section 28 of the Constitution. Moreover, the law creates reciprocal obligation on all citizens without qualification.[52]

The current discriminatory approach to dual citizenship in Nigeria is also antithetical to nation building.[53] Denying dual citizenship right to persons who are not citizens of Nigeria by birth unless they renounce any previous citizenship other than citizenship birth, inhibits national development and re-imposes a restrictive immigration policy that undercuts the developmental strategy for foreign investment.[54]

It equally defeats one core benefit of dual citizenship, which is, to encourage migrants' integration in the host country as well as strengthen the link between the migrants and the country of origin.[55]

The lacuna which section 28 of the Nigerian Constitution represents is also adverse to returnee former slaves who can no longer prove their specific nativity in Nigeria as a result of long absence from home. Compelling such persons (some of whom may be highly talented and endowed) to renounce their foreign citizenship in order to acquire Nigerian nationality may be counter-productive to Nigeria's quest for globalization, investment and economic development.[56]

This paper concedes that dual citizenship will verily benefit third-world economies[57] and hereby recommend that it be liberalized in Nigeria.

3.2 Renunciation of Nigerian Citizenship

Under the Nigerian Constitution, only persons who are 18 years and above can renounce their citizenship. Section 29(1) thereof provide thus: "Any citizen of Nigeria of full age who wishes to renounce his Nigerian citizenship shall make a declaration in the prescribed manner for the renunciation." Thereafter, the President of Nigeria shall cause such declaration to be registered and the declarant "shall cease to be a citizen of Nigeria."[58] Ironically, section 29 (4) (a) of the said Constitution defines "full age" to mean "the age of eighteen years and above" while its section 29 (4) (b), "any woman who is married shall be deemed to be of full age" (albeit, some girls get married at far below eighteen in Nigeria). Consequently, girls who cannot even vote at general elections because they are below 18 may decide or be coerced into renouncing their citizenship.[59]

Thus, while the age of renunciation for male citizens and for unmarried females is settled, that of married females remain controversial because under section 21 of the Child Rights Act 2009, a person who is below 18 year cannot validly marry. A critical problem arose in 2011 when 49 year old Senator Sani

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50 G. O. Ozumba *et al* (Eds) *Nigeria Citizenship Education* (1st edn, Aba: AAU Vitalis Book Company, 1999) p. 25.
51 *Nzekwu v. Nzekwu* [1989] 2NWLR (Pt. 104) 773 SC; *Okoli v. Okoli* [2003] 8 NWLR (Pt. 823) 565 CA.
52 *Muhammadu v. Muhammadu* [2001] 6 NWLR (Pt. 708) p. 104 CA.
53 O. O. Fayomi and G. T. Adebayo (2018). Political Participation and Political Citizenship. In *The Palgrave Handbook of African Politics, Governance and Development* (pp. 537-551). Palgrave Macmillan, New York.
54 N. Omoigui, 'Dual Citizenship in Nigeria' www.nigerianscholars.aficanqueen.com (accessed 25/4/2018).
55 I. Uche (2018). Dual Citizenship; a Divided Loyalty (A Case Study of Immigrants with Dual Citizenship in Malmo, Sweden). http://muep.mau.se/bitstream/handle/2043/27625/Ezeaka_Innocent_Uche_bachelor_thesis. pdf?sequence=2&is Allowed=y (accessed 7/4/2019).
56 D. Leblang (2017). Harnessing the diaspora: dual citizenship, migrant return remittances. *Comparative Political Studies*, *50*(1), 75-101.
57 M. Chand (2016). Leveraging the diaspora for Africa's economic development. *Journal of African Business*, *17*(3), 273-290.
58 S. 29 (2) thereof.
59 C. Pereira (2002, April). Understanding women's experiences of citizenship in Nigeria: From advocacy to research. In *CODESRIA/Arab Research Centre Symposium on "African Gender Research in the New Millennium: Perspectives, Directions and Challenges", Cairo, Egypt* (pp. 7-10).

Yerima, a former governor of Zamfara state, married a 13-year old Egyptian girl.[60] Pertinent questions are:

(1). Whether the community reading of section 29 (4) (a) and (b) of the Constitution could be understood to mean that a girl who marries at below 18 years is deemed to have attained 18 years or more;
(2). whether there is any nexus between section 29 (4) (a) and (b) and item 61 of the Second Schedule of the Nigerian Constitution[61], and
(3). whether section 29 (4) (a) and (b) legalizes child marriage.

Applying the literal rule of interpretation of statutes in resolving Question (1), it means that a married woman is presumed to be 18 years and above, even if she is actually much younger. As such, section 21 of the Child Rights Act, 2009 which outlaws child marriage would be logically circumvented unless the contentious section 29 (4) (b) of the Constitution is expunged/repealed by amendment.

On the second question, if not for the said section 29 (4) (b), marriage to a girl of below 18 years would have constituted a crime punishable with fine or imprisonment under section 21 of the Child Rights Act. Child predators may therefore take advantage of this constitutional, especially in the light of section 1(3) of the Nigerian constitution which provides that any law which is inconsistent with any provision of the Constitution shall be void to the extent of that inconsistency.[62]

The third question is accordingly resolved in the affirmative since the provision of section 29 (4) (b) of the Constitution invariably voids section 21 of the Child Rights Act and any similar provision in any other legislation.

Regrettably, the mischief which the Child Rights Act is intended to cure automatically fails.[63]

3.3 Indigeneship

The term *indigene* is a constitutional concept without statutory definition and is used in some provisions of the Nigerian Constitution.[64] Concepts like 'indigenous community', 'indigene' or 'state of origin' are equally used in relation to Nigerian citizenship.[65]

For instance, section 25 (1) (a) of the 1999 Nigerian Constitution provides that, every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community *indigenous* to Nigeria is a citizen of Nigeria by birth.

Similarly, section 147 (3) thereof provides *inter alia* that, "the President shall appoint at least one Minister from each State, who shall be an *indigene* of such State."

Indigeneship is therefore a *conditio sine qua non* for both the acquisition of citizenship and Ministerial appointment in Nigeria.

This issue of indigene and the like practically creates a dichotomy which discriminates between one class of citizens called *indigenes* and another class of citizens called *settlers*[66] or even *strangers.*[67]

Consequently, Nigerian are more inclined to their indigenous and ancestral roots than nationality which regrettably promotes discrimination and sectionalism over national integration.[68] It is therefore

60 O. Akinola (2019). Who Is a Child? The Politics of Human Rights, the Convention on the Right of the Child (CRC), and Child Marriage in Nigeria. In *Human Rights as Battlefields* (pp. 129-148). Palgrave Macmillan, Cham.
61 Namely, "the formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto."
62 See *A-G Bendel State v. A-G Federation and Ors* [1982] 3 NCLR 1 SC.
63 N. Omoigui (n. 54).
64 A. O. Adesoji and A. Alao (2009). Indigeneship and Citizenship in Nigeria: Myth and Reality. *Journal of Pan African Studies*, *2*(8).
65 See ss. 25 (1) (a) and 147 (3).
66 A. O. Adesoji and A. Alao (n. 64).
67 B. Kraxberger (2005). Strangers, indigenes and settlers: contested geographies of citizenship in Nigeria. *Space and polity*, *9*(1), 9-27
68 A. O. Adesoji and A. Alao (n. 66).

unfortunate that the Constitution approbates and reprobates[69] by guaranteeing freedom from discrimination in section 42 and yet institutionalizing open discrimination in sections 25 (1) (a) and 147 (3).

The reality of this dichotomy was demonstrated in *Anzaku and 33 others v. Governor Nasarawa State and 2 others,*[70] where the Governor of Nasarawa State made a policy ordering all the local Government staff to forfeit their jobs and go back to their so-called *local government of origin*. The plaintiffs contested the validity of the policy. The Court of Appeal, Jos division held that the practical application of *indigeneship* and '*place of origin* derogates from a common Nigerian citizenship and violates fundamental rights guaranteed in section 42 of the Constitution.

Nzeako, JCA, (as he then was) stated thus:

"In considering, the meaning, characteristics and application of section 42, I see the following elements in the provisions:

1. The provisions are rigid – the words "shall not" in subsection (i) and "shall" in subsection (2) bears this out;
2. The words and language are not only clear and precise but the prohibition which they convey are absolute in their context;
3. It is a prohibition against discrimination on grounds of the community, ethnic group, place of origin, sex, religion or political opinion to which a citizen belongs. They must not form an obstacle to citizen of Nigeria exercising his rights.
4. So prohibitive are the words, for, not only in express application of any law in force in Nigeria, but also in the practical application thereof, would the provision permit a citizen to be subjected to discrimination.

Also and, it is rather important to note, that such discrimination is not to be practiced, with respect to express and also the practical application of "ANY EXECUTIVE OR ADMINISTRATIVE ACTION OF GOVERNMENT.

Particularly, and of importance for this matter, is section 42 (1) (a) which restricts both executive and administrative action of Government which exposes a citizen of Nigeria to disabilities or restrictions which other Nigerians are not made subject "to"."

The urgent need to resolve the inherent constitutional dichotomy in citizenship and indigeneship in Nigeria and beyond cannot, therefore, be overstressed.[71]

3.4 Quota System and Discriminatory Employment

Globally, certain rights/privileges and special benefits as well as obligations arise from citizenship.[72] In the 1999 Nigerian Constitution, citizens' benefits and rights are listed as Fundamental Objectives and Directive Principles of State Policy in Chapters II and as Fundamental Rights in Chapter IV thereof. These benefits and rights are intended to be preserved and protected as sacred entitlements of Nigerian citizens. They include the right to be offered job or employment opportunities.[73] Unfortunately, the notion of 'indigeneship' in relation to citizenship is known to encourage the application of discriminatory "quota system" in employment and allied benefits.[74]

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69 *Akanbi v. Alao* (1989) 3 NWLR (Pt. 108) p. 118 @ 142 and 153; *Afegbai v. AG Edo State* [2001] 7SCNJ 438; *Amori v. Iyanda* (2008) 3 NWLR (Pt. 1074) 250.

70 5 NWLR (Pt. 919) 448.

71 B. Ng'weno and L. O. Aloo (2019). Irony of Citizenship: Descent, National Belonging, and Constitutions in the Postcolonial African State. *Law and Society Review*, *53*(1), 141-172.

72 B. K. Blitz and M. Lynch (Eds). (2011). *Statelessness and citizenship: A comparative study on the benefits of nationality*. Edward Elgar Publishing; R. Plant (2003). Citizenship and social security. *Fiscal Studies*, *24*(2), 153-166.

73 *Momodu v. NULGE* [1994] 8 NWLR (Pt. 362) 336 CA.

74 S. Fajana, O. Owoyemi, T. Elegbede and M. Gbajumo-Sheriff (2011). Human resource management practices in Nigeria. *Journal of Management and Strategy*, *2*(2), 57.

Thus, a person who is not an indigene of a place, local government or state of the federation may not successfully secure a job in that place, local government or state. Job provision in Nigeria seems to be predicated on indigeneship rather than on citizenship.[75]

This is a clear detraction from the avowed Fundamental Rights of Nigerian citizens and a deviation from the Fundamental Objectives and Directive Principles of State Policy[76] and the domino effect will be poor national development and high rate of national disunity.

3.5 Admission into Educational Institutions

Education is one of the basic essential values of which every citizen must benefit[77] and therefore should be affordable and not denied.

Section 18 (1) of the Nigerian Constitution states that: "Government shall direct its policy towards ensuring that there is equal and adequate educational opportunity at all levels". Accordingly, citizens should ordinarily not suffer any disability or discrimination on grounds of sex, place of origin, religion, status, ethnic or linguistic association or tie while seeking admission into educational/vocational or like institutions. Regrettably, this constitutional ideal is a far cry in Nigeria as consideration of 'indigeneship' and 'ethnicism' continue to threaten true citizenship in Nigeria.[78] Thus, in *Badejo v. Federal Minister of Education*,[79] the plaintiff was flagrantly denied merit admission by the Federal Government College Lagos on the ground of "state of origin." On whether the plaintiff right to freedom from discrimination had been violated by the denial of admission, the trial court held that before she could succeed, she must demonstrate that she had suffered injury greater than those of others who were denied admission for the same reason. On appeal, the Court of Appeal held, and rightly so, that she had so demonstrated having shown her interest in being called for interview, and the appeal was allowed.[80]

The practice of "indigeneship" make mockery of Nigerian citizenship on several fronts thereby placing an indelible question mark on the country's quest for globalization, inclusion and sustainable development.

3.6 Provision of Welfare Benefits

Citizenship entitlements include certain benefits and privileges which are not accorded non-citizens or aliens.[81] Section 16(2) (d) of the 1999 Nigerian Constitution is illustrative: "The state shall direct its policy towards ensuring that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens." (Underline for emphasis).

Since the provision emphasizes "for all citizens" and not "indigenes", it suffices that any other concept in practice contravenes the Constitution.[82] In reality, however, the indigene/settler phenomenon has pragmatically vitiated the concept of citizenship in Nigeria thereby breeding hardship, discrimination and disunity among persons who are ordinarily meant to enjoy common citizenship.

3.7 Deportation

Section 41(1) of the 1999 Nigerian Constitution guarantees to all citizens the right to free movement and residence. Moreover, "no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom," except on the basis of any imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent

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75 *Anzaku v. Governor Nasarawa State* (n. 70).

76 Instructively, by virtue of section 6(6)(c) of the Nigerian Constitution, the fundamental rights are justiciable while the directive principles are not.

77 D. I. Ajaegbo and E. O. Ibezim (n. 21).

78 T. S. Albeely, A. T. Mahmoud and A. I. Yahaya (2018). Ethnicity, Tribalism, and Racism and its Major Doctrines in Nigeria. http://dspace.iua.edu.sd/bitstream/123456789/3710/4/Ethnicity.pdf (10/4/2019).

79 (1966) 8 NWLR (Pt.464) 15.

80 Similarly, in *Brown v. Board of Education* (1954) 347 US 483, the US Supreme Court held that the provision of separate educational institutions for different races on the concept of 'separation but equal' was discriminatory and unconstitutional.

81 A. K. Ehensiri (n. 16).

82 *Agbor v. Metro Police Commissioner* (1969) I WLR 703 C A.

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him from leaving Nigeria,[83] or one which provides for the removal of any person from Nigeria to any other country to be tried outside Nigeria for any criminal offence[84] or to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty,[85] provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

Deportation of citizens of Nigeria constitutes an affront to human rights and dignity of their person, personnel liberty, freedom of movement and discrimination pursuant to sections 34, 35, 41 and 42 of the 1999 Constitution (as amended). This is consistent with the provisions of the African Charter on Human and Peoples Rights.[86] Article 2 prohibits discriminatory treatment against citizens on the ground of social, origin, fortune, birth or other status. Article 13 provides for equal access to public services of the country to citizens.

Regrettably though, the practice of indigeneship in relation to citizenship in Nigeria has led to the unconstitutional "deportation" of Nigeria citizens to their so-called local government or states of origin.[87]

Thus, in the celebrated case of *Shugaba v. Minister of Internal Affairs,*[88] the Court Appeal upheld the verdict of the High Court of Borno State, which held that the deportation of the respondent from Nigeria to Chad by the Federal Government constitute violations of the respondent's fundamental human rights to personal liberty and freedom of movement throughout the country.

Again, in *Director SSS v. Agbakoba*,[89] the Supreme Court of Nigeria reiterated that 'it is not in dispute that the Constitution gives to the Nigeria citizens the right to move freely throughout Nigeria and to reside in any part thereof.''

Other cases involving deportation or unconstitutional restrictions on citizens' right to freedom of movement abound in Nigeria and have been judicial noticed.[90]

3.8 Ethnicism

The nation which is today known as Nigeria came into existence in 1914 following the amalgamation of multi-ethnic groups of the people with different languages, dress codes, styles of shelter etc.[91] The socio-political and other problems inherent in the notion of ethnicity/ethnicism in Nigeria is similar to those associated with indigeneship.[92] It has similarly necessitated primordial sentiments and struggle among citizens of the nearly 374 ethnic groups which populate the country,[93] making it incumbent on people to express more ethnic sentiment and solidarity than national.[94] This is one of the causes of 'horizontal

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83 S. 41(2) (a) of the 1999 Nigerian Constitution.
84 S. 41(2) (b) (i), *ibid.*
85 S. 41(2) (b) (ii), *ibid.*
86 African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9, Laws the FRN, 2004. Although African Charter on Human and Peoples Rights is an International Law which ordinarily should not be a binding legislation in Nigeria. However, it is trite that where International Law is domesticated in Nigeria as part of her laws it will automatically become binding as any other local legislation enacted in Nigeria. This is why African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9, Laws the FRN, 2004 is so relevant to this discussion.
87 *Ubani v. Director S*SS (1999) 11 NWLR (Pt. 625) p. 129 C. A.
88 *Supra* (n. 49).
89 (1999) 3 NWLR (Pt. 595) 314 at 356 S C.
90 *Adegbenro v. A G Federation* (1962) All NLR 428 *Akunnia v. A G Anambra State* (1977) 5SC 16; *Okogie v. A-G Lagos State* (1981) 1 NCLR 218 HC; *Yukubu v. Government of Gongola State* (1989) 4 NCLR (Pt. 117) 517 SC; *Ikem v. Nwogwugwu* (1999) 13 NWLR (Pt. 633) 140; *A-G Federation v. Ajayi* (2000) 12NWLR (Pt. 682) 509 CA.
91 B. Salawu and A. O. Hassan (2011). Ethnic Politics and its Implication for the Survival of Democracy in Nigeria. *3 Journal*

inequalities' in Nigeria and some African countries.[95] It has particularly necessitated ethnically discriminatory policies and colourations,[96] as well as ethnic and regional radicalization of Nigeria.[97]

Some scholars have also established a connection between tribalism, ethnicity, racism, conflict and instability in Nigeria,[98] and that ethnic diversity promotes instability rather than political peace and socio-cultural harmony.[99] Another scholar emphatically alleged that the constitutional dichotomy on citizenship and ethnicity in Nigeria singularly promote these divisions[100] even though section 2 thereof profess Nigeria as 'one indivisible and indissoluble sovereign state.'[101]

3.9 Constitutional Complexities on Citizenship of Women

Here, we examine the citizenship status of a Nigerian woman married to a Nigeria man in a Local Government or a State other than her Local Government or State of origin on the one hand, and that of a foreign (non-Nigerian) woman married to a Nigeria man on the other hand.

It has been argued that a woman who has a marital status outside her ethnic group, particularly local government or state of origin always encounter unconstitutional discrimination which other women of such community may not suffer.[102] Although the constitution is not emphatic on what should be the position of such married women, yet, the idea behind the discrimination encountered by such women could be traced to the philosophy of indigeneship in lieu of citizenship.

This could be buttressed in the matter of one Honourable Justice Jambo Ofo from Anambra state whose valid judicial appointment in the Abia state judiciary was made 'tentative' on the obvious ground of 'state of originship'.[103] It was even more unfortunate that the Chief Justice of Nigeria upheld the petition affirming the unlawful practice called indigeneship.

It seems therefore that marriage to a man from outside a woman's political vicinity jeopardizes and dwindles the citizenship status of such woman. In the light of complexities relating to ethnic origin and indigeneship in Nigeria (earlier discussed), protection mechanisms should be put in place to protect such women against possible discrimination or underserved embarrassment.

The Nigerian Constitution does not also guarantee automatic citizenship for foreign women married to Nigerian men. Under section 26(1) (a) thereof, she must first satisfy the President that she is a person of good character, has clear intention to be domiciled in Nigeria, and has also taken the Oath of Allegiance prescribed in the Seventh Schedule to the Constitution. It suffices that where the President is not so satisfied, some foreign women cannot acquire automatic Nigerian citizenship irrespective of being married to a Nigerian. The contention is therefore understandable that citizenship is a fundamentally contested notion, for women and for men, but the terrain on which such battles are fought and sometimes won, differs considerably for women compared to men.[104]

It is a lacuna too that the Nigerian Constitution is silent on the citizenship of an adopted child and on whether/how citizenship may be reinstated after renunciation.

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95 A. Langer, A. R. Mustapha and F. Stewart (2007). Horizontal Inequalities in Nigeria, Ghana and Côte d'Ivoire: Issues and Policies. https://ora.ox.ac.uk/objects/uuid:fc4717ad-fcc3-4144-8805-1811c4a5b246/download_file?file_format=pdf&safe_filename=workingpaper45.pdf&type_of_work=Working+paper (4/4/2019).

96 M. Solomon. (2018). Addressing the Crises in Southern Kaduna State, Nigeria. *Ibadan Journal of Sociology*, *8*(1), 19-19.

97 J. B. Ejobowah (2000). Who owns the oil? The politics of ethnicity in the Niger Delta of Nigeria. *Africa Today*, 29-47.

98 T. S. Albeely, A. T. Mahmoud and A. I. Yahaya (n. 78).

99 S. A. Adamu (2012). Ethnic Conflicts and the Rights of Citizenship in Nigeria's Federalism. http://www.academia.edu/download/36026734/Ethnic_Conflicts_and_the_Rights_of_citizenship_in_Nigerias_Federalism.pdf (10/4/2019).

100 O. S. Abah, 'A performance of Disconnects in the Meaning and the Practice of Citizenship in Nigeria' in O. S. Abah (ed) *Geographies of Citizenship in Nigeria* (Zaria: Tamaza Publishing Company Ltd, 1998) P. 9.

101 See earlier discussions on 'indigeneship' versus 'citizenship' per sections 25 (1) (a) and 147 (3) of the Nigerian constitution.

102 L. D. Alabi and E C Akpa, 'Gendering Citizenship in Nigeria: Issue of Exclusion and Women's Prospects in the Political Process' in O. S. Abah (ed), *Geography of Citizenship in Nigeria* (Zaria: Tamaza Publishing Company Ltd, 2005) p. 78.

103 A. O. Adesoji and A. Alao (n. 68).

104 C. Pereira (n. 59).

4. Conclusion and Recommendations

Some recommendations are crucial for bridging identified gaps on Citizenship in Nigeria. Citizenship is ordinarily sacred and conferrable only by law. As such, citizens of every state must be distinguished from settler non-citizens in that state. This will ensure that settlers do not have equal rights and privileges with the citizens.

Commonsensically, in Nigeria and elsewhere, a person who is stateless or *citizenless* lacks the status of citizenship of any state and cannot enjoy rights and privileges available to state citizens. Invariably, only citizen of a particular state can enjoy certain constitutionally prescribed rights and privileges.

Notwithstanding the diversity or perspectives of problems related to Nigerian citizenship, it is still paramount to eliminate every form of inherent discrimination or bias by according appropriate values, rights, privileges, opportunities, equality and security to all Nigeria citizens (whether by birth, registration or naturalization) irrespective of tribe, state or local government of origin. This is because citizenship cannot exist in abstraction but must be predicated on rights and privileges accorded to citizens together with the reciprocal legal obligations and not otherwise.[105]

There is need to also maintain a balance between the duties/allegiance imposed on citizens of Nigeria pursuant to the provisions of section 24 of the Constitution and the reciprocal rights and privileges constitutionally conferred on the same citizens of Nigeria. It is however apparent from cases such as *Anzaku v. Governor Nasarawa State,*[106] that Nigerian citizens hardly enjoy prescribed rights and privileges in full.

It is simply unfortunate, as earlier observed, that expressions like 'community indigenous' and 'indigene' which appear in some of the provisions of the Constitution are detrimental to even citizens of Nigeria. Part of the problems relating to citizenship in Nigeria has consequently been blamed on the copious wording of the Constitution itself.[107] The terms 'community indigenous' and 'indigene' in sections 25(1) (a) and 147 (3) and any other similar provisions in the Constitution of the Federal Republic of Nigeria should be expunged. Section 28 of the Nigerian Constitution should by all means recognize dual citizenship in the favour of all the citizens of Nigeria notwithstanding the manner of acquisition.

The constitution making in Nigeria should envisage express provisions directly prohibiting discriminations against Nigeria citizens as it relates to employment, education, and political opportunity and so on as is the case in United Kingdom. The time is now to review and correct the policies and practices of unjust discrimination among many Nigerians on the basis of 'quota system', indigeneship, 'state of origin', or 'federal character'.

There should also be express prohibition of indigeneship thinking in Nigeria. The Constitution should accommodate persons of no parentage under section 25. Married foreign women should be accorded express citizenship upon being married to a Nigeria citizen.

This study further recommends that all citizens irrespective of whatever mode shall carry out the duties of citizens as enunciated in section 24 of the Constitution for the well-being of Nigeria and its peoples. Hence, it shall be the duty of every citizen to 'abide by this Constitution, respect its ideals and its institutions, the National Flag, the National Anthem, the National Pledge, and legitimate authorities'. A citizen should 'help to enhance the power, prestige and good name of Nigeria, defend Nigeria and render such national service as may be required'. The law also expects a Nigerian citizen to 'respect the dignity of other citizens and the rights and legitimate interests of others, and to live in unity and harmony and in the spirit of common brotherhood'. Such a citizen should 'make positive and useful contribution to the advancement, progress and well-being of the community where he resides'. He ought to equally 'render assistance to appropriate and lawful agencies in the maintenance of law and order; and declare his income honestly to appropriate and lawful agencies and pay his tax promptly'.

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105 O. S. Abah (n. 100).

106 (n. 75), where the Executive Governor of state made a policy compelling all local government staff employed in the state to redeploy to their local governments of origin.

107 O. S. Abah (n. 105).