The Practical Application Of '*Indigene-Ship*' And '*Place Of Origin*' Derogates From A Common Nigerian Citizenship And Violates Fundamental Rights [1]

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SUMMARY

The central thesis addressed in this essay is that the practical application of the concepts of 'indigene' and 'place of origin', concepts enshrined in the Constitution of the Federal Republic o f Nigeria, 1999, create a dichotomous citizenship. It is argued that the central idea of a democratic nation-state, which Nigeria legitimately claims to be, connotes a single citizenship. In the case of Nigeria, that citizenship is the Nigerian citizenship.

We examined, critically, the constitutional provisions with regard to 'place of origin' and 'indigene' and concluded that the practical application of these concepts by governments and authorities in Nigeria is bound to be arbitrary and haphazard and likely to lead to violations of citizens' fundamental rights.

We undertook a historical journey through Nigeria's pre-colonial, colonial and post- colonial constitutions and legislations. From this survey, we established the singular role which the British colonial authority played in creating the idea of the indigene/non-indigene; native/non-native; native/strange or /alien. Initially, the idea was to continue to divide, rule and plunder. Eventually, it was to undermine the nationalist struggle that had taken on a non-ethnic and pan-Nigerian, National character.

Unfortunately, after Nigeria secured its independence in 1960, successive Nigeria's post-independence leaders have failed to understand the severity of the problem posed by this dual citizenship structure, especially as the leaders have opted to entrench it in the Nigerian constitutions, as from 1979. Nigeria's intellectuals have, to date, also been unable of undertaking studies to unravel the full impact of the legacy of colonialism. The end result is the unnecessary crisis, avoidable deaths and destruction. We recommend that there is an urgent need to remove any reference to 'place of origin' and 'indigene' in the Nigerian constitution and to replace them with place of residence or birth, in line with the relevant constitutional provisions.
We also recommend that the full impact of colonial rule be studied with a view to reversing its negative effects in this and other areas of our national life.

I. Introduction

The phrase, 'place of origin', came into the consciousness of Nigerians in the Constitution of the Federation, 1963. In that Constitution, under Section 28 (1), the following provision was made:

> *A citizen of Nigeria of a particular community tribe, place of origin, religion or political opinion shall not, by reason only that he is such a person –*
> *(a) be subjected either expressly by or in the practical application of any law in*

> *force in Nigeria or any executive or administrative action of the Government of the Federation or the Government of Region to disabilities or restrictions to which citizens of Nigeria of other communities, tribes, place of origin, religious or political opinions are not made subject; or*
> *(b) be accorded either expressly by or in the practical application of, any law in force in Nigeria or any such executive act on any privilege or advantage that is not conferred on citizens of Nigeria of other communities tribes, place of origin, religious or political opinions.*

A careful examination of this section will reveal that the section is part of the fundamental rights of Nigerians guaranteed by the Constitution against discrimination, among other things, on the basis of place of origin. Place of origin under this Constitution, referred to 'belonging to'[1] one of the four Regions listed in S. 3, thus:

> *(1) There shall be four Religions, that is to say Northern Nigeria, Eastern Nigeria, Western Nigeria and Mid Western Nigeria.*

It is also to be noted that these Regions were clearly delineated territorially. Again, in the words of the 1963 Constitution S. 3 (2):

> *(2) The regions ... shall consist of the areas comprised in those territories respectively on the thirtieth day of September, 1963.*

II. Constitution of the Federation, 1963

On the other hand, the concept of 'indigene' or its derivative, 'indigenous to' finds no expression in the Constitution of the Federation, 1963.

This omission in 1963 is significant, especially, if we take account of the fact that the issue of dichotomous citizenship introduced subsequently in the Constitution of Nigeria 1979 owes its origin in the deliberate policies of the colonial authorities between 1900 – 1960, to compartmentalize, segregate and regionalize, indeed in the words of Professor Mamdani, to 'racialize' the Nigerian into ethnic and Regional identities. It was, therefore, reasonable to suppose that, the 1960 and the 1963 Constitutions would carry a hangover of the pre-Independence policies of the colonial authority. Fortunately, these policies were not incorporated into these early post-independence Constitutions as expected.

III. The Constitution of the Federal Republic of Nigeria, 1979

The Constitution of the Federal Republic of Nigeria, 1979, for the first time in Nigerian Constitutional history, introduced the concept of 'indigeneity'[2] into the Nigerian politico-Constitutional dictionary. This was first set out in its Chapter III on Citizenship and under S. 23(1) (a). Below is the relevant section:

The following persons are citizens of Nigeria by birth, namely

> *(a) every person born in Nigeria before the date of independence, either of whose parents or any of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria.*

Not many observers or commentators noticed that this is a radical departure from the equivalent section in the 1963 Constitution on the acquisition of Nigerian Citizenship by birth. For the avoidance of doubt, the1963 position was couched, thus, under Chapter II, S. 7 (1):

> *(1) Every person who, having been born in the former colony or Protectorate of Nigeria, was on the thirtieth day of September, 1960, a citizen of the United Kingdom and colonies or a British protected person shall become a citizen of Nigeria on the first day of October, 1960.*
> *Provided that a person shall not become a citizen of Nigeria by virtue of this subsection if neither of his parents nor any of his grandparents was born in the former colony or Protectorate of Nigeria.*
> *(2) Every person who, having been born outside the former colony and Protectorate of Nigeria, was on the thirtieth day of September, 1960 a citizen of United Kingdom and colonies or a British-protected person shall, if his father was born in the colony or Protectorate and was a citizen of the United Kingdom and colonies or a British-protected person on the thirtieth day of September, 1960, (or if he died before that date, was such a citizen or person at the date of his death or would have become such a citizen or person but for his death) becomes a citizen of Nigeria on the first day of October, 1960.*

Generally, there are two basic principles of acquiring citizenship by birth. The first one is the *Jus Sangolis* principle while the second is the *Jus Soli*.

Under the *Jus Sangolis* principle, citizenship is conferred on children born of parents who are citizens of the state. Parentage is, thus, the sole criterion for determining the citizenship of the person. This is practiced in France and Nigeria.[3] Under the *Jus Soli* principle, territoriality is the guiding factor. It is to the effect that citizenship is conferred on a child born on the territory of a state, notwithstanding the citizenship of the parents. The place of birth is the sole criterion for determining the citizenship of a person. Examples of the application of this principle in practice includes Britain, Brazil and the USA.[4] Thus, it can be seen that Nigeria jettisoned the *Jus Soli* principle and adopted the *Jus Sangolis* principle in granting citizenship in the 1979 Constitution.

In addition to this principle, an additional factor was introduced. That factor was that, in order to become entitled to become a citizen of Nigeria by birth, you must now show that your parent or grandparent belongs to or belonged to a community that was indigenous to Nigeria.

Incidentally, the constitution did not provide a schedule of communities that were indigenous to Nigeria. And the *Interpretation Act,*[5] did not define the phrase "*community indigenous to Nigeria*" as was used in S. 23 (1) (a).
The CFRN, 1979, itself, neither defined the phrase "*community indigenous to Nigeria*" nor provided, in any of its schedules, a list of "communities that were indigenous to Nigeria". It would, therefore, be practically impossible to apply this phrase in practice in administering Nigeria and its citizens.
This difficulty increases to an exponential level, if you attempt to operationalize this phrase at the level of a State or a Local Government Area. This is so because, Section 135 (B),[6] again, introduced the concept of '*indigene*'[7], for the first time, into the consciousness of Nigerians. It provides as follows:

> *(1) There shall be such offices of Ministers of the Government of the Federation as may be established by the President.*
> *(2) Any appointment to the office of Minister of the Government of the Federation shall, if the nomination of any person to such office is confirmed by the Senate, be made by the President.*
> *(3) Any appointment under subsection (2) of this section by the President shall be in conformity with the provisions of section 14 (3) of this Constitution:*
> *Provided that in giving effect to the provision aforesaid the President shall appoint at least one Minister from each state, who shall be an indigene of such a state.*

Again, the 1979 position is sharply different from the 1963 position and indeed represents derogation in the attempt at building a single citizenship model for the emergent Nigerian Nation State. Let us examine S. 87, 1963 Constitution of the Federation, for a similar provision on the appointment of ministers.

> *S. 87 (1) There shall be a Prime minister of the federation, who shall be appointed by the President*
> *(2) Whenever the President has occasion to appoint a Prime minister he shall appoint a member of the House of Representatives who appears to him likely to command the support of the majority of the members of the House.*
> *(3) There shall be, in addition to the office of Prime Minister, such other offices of Minister of the Government of the Federation as may be established by this Constitution or by Parliament or, subject to the provisions of any Act of Parliament, by the President, acting in accordance with the advice of the Prime Minister*
> *4. Appointments to the office of the Government of the Federation other than the office of Prime Minister shall be made by the President acting in accordance with the advice of the Prime Minister.*

Examining the 1963 Constitution, leaves one in no doubt that power of the President to appoint a Minister is not restricted to citizens of Nigeria who happened, also, to be *'Indigenes'* of their respective Regions. It is this unfettered power of the President in the appointment of Ministers that was not only radically shackled in 1979 but was also limited to a nebulous concept whose practical implementation would, at best, be arbitrary and discriminatory.

The above two sections in the 1979 Constitution actively canvassed the concept of *'an indigene'* or *'belonging to' 'a community indigenous to a Nigeria"*. Against these two concepts, are a whole array of provisions in the 1979 Constitution which provide against the discriminatory treatment of citizens. For example:

> *(1) S. 15 (1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress.*
> *(2) Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, states ethnic or linguistic association shall or ties shall be prohibited.*
> *(3) For the purpose of promoting national integration it shall be the duty of the state to ...*
> *(b) Secure full residence rights for every citizen in all parts of the Federation.*

> *(4) The state shall foster a feeling of belonging and of involvement among the various peoples of the federation, to the end that loyalty to the nation shall override sectional loyalties.*

Also, in S. 17,

> *(1) The state social order is founded on ideas of Freedom, Equality and Justice.*
> *(2) In furtherance of the social order –*
> *(a) every citizen shall have equality of rights, obligations, and opportunities before the law;*
> *(3) The State shall direct its policy towards ensuring that –*
> *(a) All citizens without discrimination on any grounds whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment.*

And in S. 39., under right to freedom from discrimination, the Constitution, states that:

> *(1) A citizen of Nigeria of a particular community ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person -*
> *(a) be subjected either expressly by or in the practical application of any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities ethnic groups, places of origin, sex, religious or political opinions.*
> *2. No citizen of Nigeria shall be subjected to any disability merely by reason of the circumstances of his birth.*

All the above Constitutional provision actively prohibit discrimination either on the basis of 'place of origin' or on the basis of *'indigeneity'* no matter how defined.

Yet, in flagrant abuse of these Constitutional provisions against discrimination, all the State Governments and Local Governments discriminate among Nigerian citizens on the basis of *'place of origin'* and *'indigeneity'* since the enactment of the 1979 Constitution. Citizens are classified as so-called *'indigenes'* *'non-indigene'*. The so-called *'indigenes'* are the favoured citizens who are entitled to all the privileges and perquisites of the State. They are given special certificates to identify them as *'indigenes'* different from the *'non indigene'*. In the application of this principle, many individuals and communities have been declared as *'non indigenes'* with all the attendant tension and conflict.

According to Jibo Ibrahim[8],

> *"numerous cabals have devoted considerable resources and time to defining themselves as indigenes, natives and autochtones while defining others in their communities as settlers, migrants, strangers. With the return of democratic role in 1999, there has been an explosion of (such) political and religious conflicts."*

A survey of these conflicts reveal that they are fairly representative of the dimension they have taken nationally:

	LOCAL AREA	STATE
1	Umuleri/Aguleri Communities	Anambra
2	Hausa/Kataf in Zangon Kataf LGA	Kaduna
3	Jukun/TIV Conflict in Wukari LGA	Taraba
4	Chamba/Kuteb Wukari LGA	Taraba
5	Bassa/Ebira in Toto LGA	Nassarawa
6	Hausa/Fulani/Muslims/Christians in all the LGAs.	Plateau
7	Ife/Modakeke Ife East, North & South LGA's	Osun
8	Ijaw/Itsekiri/Urhobo in Warri North, South, South West LGA	Delta

The most bizarre aspect to this tragedy is that in the case of the conflicts involving the communities in Umuleri/Aguleri and the conflicts in Ife/Modakeke in Osun state, credible anthropological evidence have demonstrated that the two warring groups are of the same ethnic origin, linguistic group and culture.

Nigeria, as a nation, cannot survive and this democracy cannot blossom, if we ignore the heavy costs we pay on account of the false and superficial dichotomy of citizens along the *'indigene/non-indigene'* divide. The costs involve hundreds of thousands of deaths, massive dislocation of communities and their way of life and destruction of properties. The gravity of the problem is enormous. This is apart from the fact that individuals, and communities are denied their constitutional and human rights under the officially-sanctioned policies of states and governmental authorities.

IV. The Mahmoud Mamdani Principles

Professor Mahmoud Mamdani of Columbia University, USA, has examined the concept of indigene/settler and has enunciated a number of principles. These principle are relevant to the situation in Nigeria and they are:

1. That the two categories of indigene/settler are interdependent as one defines the other. He posits that settlers exist because some people have succeeded in defining themselves as *'indigenes'* in order to exclude others who they have defined as settlers.
2. Settlers, as a category, are not defined by immigration, as virtually all African groups and people have migrated over time. He states that the concept of settler/indigene is a political definition attributed on the basis of conquest and state power, both customary and modern.

3. Most important, the settler can never become an *'indigene'* because the basis of the differentiation is the denial of civic citizenship through a political imposition of a permanent and exclusionary tribal or religious label. This means that the historical methods of gaining citizenship through migration, immersion in the language, and culture and norms of the new community through time are excluded.

The implication of those principles is that as long as we continue with the indigene/settler divide, our dreams of deepening and broadening democratic governance will elude us. In addition, our claim to being a nation or our dreams of becoming a nation will became a mirage and the cost of these are, as stated above, unquantifiable.

Cote de' 'Voir, this once peaceful prosperous and political stable country, has now become a war-ravaged, desolate and unstable polity with half of the country in "rebels" control. If care is not taken, that country may be partitioned into two.
That country is a vivid example of what can happen on account of the indigene/settler dichotomy.

As stated above, the basis of the crisis of citizenship in Nigeria is rooted in Nigerian colonial history. This is especially true if you consider the fact, that politically and administratively, the colonial power, Britain, did not conquer and administer the country as a single entity initially. What it did was to establish its presence along the coast of the present day Nigeria, first around 1861. By 1900, it obtained the colony of Lagos under a forced Treaty of cession from King Docemo. By 1904, it had established separate administration in the Protectorates of Western Province. These entities continued to be governed separately until the Amalgamation of 1914. Consequently, during the period they were governed separately there was no common citizenship. What you had were, natives' of the various Protectorates, who were all subjects of the colonial authority. Thus, natives of one Protectorate were considered 'aliens' of the other Protectorates and *vice versa*. This categorization is to, later, have devastating effect in post-colonial Nigeria and as Nigeria grapple with the challenge of common citizenship and nation-building.

Secondly, even after the Amalgamation in 1914, the Regions (Northern, Western & Eastern) continued to be administered using different laws and operated under different judicial systems. Thus, even though, the Nigerian State was now one, you had multiple laws and multiple judicial systems (e.g.*English Common Law, Native law and Islamic Law*). Jurisdiction of these courts on persons was defined on the basis of whether you were native or non-native (i.e. alien), even though a Nigerian) in the area where the court was sitting. The effect of conferring jurisdiction on courts based on a categorization of the person as being native or settler reinforced the political categorization identified above, and provided the basis, in 1979, for the Constitution to still refer to some citizens as indigenes and some as settlers.

It is understandable when a colonial authority segments its subjects into 'natives' and 'non-natives' or 'natives' and aliens/foreigners. This categorization is the objective of the colonialist to divide and rule and plunder. But for this policy to continue long after the conclusion of a nationalist struggle for independence and the attainment of independence, is difficult to fathom.

In Tanzania, the citizens were very clear as to what they wanted. According to Mandani,

> *"Tanzania dismantled the entire system of customary laws and created as a single body of law; and dismantled the entire system of customary authorities and created a single administration, a juridical structure. And it is not accidental that Tanzania is the only country in East Africa where no group has been targeted by the state either on racial or ethnic grounds. In other countries, you have this targeting as non-indigene."* **[9]**

The major consequences of the citizenship crisis or the indigene/settlers dichotomy are three-fold:

1. The effort to build the Nigerian nation-state is weakened by the unintended process of generating multiple pseudo citizenships.
2. It represents a major assault on the rights and liberty of citizens
3. It engenders conflicts, and instability in the polity, thereby, causing critical resources to be diverted towards rebuilding, rehabilitation, and crisis management.

V. The Case of *Anzaku & 33 others V. Ex. Gov. NASG & 2 ORS* [10].

In a December, 2004 judgment on the indigene/non-indigene issue, the Court of Appeal, Jos Division, ruled that the policy implementation of the Nasarawa State Government to deploy Local Government staff to their so-called *'local government of origin'* was discriminatory and was in breach of Sections 42 and 46 of the Constitution of the Federal Republic of Nigeria,1999.
According to Nzeako JCA,

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

(5) The provision not only curbs the excesses of any law or legal system but also of any executive or administrative action of the Government.

(6) "ANY LAW" is so encompassing,

not limiting the type of law, it applies to any system of law in Nigeria, whether statute law, customary law, Islamic law or common law, applicable in Nigeria which subjects a citizen to discrimination, or disability, or restriction on account of any of the grounds specified in the section....

(7) 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 disabilities or restrictions which other Nigerians are not made subject "to".

The learned justice added that:

> *"The Nigerian democratic Constitution in its language exhibits how much value it places on the worth of each and every one of its citizens. It does not and will not condone indeed (will) not tolerate class or ethnic, etc discrimination whether by any law of the land or any action on the part of any executive or administrative authority or person or the state in sharing advantages and even disadvantages based on sex, race, place of origin ethnic, religious or political affiliation"*

V. Discrimination meted out to Women.

Discrimination meted out to men, that is anchored on the indigene/settler dichotomy, has been the subject of popular discourse. What has failed to attract serious intellectual consideration is discrimination targeted at Nigerian women, that is also based on the indigene/settler divide.

Let us consider the following situations:

i. A Nigerian woman marries a man from a Local Government Area other than her own;
ii. A Nigerian woman marries a man from a State other than her own;
iii. A Nigerian woman marries a man from a Country other than Nigeria.

In all the above three situations, the woman may either have to adopt the Local Government Area, State or country of her husband, subject to the approval of the Local Government, the State or the Country, respectively she wants to adopt or she forfeits the notion of 'belonging to' any Local Government Area or State. In other words the act of marriage to a husband from a different Local Government Area or State may politically sever the link of such a woman from a LGA or State of her choice. Why should this be the case, especially when we take into account all the relevant Constitutional provisions regarding non-discrimination and also the fact where a non-native consents to be tried by a native court during the colonial period, that person, *ipso facto* and for all practical purposes, became a 'native'

Ironically, the Constitution of the Federal Republic of Nigeria 1979, had this to say about intermarriage among persons of different 'places of origin'.

> *S. 15 (3) for the purpose of promoting national integration it shall be the duty of the state to—*
> *... (a) encourage intermarriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties.*

Above section is in *pari-materia* with S. 15 3 (c)of the 1999 Constitution.[11] The application of the concept of indigene/settler with regards to married Nigerian women renders it impossible for the spirit expressed in the above constitutional provision ever to be realized. But non-Nigerian wives who marry Nigerian men are constitutionally protected if they decide to take on Nigerian citizenship.

In the next part of this paper, we intend to argue that population shifts in the form of migration, urbanization, etc. have produced and are continuing to produce an ethnically diversified Nigerian society and polity and the impact of this population shift further confirms the thesis that the concepts of indigene and place of origin cannot stand rigorous examination.

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[1] This is another phrase whose exact denotation is problematic. Its

discussion is explored in detail in due course.

[2] Again, this phrase is problematic. Until its usage in the CFRN,1979, the term 'indigenous to' was used, generally, to refer to plants and animals but rarely to humans. The exceptions to this usage was the reference to the natives of the United States of America, Brazil, New Zealand and Australia who had been colonized by the various European powers and who effectively expropriated their lands and virtually consigned them to Reservations. These are indigenous people as opposed to alien settlers. However, in Nigeria, the term is a misnomer because every African in Nigeria was a victim of colonialism. And, therefore, every colonised person and every colonized ethnic group was indigenous to Nigeria. The reference to some as 'indigenous' and others as 'non-indigenous' is not borne out by history. Even then, it was unheard of to refer to humans as 'indigenes'.

[3] See Section 25, CFRN, 1999

[4]

[5] Laws of the Federal Republic of Nigeria, 1990.

[6] CFRN, 1979.

[7] See footnote 2 at p.3, supra.

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Mandani, Op cit at p.13

[10] Appeal No. CA/J/19/2002

[11] CFRN, 1999