

# Rethinking the 1999 Constitution within Recent Dynamics of Nigeria's National Security: Indigene-Settler Crisis in Jos, Plateau State in Focus

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## Abstract

This study examined the contradictions of indigeneity-based citizenship as provided in the Nigerian 1999 Constitution, through the lens of the dynamics of Jos indigene-settler crisis since 2001. While it is given that there is merit in the constitutional definition of membership of component states of the country in terms of indigeneity, this study contends that the definition is unjust and bedeviled with gaps and contradictions, thus, there is a need to rethink this Constitution for a possible normative alternative. This study proposed that a constitutional re-engineering that will foster and promote the entrenchment of shared national institutions and common bonds as possessing normative weight to mitigate the conflicts. Also, that co-nationals domicile in Jos ought not to be subjected to foreign treatment as provided for by the Constitution. Consequently, the study submits that residency in plateau state and any of the states in Nigeria should be sufficient to access and claim membership of the state. Thus, the dysfunctional structural template, which the 1999 Constitution represents in its provisions, as in this regard created the indigene-settler dichotomy stoking the crisis in Jos and it requires a re-think that will galvanise a re-engineering to accommodate residency rights and also specifically prevent the possible marginalisation of the minorities.

**Keywords:** The 1999 Constitution, National Security, Indigene-settler

## Introduction

Generally, most states and local governments in Nigeria commonly deny political and social rights to residents who are deemed to be non-indigenes or settlers. Whatever level of government — village, ward, town, or national — operationalising indigeneity clause provided in the 1999 Constitution with the intent of excluding resident co-nationals from political representation and welfare benefits stoke conflicts in Jos, Plateau state and various part of Nigeria. Social scientific discourses have not been able to come to a consensus as to the meaning for indigeneity. Also, as at now, at the international plane, the United Nations is inexact as to who are 'indigenous people'<sup>1</sup>. However *Webster* defines 'indigene' to mean "one born in a country; an autochthon."<sup>2</sup> The dictionary further clarifies who an 'autochthon' is to mean "one who is supposed to rise or spring from the

<sup>1</sup> United Nations. 2004. "The Concept of Indigenous People," Workshop on Data Collection and Disaggregation for Indigenous Peoples (New York, 19-21 January, 2004).; United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), G.A. Res. 61/295 of 13 September 2007; For an overview of the struggle and legal analysis of its outcomes, see the path-breaking book by the initiator and first chairperson of this Committee, S. J. ANAYA, *Indigenous Peoples in International Law*, 2<sup>nd</sup> ed., Oxford, 2004; Kuper, Adam 2003. "The Return of the Native," *Current Anthropology*, 44 (3): 389-402. A comprehensive declaration by the United Nations General Assembly, specifying the rights and status of indigenous people on the international plane was attempted in the 2007 documents referred to above. While it is not in itself, technically, and under the positive law of the United Nations Charter, legally binding, it demonstrates a remarkable consensus among States as the most important actors on the global playing field that indigenous persons and peoples are back not only as fully entitled holders of individual human rights, but as collective actors with distinct rights and status under international law. Those rights have been recognized in various systems of domestic law and in disparate areas of international law, via treaties and other instruments, and have been put together in UNDRIP. They are the result of a struggle over many years, helped by articulating the indigenous voice over many boundaries, acting in a unified way to combat prior attempts at termination of their traditional ways of life and faith. Indigenous peoples have re-emerged empowered, with a strong voice looking forward to self-actualization as a group, steeped in their culture, but open to self-determined change, on their lands with which they share a strong, often spiritual bond. The success has not been on a straight upward trajectory; there have been ups and downs along the journey. That is why UNDRIP has been a milestone of re-empowerment, from the down of the Cayuga Indians Award of 1926 which denied indigenous peoples the status of a "legal unit of international law" to their membership, on a level of equality with states, on the UN Permanent Forum on Indigenous Issues and beyond. The only way to appropriately locate the state of law along the lines of the categories of UNDRIP intended to provide a comprehensive answer to the essential claims of indigenous peoples is to take a problem-oriented approach to the task of writing an expert commentary on this document. As the founding statement on this Committee indicates, international law has been changed significantly in response to the claims of indigenous peoples over the last few decades: "[n]umerous processes of the international system have responded to the common set of ongoing problems that are central to the demands of indigenous groups, so that discernible patterns of responses and normative understandings have emerged at the international level in respect of Indigenous peoples."

<sup>2</sup> *Webster Dictionary*

ground or soil he inhabits.”<sup>1</sup> This is the conventional usage within the African continent where the concept is deployed as a protective clause for the minority groups and to discriminate against others regardless of the political system in place – be it unitary or federal. In Nigeria, a nation with 36 states, 774 local government areas and over 4000 wards certainly sites of violent conflicts between indigenes and settlers. In Plateau State — located in the North central geo-political zone — and the seventeen local government areas that comprise it, contestations over political participation and resource fanned the ember of discord between ethnic groups in Jos and triggered crisis between indigenes and settlers which resulted in myriads of mass killings in 2001, 2004, 2008, 2010, and 2011.<sup>2</sup> Plateau state has been a theatre of war and Jos, the capital city, especially Jos north, has become a slaughter house, near reminiscent of the Rwanda killings of 1994. Predictions are rife that the nation is heading towards disintegration. Some have said that “Nigeria is tending towards disaggregation into its ethnic and sub-ethnic groups”.<sup>3</sup> It is therefore important to inquire into what is required for those within the Nigerian state to live in tolerance and identify with each other.

Reflecting on this, some legal and theoretical literature of the last two decades gave insightful hints into the above. The legal literature discusses how federal systems provide multiple levels of citizenship, albeit not violating individual rights.<sup>4</sup> The position of scholars in this regard is that federal structures provide for multiple levels of political and legal memberships, vis-à-vis subnational governments having certain rights and privileges for their own citizens. Regardless of these discrepancies, citizens of other sub-national governments can enjoy these rights and privileges if they reside in the jurisdiction for a long time. The enjoyment of these rights (through residency) is grounded in the national government’s overriding power on immigration and citizenship issues, and in its commitment to the idea of citizenship as formal equality.<sup>5</sup>

Regarding theoretical literature, the liberal nationalism discourses justify differentiated citizenship rights within the polity. Liberal nationalism, as a set of theory, makes liberal argument in defense of group claims to self-government. A part of this theory posits that group right to self-determination is essential for the members’ freedom.<sup>6</sup> Occasionally, this argument limits self-determination to cultural matters (especially where groups are dispersed) and at other times it calls for either political autonomy within the nation-state or full sovereignty.<sup>7</sup> Another aspect of the theory focuses on principles that are often used to justify indigeneity claims. The principles are ‘first occupancy,’ (meaning those who first settled in a place own the place) and ‘territorial formativeness’ (meaning a place that is intimately connected to a people’s identity is their homeland). The theory rejects the principles as vacuous and problematic.<sup>8</sup>

<sup>1</sup>Webster Dictionary

<sup>2</sup>Obateru, Taye and Chris Ochaye. 2011. “Jos Killings Escalate,” *Vanguard* (Lagos), January 12.; Kwaja, Chris. 2011 “Nigeria’s Pernicious Drivers of Ethno-Religious Conflict,” *Africa Security Brief*, No 14 (July): 1-8.

<sup>3</sup>Ostien, Philip. 2009. “Jonah Jang and the Jasawa: Ethno-Religious Conflict in Jos, Nigeria,” *Muslim-Christian Relations in Africa*, Africa Centre for Security Studies,

<http://africacenter.org/2010/05/jonah-jang-and-the-jasawa-ethno-religious-conflict-in-josnigeria/> accessed 16 March, 2015.

<sup>4</sup>Jackson, Vicki. 2001. Citizenship and Federalism, in *Citizenship Today: Global Perspectives*, edited by T. Alexander Aleinikoff and Douglas Klusmeyer. Washington DC, Carnegie Endowment for International Peace Page?...; Schuck, Peter H. 2000. “Citizenship in Federal Systems,” *The American Journal of Comparative Law*, 48 (2): 195-226; Beaud, Olivier. 2002. “The Question of Nationality within a Federation: A Neglected Issue in Nationality Law”, in *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe: The Reinvention of Citizenship*. New York: Berghahn Books. Page 314-320.

<sup>5</sup> Ibid, 5

<sup>6</sup> For more detail, including citations and references, see Andrew Moravcsik, “The New Liberalism,” in Christian Reus-Smit and Duncan Snidal, eds. *The Oxford Handbook of International Relations* (2008); “Taking Preferences Seriously: A Liberal Theory of International Politics” *International Organization* (Autumn 1997); Liberal International Relations Theory: A Scientific Assessment” in Colin Elman and Miriam Fendius Elman, eds. *Progress in International Relations Theory: Appraising the Field* (Cambridge, Mass.: MIT Press, 2003), 159-204; “Is Anybody Still a Realist?” *International Security* (Fall 1999) (with Jeffrey Legro). All are available at [www.princeton.edu/~amoravcs](http://www.princeton.edu/~amoravcs). The focus on variation in state preferences is consistent with some or all of other scholarly writing on IR theory. See, for example, David Lake and Robert Powell, eds. *Strategic Choice and International Relations Strategic Choice and International Relations* (Princeton, 1999), Chapter Two; Robert Keohane, *International Institutions and State Power: Essays in International Relations Theory* (Boulder, 1999).

<sup>7</sup>Tamir, Yael. 1993. *Liberal Nationalism*. Princeton: Princeton University Press ; Tully, James. 1995. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press; pp 253. Kymlicka, Will. 1998. “Multicultural Citizenship”, in *The Citizenship Debates*, edited by . G. Shafir. Minneapolis, London: University of Minnesota Press, 1998, pp 255-278; Patten, Alan. 1999. “The Autonomy Argument for Liberal Nationalism,” *Nations and Nationalism*, 5 (1): 1-17

<sup>8</sup>Gans, Chaim. 2001. “Historical Rights: The Evaluation of Nationalist Claims to Sovereignty,” *Political Theory*, 29 (1): 58-7; Kuper, Adam. 2003. “The Return of the Native,” *Current Anthropology*, 44 (3): 389-402.; Kuper, Adam. 2005. “Indigenous People: An Unhealthy Category,” *The Lancet*, Volume 366: (September 7), <http://download.thelancet.com/pdfs/journals/lancet/PIIS0140673605673746.pdf> accessed 9<sup>th</sup> November 2016 ; Meisel, Tamar. 2009. *Territorial Rights*. Dordrecht (Netherlands): Springer pp 1-4 ; Moore, Margaret. 1998. “The Territorial

The study draws on the legal and theoretical literature to appraise citizenship in the Nigerian multi-tiered federation. On one hand, it notes that indigeneity is not an objective principle for defining membership in the component states; on the other, it shows that the principle has merit in the Nigerian political context but its rights violations pose severe threat to national coherence. To overcome the difficulties of indigeneity, the paper argues that the component states of the federation are not foreign to one another, and that shared institutions and common bonds have normative value. Thus, the main claim of this paper is that, by sharing common national institutions and bonds, citizens of the component states ought to be free to reside in another component state and share in its rewards and burdens of membership. The argument is normative, not diagnostic.

Before proceeding to develop this argument, it will be helpful to address a potential objection. It might be objected that federations do not normally have sub-state citizenship and, in fact, the Nigerian Constitution does not use such terminology. Formal sub-state citizenship is the hallmark of confederations and it might be inaccurate to ascribe such to the Nigerian federation. This paper uses sub-state citizenship to denote membership of the component states, membership that carries differential social and political rights (such as right to subsidized health and educational services and right to political representation). Indeed the Nigerian Constitution speaks of “belong to” the constituent states, an expression that denotes some form of membership that entails differential rights.<sup>1</sup>

### Citizenship in Nigeria

Several theorists of citizenship acknowledge that there are four meanings of citizenship.<sup>2</sup> First is the common understanding that it is a link between the individual and the state. This is a legal meaning wherein the Constitution clearly defines members of the political community specifies the rights and obligations that go with the status.<sup>3</sup> Second is the sociological understanding which points to the exclusion of certain groups from full participation in economic, political, social, and cultural lives of society despite their legal status as citizens. This understanding is inspired by T. H. Marshall’s ideas for social integration through the expansion of citizenship rights.<sup>4</sup> Third is the psychological understanding that invokes the identity and solidarity that the individual maintains.<sup>5</sup> This may be ethnic and does not preclude identification with a polity or national group within the polity. Last is the civic meaning that emphasizes active participation in political activities, including voting.<sup>6</sup>

Citizenship in Nigeria is a combination of the legal and psychological dimensions described above. The legal dimension is provided by the country’s 1999 Constitution which clearly grounds citizenship on birth. Citizens by birth are persons born within or outside the country to parents either of whom belongs to a community indigenous to Nigeria or to parents either of whom is a Nigerian citizen.<sup>7</sup> The Constitution provides other ways of attaining citizenship, vis registration and naturalization. A person could become a citizen by registration if she is a woman married to a Nigerian citizen or an adult born outside the country either of whose grandparents is a Nigerian citizen. Such person has to fulfill conditions such as good character and the intention to reside in the country. Naturalization could be attained by any adult foreigner who satisfies several criteria, including continuous residence in the country for at least 15 years.<sup>8</sup> These constitutional designations constitute the legal or formal meanings of citizenship at the federal level.<sup>9</sup> As a federation, Nigeria does not have formal citizenship at the level of the component states, but the Constitution speaks of belonging to this tier. According to the Constitution, “belong to . . . when used with reference to a person in a state refers to a person either of whose parents or any of whose grandparents were members of a community indigenous to that state.”<sup>10</sup>

The Constitution does not define ‘indigenous,’ but the context suggests autochthony. This constitutional definition intersects with the psychological meaning which is rooted in cultural norms and

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Dimension of Self-determination”, in *National Self-Determination and Secession*, edited by Margaret Moore. Oxford: Oxford University Press page what?.; Waldron, Jeremy. 2003. “Indigeneity? First People and Last Occupancy,” *New Zealand Journal of Public and International Law*, 1 (1): 55-82 <http://mc.manuscriptcentral.com/pub>(accessed 15 March, 2015).

<sup>1</sup> Constitution of the Federal Republic of Nigeria (CFRN) , 1999, section 318 subsection 1; Ejobowah, John Boye. 2013 *Ethnic Conflict and Cooperation: Assessing Citizenship in Nigerian Federalism Publius (Fall 2013) 43 (4): 728-747. doi: 10.1093/publius/pjs049* First published online: November 11, 2012, (accessed 14 February 2015).

<sup>2</sup> R. Banier. 1995 “Introduction: why citizenship constitutes a theoretical problem in the last decade of the twentieth century” in *Theorizing Citizenship*, (R Banier, Ed) State University of New York Press, Albany, p.1.

<sup>3</sup> Edwin Meese III. 2009 “The Meaning of The Constitution” , The Heritage Foundation, Massachusetts, Washington, DC, [www.heritage.org/Research/Thought/wm2616.cfm](http://www.heritage.org/Research/Thought/wm2616.cfm)(accessed 22 November, 2016).

<sup>4</sup> T. H. Marshall, 1950, “Citizenship and Social Class”, Cambridge University Press, New York, p. 46-75.

<sup>5</sup> J. A. Howard, 2000, “Social Psychology of Identities”, [arjournals.annualreviews.org](http://arjournals.annualreviews.org), accessed 22 March 2015.

<sup>6</sup> Stanford Encyclopedia of Philosophy, 2006, “Citizenship”, [plato.stanford.edu](http://plato.stanford.edu), accessed 22 November 2016.

<sup>7</sup> Constitution of the Federal Republic of Nigeria, 1999, Section 25(1)(2).

<sup>8</sup> CFRN 1999, Sections 25-27

<sup>9</sup> *Ibid*, 8

<sup>10</sup> CFRN 1999, Section 318(1).

practices. Across Nigeria and most of sub-Saharan Africa, local communities regard the concept of citizen to mean a person born into a family that has historical rights to land within the local/ethnic community. That is any person whose ancestors originated from the local community and, therefore, has sanguinary ties to it. This is what some writers have referred to as ethnic citizenship.<sup>1</sup> Citizenship of the component states and local governments is, therefore, understood to mean autochthon; anyone whose family has ancestral right to land and biological ties to a community within the jurisdiction. This psychological view corresponds with the legal meaning and, indeed, grounding the legal meaning of citizenship on the psychological meaning has obvious implications; among which includes the problem of rights of citizens who move to settle in another state within the federation.

The Constitution upholds the fundamental rights of all persons within the country and explicitly stipulates that “a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion” shall not be subjected to discrimination or accorded any advantage by reason of being such a person.<sup>2</sup> Yet, citizens of a component state or local government who enter and take up residence in another component state or local government enjoy fewer rights and are discriminated against. Such co-nationals are denied political rights to elective and appointive offices, employment into the public sectors of the states and local governments, and social benefits such as education and health. Human Rights Watch has issued a report in which it detailed these rights violations in several states across the country.<sup>3</sup>

Secondly, citizens (at the federal level) who acquire their status through naturalization or registration would not belong to any of the component states and local governments regardless of residence. The belief is that such persons have no roots in any of the states and local governments because they do not have ancestral land rights in, and sanguinary ties to, a local community. They are not citizens of the subnational tiers. In effect, there are three classes of citizens in Nigeria: those who simultaneously belong to the national and subnational levels by fact of being autochthons of the latter; those who belong to the national and subnational levels but their membership in the latter is problematic because their ancestral origins are traceable to states and local governments in which they do not reside; and those who belong to the federal level, only, by fact of not having ancestral land rights in, and blood ties to, any local community in any state and local government. The classification of citizenship in terms of indigeneity is not defensible.

### **Assessing Indigeneity-based Definition of Citizenship in Nigeria Constitutions: 1960 to 1999**

Why would Nigerians define membership in terms of indigeneity, if it is indefensible? After all, from the time of independence in 1960 to the bloody civil war of 1967-1970, Nigerians could freely settle in any of the then regions and become full members after a period of time. For example, the Independence Constitution of 1960 required residency as the condition for membership rights in the then existing regions. A person was qualified to be elected into a regional legislature if s/he was born in the region or had resided there for at least one year (three years in the case of the Northern Region) immediately before the election.<sup>4</sup> The Republican Constitution of 1963 required the same conditions for the exercise of regional membership rights.<sup>5</sup> Thus, similar to what was contained in the constitutional instruments, the contemporary Nigerian constitution ought not to abandon residency for indigeneity as this does not necessarily have advantages.

One of the merits of indigeneity is that it ensures political inclusion of groups that would otherwise be excluded from citizenship rights. It permits groups to govern themselves locally and to represent themselves in national institutions at the center. In the Nigerian context this has moral weight because residency is a universalistic principle, a principle that was perceived to be of systemic advantage to some groups. It was believed that residency opens the door for non-indigenes to occupy and dominate public positions in their host regions. At the federal level, it was also believed that the regions were not legitimately represented as residency enabled non-indigenes in the regions to fill up federal positions that would otherwise go to indigenes of these regions.<sup>6</sup> Nigerian policy makers moved away from it to indigeneity in a two-fold process: progressive reorganization of the federation into multiple states and local governments such that these subnational units emerged as homelands to ethnic groups; and the constitutional adoption of the federal character principle -

<sup>1</sup> E. J. Keller, 2002, “*Culture, Politics and Transnationalization of Ethnic Conflict in Africa: New Research Imperatives*” University of California, Los Angeles, Polis/CPSR Vol 9.

<sup>2</sup> CFRN 1999, Section 42 Subsections 1-2

<sup>3</sup> Country Reports on Human Rights Practices, 2013, “Nigeria 2013 Human Rights Report” United States Department of State. Bureau of Democracy, Human Rights and Labour. [www.state.gov>documents>organization](http://www.state.gov/documents/organization) accessed 22 March, 2015.

<sup>4</sup> *Constitution of Northern Nigeria, 1960*, 8 (1a-c); *Constitution of Eastern Nigeria, 1960*, Section 7 (1a-c); *Constitution of Western Nigeria, 1960*, Section 7 (1a-c); all in Nigeria 1960).

<sup>5</sup> *Constitution of Northern Nigeria, 1963*, Section 8 (1); *Constitution of Eastern Nigeria, 1963*, Section 7 (1); *Constitution of Western Nigeria, 1963*, Section 7 (1); all in FRN 1963).

<sup>6</sup> Ejobowah, John Boye. 2013 “Ethnic Conflict and Cooperation: Assessing Citizenship in Nigerian” *Federalism Publius (Fall 2013) 43 (4): 728-747*. doi: 10.1093/publius/pjs049 First published online: November 11, 2012, accessed 10 March, 2015.

power-sharing. The former occurred over the period 1967-1996 and the boundaries of the resultant thirty-six states and 774 local governments explicitly accounted for ethnic ties while simultaneously diluting major identities. The latter also emerged over a long period of time: first, through the informal introduction, in 1958, of affirmative action for the educationally backward regions; in turn, informal affirmative action changed in 1962 into regional quota representation in the officer ranks of the military; in turn, the quota system was escalated in 1975 into balanced recruitment of indigenes of the states into the federal civil service and other national institutions; and finally, the defunct 1979 and the current 1999 Constitutions defined membership in terms of indigeneity and also specified the use of federal character principle in appointments – power sharing.<sup>1</sup>

Thus the construction of Nigerian ethno-federalism – a type of federation whose component units have primary ethnic identification – was done to ensure that both majority and minority groups participate in self-government meaningfully. And the definition of membership in the component states in terms of indigeneity was to ensure that group right to self-government and to fair representation in the central government was not undermined by settlers within their midst. To illustrate, through competition and achievement, settlers from other states could fill many important positions in the public institutions of their host state and thereby trigger fears of political domination by outsiders. Or at the federal level, citizens who belong to one or a few groups but are settlers in states not reflective of their ancestral origins might be appointed or elected into key positions in national institutions as representatives of their host states, thus generating the very fears that culminated in the Biafran civil war. The merit of indigeneity, therefore, is that it allows both majority and minority groups to enjoy internal self-government rights and to participate in the central government. This is a true manifestation of the idea of federalism as “a combination of self-rule and shared rule”.<sup>2</sup>

Indeed it has enabled minority group members to emerge as major players in the country’s national politics. Minority group elites have filled powerful ministerial positions and occupied the offices of the president and vice president at various times since the country’s return to democratic rule in 1999. By all measures, one could speak of the ascendance and triumph of minority power in contemporary Nigeria the way Donald Smiley<sup>3</sup> spoke of French Canadian power in Canada during the Trudeau years. This successful accommodation of the country’s ethnic minorities on near equal terms as majority groups vindicates the earlier discussed liberal nationalists’ argument for the institutionalization of diversity.

Nonetheless, the dark-side of indigeneity remains nagging. In 1987, a government Commission –the Political Bureau - provided an inventory of rights violations and also lamented threats to “national integration” on account of the use of indigeneity in the definition of membership.<sup>4</sup> Two decades later, Human Rights Watch<sup>5</sup> reported that, in many states, if not all, non-indigenes are relegated “to the status of second-class citizens, a disadvantage they can only escape by moving to whatever part of Nigeria they supposedly belong in”.<sup>6</sup> In their arguments, liberal nationalists acknowledge the potential for individual rights violations where there are differentiated citizenship rights but they have not been able to come up with convincing ideas for avoiding or dealing with such infractions.

### **Rethinking Indigeneity in the 1999 Constitution**

A possible response is do nothing like the approach employed by the just concluded 2014 National Conference where the subject was jettisoned and simply treat indigeneity’s violations of individual rights and liberties as a regrettable price that some have to pay. The advantage of this option is that it leaves things as they currently are and does not make them worse. Self-determination is a human right and the current ethno-federal arrangement makes that possible for groups that were formerly denied of this right.<sup>7</sup> Thus, under the current arrangement, groups share in the rewards and burden of citizenship equitably, except that some members of the polity are sacrificed.

But this is not a good option. Sacrificing the rights of a chunk of the national population in order for the rest of the national population (both majority and minority) to enjoy self-determination rights equitably is like invoking utilitarian morality. One of the weaknesses of utilitarianism is its ruthless exploitation of the

<sup>1</sup>Gboyega, Alex. 1989. “The Public Service and Federal Character”, in *Federal Character and Federalism in Nigeria*, edited by Peter Ekeh and Eghosa Osaghae. Ibadan (Nigeria): Heinemann Educational Books. ; Dudley, Billy. 1973. *Instability and Political Order: Politics and Crisis in Nigeria*. Ibadan (Nigeria): Ibadan University Press. P xii+265

<sup>2</sup>Elazar, Daniel. 1998. *Constitutionalizing Globalization: The Post Modern Revival of Confederal Arrangements*. Oxford: Rowman and Littlefield. P.9-10.

<sup>3</sup>Smiley, Donald V. 1987. *The Federal Condition in Canada*. Toronto: McGraw Hill Ryerson. Page 78

<sup>4</sup>FRN (Federal Republic of Nigeria). 1987. *Report of the Political Bureau*. Lagos: Federal Government Printer.

<sup>5</sup>Human Rights Watch (2006):1 <http://www.hrw.org/legacy/wr2006> accessed 22 February, 2015.

<sup>6</sup>*Ibid*,17

<sup>7</sup>Ejobowah, John Boye. 2013 Ethnic Conflict and cooperation: Assessing Citizenship in Nigerian Federalism *Publius (Fall 2013) 43 (4): 728-747. doi: 10.1093/publius/pjs049* First published online: November 11, 2012 accessed 10 February, 2015.

interest of a small group of people in order to achieve “a net gain of total utility”.<sup>1</sup> An approach that leaves things as they currently are will be no different from the pre-1966 Nigerian constitutional arrangements in which citizenship rights of ethnic minority group members were sacrificed for the rights of majority group members. Grafting previously oppressed or excluded groups mainstream and ensuring the continued existence of the country that way is praiseworthy. However, simultaneously degrading another set of the country’s population into the same oppressed or marginalized status as that from which ethnic minorities are being freed amounts to substituting one evil for another. The substitution perpetuates the very political problem that marginalization generates, namely: mutual suspicion and conflict. Joseph Carens<sup>2</sup> made the point when he argued that a “community held together only by regrettable necessity will presumably find it more difficult to act collectively.” If anything, the ongoing human carnage in Jos, the capital of Plateau State, as well as the recent Boko Haram killings, and demands that southerners should leave northern Nigeria, are testimonies.

Another possible response is to regard the settler-indigene dichotomy as abhorrent and to encourage individuals who suffer discrimination on the basis of that divide to institute legal action. This alternative course would aim at putting a formal end to the dichotomy by appealing to some of the fundamental objectives and directive Principles of the Nigerian Constitution. One of the fundamental objectives and directive principles is declared as follows:

The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress. Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.<sup>3</sup>

Several cases have been filed in the country’s courts that seek to topple indigeneity status but have not been successful. For example, the *Festus Okoye&ors(2004) v. FGN &or<sup>4</sup>s*, and *Anizaku&ors v. Nasarawa State Governor &ors(2006)*<sup>5</sup> failed to get judicial definition for indigeneship and deterred governments from using the indigene-settler dichotomy as basis for assessing socio-economic and political opportunities like education and employment. The *AdamuGarba and 20 Ors v Federal Attorney General of Nigeria and 13 Ors* pending at the Federal High Court in Kaduna where the litigants are seeking their constitutional right to protection from discrimination,<sup>6</sup> protection that the constitution guarantees may not go differently by the court.

Yet a legal approach might prove ineffective because indigeneity is regarded in most of the states as a firewall against domination by other groups. Any court order to undo it will be viewed as a political domination plot and would be resisted. To illustrate, barely three months after he was inaugurated as President in May 2011, Goodluck Jonathan initiated a constitutional amendment with a view to replacing indigeneity with residency. The President’s proposal died without even getting to the country’s National Assembly. Governors and representatives of the core northern states (the North-west and North-east geopolitical zones) were alarmed because they saw the proposed amendment as opening the door to Christian Igbo domination of the predominantly Muslim states. Politicians from the northern minority states (the North Central geopolitical zone) were also outraged because such amendment, according to an official, “will automatically empower the Fulani herdsmen to take over lands and grazing areas. Before long, the core North will be in charge of the North-central zone”.<sup>7</sup>

This case is a pointer to what would likely be the outcome of a court ruling that restrains the states from using indigeneity. Such ruling, if made, will be regarded as anti-northern politicking and won’t have sufficient legitimacy to compel compliance. For such order to stick, the government will have to muster sufficient force to beat the dissenting states into submission, in which case the outcome will be the direct opposite of national unity. There is therefore a huge dilemma: on one hand, it is difficult to let apparent violations of the rights of co-nationals to go on without legal riposte and, on the other, neither would a mere court order have the legitimacy to invite compliance nor would the central government have the force to sanction the offending states for non-compliance.

Perhaps a desirable alternative is for us to look at the 1999 Constitution such as to consider what makes memberships in constituent states of a federation distinct from memberships in independent nation states. In the case of the latter there is nothing in common. Independent nation states are foreign to one another. Their citizens do not share common institutions, common system of justice, and common rights. For example,

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<sup>1</sup>*Ibid*, 20

<sup>2</sup>Carens, Joseph. 2009. “The Case for Amnesty,” *Boston Review*, May/June.

<sup>3</sup>CFRN 1999, section 15 subsections 1- 2.

<sup>4</sup><https://thewhistler.ng?id=3607:elzakza>; <https://m.thenigerianvoice.com>movie> accessed 22 February 2015.

<sup>5</sup>*Ibid* 37

<sup>6</sup>Institute of Human Rights and Development in Africa, an organization with the mandate to promote rights and welfare of member states and its citizens. <https://m.facebook.com>IHRDA>notes>.

<sup>7</sup>Rasheed, Olawale. 2011. “Constitution Amendment: Governors Oppose Local Government Autonomy, Indigeneship, Single Term Tenure,” *Nigerian Tribune*, August 11.

Canadian citizens do not share the same institutions (military, education, health, bureaucracy etc) with American or Mexican citizens. The situation is different with membership in the component states of a federation. In a federation, the component states are not foreign to one another even though they may have different benefits for their residents. Citizens may belong to each of the component states but they also share common institutions- the same national flag, the same national anthem, the same national soccer and sports teams, and the same military. Through these institutions they toil arms-in-arms either to bring honors to the country or to defend it. Thus in time of war they risk their lives to fight at the battlefield in order to defend co-nationals from external conquest. And, in time of international events or tournaments they put their jobs on hold and adorn the national uniform in order to bring glory to the country. Some pay the ultimate price<sup>1</sup> and some come close to doing so.<sup>2</sup> Through the sacrifices of co-nationals, the country's triumphs and losses in war, athletics, soccer, etc, are shared by all. It is these shared experiences in common institutions - or common sentiment in relation to the federation - that eliminate the classification of foreigners among the inhabitants of a federation.

While federations are characterized by two or more orders of government and each of these orders has its corresponding members, dual or multiple citizenships ought not to lead to the designation or treatment of co-nationals who move to settle in another component state as foreigners. Common bonds, sentiments, and patriotism ought to nullify such designation. Indeed, common institutions and shared sentiments undergird what writers of federalism call federative rights. This refers to the rights that citizens of a component state enjoy in other component states by virtue of belonging to the federation. The rights are sometimes referred to as "inter-state privileges".<sup>3</sup>

Thus, by belonging to the federation, citizens should be able to reside in any part of it. This means they ought to have the freedom to move and settle in another component unit. Foreigners also have freedom of movement and temporary residence in any part of the federation once they have entered the country on visa permit. They have civil rights — right of movement, rights to property, marriage, protection of life, etc. What makes citizens different is that when they exercise their freedom to reside in any part of the federation, the government of the receiving component unit ought not to designate them as foreigners. Their freedom of movement and settlement does not degrade their core citizenship right, namely: political right to vote and be voted for. This is a right that differentiates citizens from foreigners.<sup>4</sup> By residing in new jurisdictions within the federation, co-nationals become eligible for the benefits and privileges enjoyed by members of those jurisdictions, benefits and privileges that are denied to non-residents.

Residency means to live one's life in a place. Life lived in a place over a period of time indicates ties to the local community. It indicates our participation and investment in the community's socio-economic and cultural life, our human connectedness, our use of the local language to express our thoughts, our bonds to the culture and environment, and our sense of nostalgia. By residing in a place, people become members regardless of their formal status.<sup>5</sup> Seen in this way, federative rights serve as a mechanism for heading off discriminations that dual or multiple citizenships may invite.

It might be objected that indigeneity is an instrument used by elites and their followers to seek opportunities and resources at the public sphere and that the case for residency will not gain traction among these politically deft elites. In this respect, Aiyede<sup>6</sup> has argued that indigeneity is a template for booty sharing and that it is crucial for the sustenance of elite predatory rule. It might also be objected that the argument for residency is futile because it will require amendments to relevant sections of the Nigerian Constitution, amendments that would likely fail as evident in the just concluded 2014 national conference, where the subject was dropped and never discussed. According to this objection, Nigeria has a rigid Constitution whose amendment process is cumbersome. The process requires the participation of all the 36 legislative bodies and governors, as well as the two arms of the National Assembly. Doing away with indigeneity provisions through this democratic process might run into difficulties because citizens of most of the component states may not support such removal (for reasons given earlier). Should a referendum be held, the majority will likely vote to retain what exists because autochthons constitute the majority population in most of the constituent states. Furthermore, if the National

<sup>1</sup>e.g. Sam Okwaraji of Nigeria who collapsed and died in the 77<sup>th</sup> minute of the 1989 World Cup qualifier against Angola.

<sup>2</sup>e.g. Monday Odiaka who collapsed and temporarily lost consciousness while scoring a goal during the Nigeria Under 20 World qualifiers against Cameroon in 1985. Obodo, Kate. 2012. "Nigeria Not Worth Dying For - Odiaka," *The Vanguard*, January 29. [www.vanguardngr.com](http://www.vanguardngr.com), accessed 20 March, 2015.

<sup>3</sup>Beaud, Olivier. 2002. "The Question of Nationality within a Federation: A Neglected Issue in Nationality Law", in *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe: The Reinvention of Citizenship*. New York: Berghahn Books, P.345

<sup>4</sup>Benhabid, Seyla. 2004. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press.

<sup>5</sup>Carens. J.H, 2009, "The Case of Amnesty", *The Boston Review*, [http://bostonreview.net/BR34.3/ndf\\_immigration.php](http://bostonreview.net/BR34.3/ndf_immigration.php), accessed 20, March, 2015.

<sup>6</sup>Aiyede, Emmanuel Remi. 2009. "The Political Economy of Fiscal Federalism and Dilemma of Constructing a Developmental State in Nigeria," *International Political Science Review*, 30 (3): 249-269.

Assembly were to avoid this complex process by simply voting to pass an amendment bill to the relevant section of the Constitution, the outcome would not be different either as majority of the elected representatives will defend the wishes of their constituents by voting to retain the status quo. A democratic process is, therefore, not likely to result in the abandonment of indigeneity.

Regarding the first objection, this paper acknowledges that the case for residency faces a practical uphill battle. Indeed the Political Bureau of 1987<sup>1</sup> recommended 25 years residency as the condition for membership in the states but this recommendation was sacrificed partly on the altar of political expediency. Nonetheless, it should be noted that political expediency, no matter how powerful it is, ought not to trump the call of justice. Nigerian elites may regard indigeneity as essential in their quest for the country's centrally redistributed oil revenue but predation is destruction and should not be acceptable in any society.

Regarding the second objection, the paper accepts that in a democracy the preferences of the majority prevail as the law while those of the minority are sacrificed. But, sometimes, the majority makes wrong or unjust decisions yet the injustice will not be obvious until several generations have passed. Part of the objective of this paper was to draw attention to the idea that some laws could be unjust, that the denial of membership right to resident co-nationals is wrong, and that there is a normative alternative.

### **Conclusion**

This paper has hitherto posited that the use of indigeneity in the definition of citizenship is indefensible in terms of principles usually invoked to support it and a further rethink is essential for Nigeria to build a sustainable nation state. We have also considered and rejected two alternative responses to the indigeneity problem. These are the do-nothing response which we considered to be politically suicidal and purely the legal response which we also considered to be self-defeating and insufficient. Instead, we argued that re-engineering the 1999 Constitution to foster the building of shared institutions and common political bonds are weighty enough to override the foreign treatment of Nigerians who move to settle in another state. Thus, the Constitution should be rejigged such that Nigerians ought not to lose their political and social rights when they move to settle in another jurisdiction within the federation. Consequently, through constitutional amendments, residency rights should be promoted such that the settlers should enjoy the same package of rights and benefits held by members of the receiving jurisdiction. Summarily, residency rights through federalism promises to ensure that the right of citizen to freely move and settle in any of the jurisdictions is not undermined and sullied by indigeneity. This, in the view of this study, may be arrived at through re-engineering the Constitution of the Federal Republic of Nigeria, 1999 as amended. To this end, suffice to say that there may be no better way to assess what is required for those within the polity to live in tolerance and identify with each other than this.

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<sup>1</sup>Report of Political Bureau Nigeria, 1987, Nigerian Muse, [www.nigerianmuse.com>SNCPProject](http://www.nigerianmuse.com>SNCPProject). Accessed 20, March, 2015.