

THOUGHTS ON THE CONSTITUTIONALITY OF THE RECENT DEPORTATION OF SOME CITIZENS BASED ON THE INDIGENESHIP CONTROVERSY IN NIGERIA.

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Introduction

As recent as the year 2013, issues relating to the citizenship – indigeneship controversy rented the Nigeria’s political and social space. The media, both print and electronic, and the now very popular social network, like Facebook and Twitter, were awash with stories of how some State Governments in Nigeria “deported” some Nigerian citizens to their states of origin on the ground that they were not indigenes of the states deporting them. Of particular note was the action of the Lagos State Government wherein it expelled or “deported” some Nigerian citizens, whom it termed “destitutes”, from Lagos State to the Onitsha Bridge in Anambra State, in the dead of the night¹. This was done without considering the safety and welfare concerns of such citizens who had to sleep under the bridge till the following morning. In other cases, some non – indigenes had been reportedly relieved of their jobs and ordered to return to their states of origin². This same citizenship – indigeneship controversy has led to violent inter – ethnic conflicts, claiming many lives and destroying property worth millions of Naira³. It has eroded or almost eroded the unity or corporate existence of Nigeria. It is a fact that a situation where Nigerians, who are residents in states or local governments other than theirs, are subjected to some discriminatory practices does not augur well for national unity and integration, which the present Constitution of Nigeria preaches or pursues.

This paper therefore raises some concern on the constitutionality of the administrative or executive actions of some State or Local Governments wherein they discriminate against

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¹ Some of the deportees have since instituted an action against the Lagos State Government, claiming One Billion Naira, among others, for breach of their fundamental human rights. The Suit, Joseph Aniebonam & 6 Ors v. Attorney – General of Lagos State & Anor is currently before His Lordship, Honourable Justice Rita Ofili – Ajumogobia of the Federal High Court, Lagos. See www.channelstv.com/home/2014/01/29/igbo-deportees-seek-1-billion-naira-compensation-from-lagos-state/. Accessed on 19/03/14 at 12 noon.

² Though the Government later recalled the non – indigenes, due, perhaps, to the condemnation that trailed the sack. See www.punchng.com/news/why-i-recall-sacked-non-indigenes-orji-/. Accessed on 19/03/14 at 12.10pm

³ For instance, the inter-ethnic conflicts between the Yoruba and Fulani in Ilorin, Ife and Modakeke in Osun State, Zango Kataf and Hausa/Fulani “settlers” in Kaduna State, Urhobo and Itsekiri in Delta State and the Berons and Hausa/Fulani in Plateau State which led to loss of lives and property.

Nigerian citizens residing in their states, on the basis of the citizen – indigene divide, contrary to the said citizens’ constitutional rights to freedom of movement and freedom from discrimination. In this article, we shall examine the concept, nature and types of citizenship and indigeneship. We would bring to the fore some discriminatory practices rooted on the citizen – indigene dichotomy. We shall also explore the constitutional framework – including judicial pronouncement thereon - which protects Nigerian citizens from discrimination in their own country. We would give some attention to the negative effect of this citizen – indigene divide on the unity of Nigeria as well as proffer some suggestions on the way forward, while drawing some lessons from other Jurisdictions.

Definition of Terms

Citizenship

According to the Oxford Advanced Learner’s Dictionary of Current English⁴, the word “citizenship” means “the legal right to belong to a particular country....” The Black’s Law Dictionary takes the definition further by stating that citizenship is “The status of being a citizen. The quality of a person’s conduct as a member of a community.⁵” The dictionary defines a citizen as “A person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protection; a member of the civil state, entitled to all its privileges.” A citizen is a person who by place of birth, nationality of one or both parents, or by going through the naturalization process has sworn loyalty to a nation⁶. Citizenship has also been described as “the membership of a political community otherwise known as state⁷.” Odinkalu sees citizenship as “ The optimal relationship between a person and a sovereign entity⁸.” In the words of Ibrahim, “Citizenship is applicable to a person endowed with full political and civil rights in a state. It has much to do with political, civil and social rights attributed to the individual as a member of a state⁹.” Citizenship is about

⁴ 7th Edition p.254

⁵ Garner, B.A., *Black’s Law Dictionary*, (USA: West Publishing Co.,2004, Eight Edition) 261

⁶ Hill, G.A. & Hill, K.T., *Real Life Dictionary of Law* (Los Angeles: General Publishing Group, 1995) P. 85.

⁷ Eweluka, D.I.O., “Acquisition and Loss of Citizenship in Nigeria”, *Nigerian Current Law Review*, July 1982, p.216.

⁸ Odinkalu, C.A., “From Nativity to Nationality: Understanding and Responding to Africa’s Citizenship Crises”, *Democracy & Development Journal of West African Affairs*, Rain Edition, 2004, Vol. 4 No.1, P. 33

⁹ Ibrahim, J., “Constitutional Reforms and the Struggle for Civil and Political Rights in Nigeria: An Overview”, being a paper presented at the Nordic Africa Institute Conference on Africa: A Future Beyond the Crises and Conflicts, Helsinki (19 -20 April, 2002) cited in Kazah –Toure, T., “ A Discourse on the Citizenship Question in Nigeria”, *Democracy & Democracy Journal of West African Affairs*, Rain Edition, 2004, Vol. 4. No. 1, P. 43.

rights, benefits, privileges and duties of an individual as a member of a political community, usually a state. It is an instrument of political exclusion and social closure through which a state creates a common identity for its citizens while denying non – citizens such identity¹⁰. In **Herriott v. City of Seattle**¹¹, citizen was defined as “members of a political community who in their associated capacity have established or submitted themselves to the dominion of a government for the promotion of their individual as well as collective rights.”

From the above definitions, it has become clear that citizenship, once acquired under the procedure to be discussed *anon*, gives the citizen some rights which are not applicable to aliens. Thus, the United States Supreme Court, in **Trop v. Dulles**¹², described citizenship as “a right to have rights.”

Indigeneship

On the other hand, indigeneship is not defined by the dictionaries. Rather, the dictionaries define the word “indigenous” as “belonging to a particular place rather than coming to it from somewhere else¹³.” Hence, an indigene is a person who originally belongs to a place or community, as against somebody who came to settle there. In the Nigerian local parlance, an indigene is a native, “son of the soil” in contra – distinction with a non – indigene, settler or stranger.

Discrimination

The word “discrimination” means “The practice of treating somebody or a particular group in a society less fairly than others....¹⁴” The Black’s Law Dictionary¹⁵ defines discrimination as “the effect of a law or established practice that confers privileges to a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap....” Dictionary of Law defines the word as “The according of some differential treatment to persons

¹⁰ Adejumbi, S., “Antinomy of Citizenship: Negotiating Power or Social Existence”, *Democracy & Development Journal of West African Affairs*, Rain Edition, 2004, Vol. 4 No.1, P. 6

¹¹ 81 Wash 2d 48 500 p3d at 190, cited in Ogbonna, J.O., “The Concept of Citizenship: Evolution, Theory and Significance”, *ABU Journal of Public and International Law*, Vol. 1 No 3 (2009) 125 at 126

¹² 356 US 86 (1959)

¹³ Hornby, A.S., *Oxford Advanced Learner’s Dictionary of Current English*, (New York: Oxford University Press, 2005, 7th Edition), P. 759

¹⁴ Op. cit. p. 417

¹⁵ Op. cit., 500

or bodies in the same position, e.g., sex or racial discrimination....¹⁶” Discrimination means the unequal treatment of persons, on the basis of a given reason which does not have anything to do with merit, legal right or ability.

There are classes of discrimination, viz: direct discrimination, indirect discrimination and positive discrimination. Direct discrimination, which is the most common, occurs where a person is treated less favourably than someone else would have been in the same situation¹⁷. For example, it is direct discrimination to deny a person a job or refuse him promotion on the basis of his or her sex, race, tribe or political affiliation. On the other hand, indirect discrimination is where some requirements or conditions are imposed with a view to indirectly prejudicing or sidelining a certain group of people who would find it difficult to meet such conditions. For instance, it amounts to indirect discrimination to advertise job vacancies with a condition that the applicants must submit a letter of recommendation from a specified traditional ruler. It is obvious that such a traditional ruler would most likely first of all attend to applicants who are his subjects before attending to “strangers” and non – indigenes. This will indirectly discriminate against certain persons on their chances of getting the job.

Positive discrimination is what is now popularly referred to as “affirmative action.” This occurs where certain jobs, opportunities or privileges are given to a particular group of people that are often treated unfairly on the basis of their race, tribe or sex. In other words, positive discrimination is the practice or policy of favouring a particular group of people or providing much more direct and quicker help to them than the strict implementation of the policy of equal treatment would have earned them. The Women Affirmative Action currently being vigorously pursued by Nigeria’s First Lady, Dame Patience Jonathan is rooted on this kind of discrimination. Also, the Federal Character principle is based on this type of discrimination. Section 14 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (**The Constitution**) has constitutionally flavoured this Federal Character principle when it provides thus:

*The composition of the Government of the Federation or any of its agencies
and the conduct of its affairs shall be carried out in such a manner as to*

¹⁶ Curson, L.B., *Dictionary of Law* (London: Financial Times Pitman Publishing, Fifth Edition 1998) P.118

¹⁷ Stone, R., *Textbook on Civil Liberties & Human Rights* (New York: Oxford University Press Inc.,2008, 7th Edition) P.530.

*reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that Government or in any of its agencies*¹⁸.

Deportation

The word, “deport” is the root word for deportation and it means to force somebody to leave a country either because he has broken the law of that country or because he has no right to be there in the first place. The Black’s Law Dictionary defines deportation as “*The act or an instance of removing a person to another country; especially the expulsion or transfer of an alien from a country*”¹⁹.” The Dictionary of Law defines the word as “*Expulsion from a country. ‘The taking of the person in question from the country from which he is deported to some other places’: R v. Secretary of State for Foreign Affairs, ex p Greenberg [1947] 2 All ER 550.*” Deportation is “*the act of expelling a foreigner from a country, usually because he/she has a criminal record, committed a crime, lied on his/her entry documents, is in the country illegally or his/her presence is deemed by the Immigration and Naturalisation Service, FBI or State Department officials to be against the best interests of the nation....*”²⁰” From the definitions above, it is clear that the actual meaning of deportation has to do with inter – national or inter – country movement of persons. This is why the word is in quotation marks in this paper because its actual meaning does not fit into the way it was used by Nigerians during the deportation saga. However, for the purposes of consistency with the background to this work, which is the Lagos State deportation saga, we would adopt the word “deportation” as if it means movement or expulsion of a person from one State to another within a given country, as against its true meaning which relates to the expulsion of a person from one nation or country to another.

Types of Citizenship

The Constitution of Nigeria makes provisions for about four types of citizenship in Nigeria. These are:

¹⁸ Section 14 (4) has similar provisions for the States in Nigeria. See also Section 147 (1) and (3) of the Constitution which make the appointment of Ministers, by the President, subject to Section 14(3) above and further provide that the President shall appoint at least one Minister from each State who shall be an indigene of that State.

¹⁹ Eight Edition, P.471

²⁰ Hill, G.A. & Hill, K.T, op.cit. P.136

1. Citizenship under the previous Constitutions Nigeria operated before the 1999 Constitution;
2. Citizenship by Birth;
3. Citizenship by registration and
4. Citizenship by naturalization.

We will now examine these types of citizenship one after the other.

1. Citizenship under previous Nigerian Constitutions

This is provided for under Section 309 of the Constitution which states that any person who was a citizen of Nigeria by birth, registration or naturalization under the provisions of “any other Constitution²¹” shall continue to enjoy such citizenship rights under the extant Constitution. Thus, any person who enjoyed citizenship rights under the 1960 Constitution, for instance, would continue to enjoy such rights under the 1999 Constitution, subject however, to the provisions of Section 28 of the extant Constitution which forbids dual citizenship for Nigerian citizens.²²

2. Citizenship by Birth

The most radical type of citizenship is the one acquired by birth. As could be seen above, it is only citizenship by birth that is not subject to the restriction on dual citizenship. It has been stated, elsewhere, that this type of citizenship is unassailable to the powers of the State in that the State cannot interfere with it.²³

Citizenship by Birth is acquired, automatically, by any person who:

- I. Is born in Nigeria before Nigeria’s Independence on 01 October, 1960 and either of whose parents or any of whose grandparents belonged or belongs to a community that is indigenous to Nigeria, coupled with the additional condition that the said parents or grandparents must have been born in Nigeria.
- II. Is born in Nigeria after Nigeria’s Independence on 01 October, 1960 and either of whose parents or grandparents is a citizen of Nigeria.

²¹ We humbly submit that the framers of the Constitution, by this phrase, meant any previous Nigerian Constitution. Obviously, “any other Constitution” could not have meant the Constitution of another nation.

²² But a Nigerian citizen by birth can hold dual citizenship. See Section 28 of the Constitution.

²³ Jamo, N. M., “An Appraisal of the “Right” to Citizenship under the 1999 Constitution”, *ABU Journal of Private & Comparative Law*, Vol. 1 No. 1, 2006, P. 168.

III. Is born outside Nigeria either of whose parents is a citizen of Nigeria.²⁴

Once a person is able to show that he falls within the above specified conditions, he is taken to be a Nigerian citizen by birth, and as such, his citizenship cannot be a subject of withdrawal or suspension, neither can he be deported from Nigeria. In the case of **Shurgaba Darman v. Minister of Internal Affairs**²⁵, the Minister of Internal Affairs, while purportedly acting under Section 18 (3) of the Immigration Act, 1963²⁶, issued a Deportation Order against the Applicant, on the allegation that the latter constituted a threat or risk to national security. Having resolved that the Applicant was a Nigerian Citizen, and was thus entitled to citizenship rights, including the right to fair hearing, the Court went further to hold that a Nigerian Citizen cannot be deported. Hence, the Court declared the Deportation Order unlawful and unconstitutional. While we agree that **Shurgaba case** was a case of deportation from Nigeria to another country, we however submit that the pronouncements of the Court in that case is of most importance to the recent deportation of Nigerian citizens from one State to another. We deprecate, in the strongest terms possible, the action of the Lagos State Government by which it deported Nigerian citizens from the State to their home States. Such an action is devoid of any modicum of legal foundation whatsoever.

3. Citizenship by Registration

This is another type of citizenship recognised by the Constitution. Section 26 of the Constitution provides that a person may become a citizen of Nigeria once his application for registration for that purpose has been granted by the President of Nigeria . By the tenor of the said Section, this type of citizenship can be applied for by any woman who is or has been married to a citizen of Nigeria or any person of full age (18 years old) and capacity who is born outside Nigeria but either of whose parents or grandparents is a citizen of Nigeria.

It is imperative to state here that application for citizenship by registration is not granted as a matter of course. Rather, the Applicant must prove the existence of certain conditions, viz:

- a. That he is a person of good character;
- b. That he has evinced a clear intention of his desire to be domiciled in Nigeria; and

²⁴ See generally Section 25 of the Constitution.

²⁵ (1981) 1 N.C.L.R. 25

²⁶ Which is now deemed to be an Existing Law under Section 315 of the Constitution

- c. He has subscribed to the Oath of Allegiance prescribed in the Seventh Schedule to the Constitution.
- d. The person must, in accordance with Section 28 of the Constitution, be willing to renounce any citizenship status he has with any other country, within 12 months of becoming a citizen of Nigeria by registration.

By the wordings of Section 26 where the word “May” was used, we submit that even after meeting the above conditions, the President of Nigeria can still decide not to grant the applicant citizenship by registration and no action would lie against him. The word “may’ generally means permissible or discretionary, not mandatory or compulsory²⁷. This ordinary meaning should be ascribed to the word as used in Section 26. It is trite law that words in a statute are to be given their plain and ordinary meaning in an attempt to identify the legislative intention behind the statute²⁸. It is also to be noted that while a person born outside Nigeria by a Nigerian parent may become a citizen by birth automatically, however, for such a person born outside Nigeria to apply for citizenship by registration, he must have been of full age and capacity²⁹. We however contend that the provisions of the Constitution on this issue are quite confusing. If a person born outside Nigeria by a Nigerian parent is already deemed to be a citizen by birth automatically, what will make the same person to apply for citizenship by registration when he becomes of full age and capacity? What now happens to his citizenship by birth? The other point to be made is that the question of whether or not the applicant is of good character is solely left at the discretion or subjective perception of the President by the Constitution. We submit that this leeway is rather too wide a privilege which could become a subject of abuse in the hands of a dictatorial President. We therefore canvass for a more objective test in assessing who is of good character.

4. Citizenship by Naturalisation

Naturalisation is another way of acquiring Nigerian citizenship. According to a learned writer, naturalization is the only process by which an alien who is not genealogically tied to Nigeria can acquire Nigerian citizenship.³⁰ Hence, the conditions for acquiring citizenship by naturalization,

²⁷ See *Enakhimion v. Edo Transport Services* (2006) All FWLR (pt. 334) 1882 at 1900 – 1901 paras B – A.

²⁸ See the case of *Oduote v. Oduote* (2013) All FWLR (pt. 668) 867 at 882 para B

²⁹ Note the difference between Section 25 (1) (c) and Section 26 (2) (b) of the Constitution

³⁰ Eweluka D.I. O., op. cit., P. 225

as would soon be seen, are more stringent than those of the other types of citizenship already examined.

Section 27 of the Constitution makes provisions for citizenship by naturalization. The gist of the section is that it provides that an alien, who is desirous of acquiring Nigerian citizenship, may apply to the President of Nigeria for the grant of a Certificate of Naturalisation. Just like the case of registration, this type of application for citizenship is not granted automatically or it is not granted as a matter of course. The applicant must, in line with the provisions of Section 27 of the Constitution, satisfy the conditions for its grant, which are:

- a. He must show that he is of full age and capacity to apply for citizenship;
- b. He must be of good character;
- c. He must have manifested a clear intention to be domiciled or live permanently in Nigeria;
- d. The Governor of the State in Nigeria where the applicant is or intends to be resident must give a favourable opinion, regarding the applicant, as to his acceptability in the local community where he will live permanently, upon the grant of citizenship and that he has been assimilated into the way of life in the said community;
- e. He must have made or must be capable of making useful contribution to the advancement, progress and well – being of Nigeria;
- f. He must have taken the Oath of Allegiance as prescribed in the 7th Schedule to the Constitution.
- g. He must have, immediately preceding the date of his application, resided in Nigeria either for a continuous period of 15 years or for a continuous period of 12 months and during the period of 20 years immediately preceding that period of 12 months, he has resided in Nigeria for periods amounting in aggregate to not less than 15 years.³¹
- h. He must be ready to renounce his citizenship of any other country within 12 months of acquiring Nigerian citizenship by naturalisation³²

³¹ What this means that the applicant must have resided in Nigeria continuously for 15 years or if not up to 15 years continuous residence, then the different periods he has resided in Nigeria in the past 20 years must not be less than 15 years and he must have then lived in Nigeria for at least 12 months to benefit from this latter provision.

³² See Section 28 of the Constitution

Even after satisfying the above conditions, the President may or may not grant the Applicant's request for citizenship; it is the exclusive prerogative of the President to grant or not to grant a Certificate of Naturalisation.

Discriminatory Practices on the basis of Citizen – Indigene Divide

The following are some of the discriminatory practices in Nigeria whereby Nigerian citizens are denied their constitutional rights on the illegal ground that they are not indigenes.

a. Denial of Right to Freedom of Movement and Residence

This right is provided for under Section 41 of the Constitution which guarantees citizens' entitlement to move freely throughout Nigeria and to reside in any part of Nigeria without fear of being denied a right of ingress or egress³³. This includes the right to hold a Nigerian passport with which the right of egress can only be possible.³⁴ While we recognise the inbuilt derogations in the same Section 41 as regards restriction on the residence or movement of criminals or criminal suspects or their evacuation from Nigeria as well as the derogation of the right under Section 45 of the Constitution, we however submit that the recent action of the Lagos State Government in removing Nigerian citizens from Lagos to their States of origin cannot find justification under the derogation provisions of the Constitution. First, there is no evidence that those expelled citizens were criminals or criminal suspects. Second, their expulsion was not as a result of any state of emergency. Third, to the best of the knowledge of these writers, there is no law empowering the Lagos State Government to restrict the movement or residential rights of those affected Nigerians. We contend that the Lagos State's curtailment of the freedom of movement of those citizens is not reasonably justifiable in a democratic society as same is not in the public interest or the interest of the unity or corporate existence of Nigeria; neither is it in the interest of the residents.

In the case of **Attorney – General of the Federation v. G.O.K. Ajayi**³⁵, the Court, in no uncertain terms, held:

³³ See *Shugaba v. Minister of Internal Affairs* (supra)

³⁴ See *Director, State Security Service v. Agbakoba* (1999) 3 NWLR (pt. 595) 314

³⁵ (2000) 12 NWLR (pt. 682) 509 at 536 paras E - F

“Freedom of movement is guaranteed under our constitution and it is a right to which every citizen is entitled when he is not subject to the disabilities enumerated in the constitution. The right enures to the benefit of every human being. It is because it is fundamental that it is entrenched in the Constitution, its mere entrenchment in the Constitution does not make it fundamental. It is a natural right....”

The above judicial pronouncement was re-echoed in *Arowolo v. Akapo*³⁶ where the Court, per Omu, JCA stated, “....By the provisions of our 1999 Constitution, the right is in every citizen of this country to reside where he wishes....”

It therefore smacks of sheer grandstanding and executive lawlessness, or if you like, recklessness, on the part of the Lagos State Government whose action should be condemned by all and sundry, including the Court before which the matter is pending. The only instance where the action would have been legally justifiable would have been if the State Government’s deportation of the citizens had been done in the interest of public defence, public morality or generally where the national security is being threatened.³⁷ Clearly, this is not the case here!

b. Denial of Employment Opportunities

This is another negative effect or practice of the citizen – indigene divide in Nigeria. Employments in Nigeria are, more often than not, reserved for indigenes. Even where there are more competent or more qualified citizens who are non – indigenes, their applications are hardly considered once their applications indicate that their state of origin is not the employing State. The Abia State Government recently took the citizen – indigene issue to the ridiculous when it sacked non – indigenes in its payroll and asked them to go and look for jobs in their own States. This, to us, is the height of unconstitutionality; it is a flagrant rape on the provisions of the Constitution. Section 17 (2) (a) of the Constitution provides, “*In furtherance of the social order- Every citizen shall have equality of rights, obligations and opportunities before the law.*” This is further amplified by Section 17 (3) (a) which states, “*The State shall direct its policy towards ensuring that –All citizens, without discrimination on any group whatsoever, have the*

³⁶ (2004) All FWLR (pt. 208) 807 at 869 paras C - D

³⁷ See Section 45 of the Constitution and the case of Dokubo – Asari v. Federal Republic of Nigeria (2007) NWLR (pt. 1048) 320 at 358 paras E - H

opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.”

Though the above constitutional provisions fall under Chapter II³⁸ of the Constitution, a combined reading of the provisions with Section 42³⁹ of the Constitution would lead us to the inevitable conclusion that right to equal employment opportunities for both indigenes and non – indigenes is an enforceable right under the Constitution. After all, the provisions of a statute or of the Constitution for that matter, are not meant to be read in isolation. Rather, they are to be given a community reading⁴⁰. Section 42 provides:

- (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, religions 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 or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.*
- (2) *No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.*⁴¹

³⁸ Chapter II of the Constitution which contains the Fundamental Objectives and Directive Principles of State Policy is not generally justiciable, or enforceable by virtue of Section 6 (6) (c) of the Constitution.

³⁹ This section is under Chapter IV of the Constitution which thus makes it a justiciable or enforceable right.

⁴⁰ See *Obi v. INEC* (2007) All FWLR (pt. 378) 1116; (2007) 11 NWLR (pt. 1046) 565

⁴¹ This right against discrimination is however subject to laws regulating appointment into the Armed Forces and the Nigeria Police. See Section 42 (3) of the Constitution.

The above provisions have knocked off the legal foundation of any justification the “guilty” State Governments may have offered for the unconstitutional deprivation which they have illegally inflicted on Nigerian citizens who happen to be non – indigenes in their states of residence.

Section 42 of the Constitution fell for judicial determination in the recent case of **Lafia Local Government v. Executive Government, Nasarawa State**.⁴² In that case, the 3rd – 36th Respondents were employed by the Nasarawa State Local Government Service Commission and subsequently deployed or posted to Lafia Local Government Council. However, in the year 1999, the Governor of Nasarawa State issued a policy statement to the effect that all unified Local Government staff serving in Local Government Councils other than their own councils of origin should relocate or should be redeployed to their councils of origin on their existing ranks and status. Pursuant to the said policy statement, Lafia Local Government Council set up a screening committee to screen its staff (including 3rd – 36th Respondents) and the committee identified the 3rd – 36th respondents as non – indigenes of Lafia Local Government Council but indigenes of Nasarawa Eggon Local Government Council. Consequently, 3rd – 36th respondents, with some others, were redeployed from Lafia Local Government Council to Nasarawa Eggon Local Government Council. However, the latter council refused to accept or absorb the 3rd – 36th respondents, contrary to the Governor’s policy statement.

The 3rd – 36th respondents, being caught in the web, decided to challenge the constitutionality of the Governor’s policy statement which they believed had infringed on their constitutionally inherited right to freedom from discrimination. At the Trial Court, the Respondents who were then the Applicants had their claim dismissed for lack of merit. However, on appeal to the Court of Appeal, the Trial Court’s decision was overturned and the Court of Appeal declared the Governor’s policy statement null and void for being a breach of the Respondents (the Appellants’) right to freedom from discrimination. On further appeal to the Supreme Court, the Court unanimously affirmed the decision of the Court of Appeal. Rhodes – Vivour, JSC, who read the Lead Judgment of the apex Court, had this to say at pages 977 – 978 paras D – A of the Law Report:

⁴² (2013) All FWLR (pt. 668) 956 at 976 – 978 paras F - A

A liberal approach must be adopted when interpreting the Constitution and especially the fundamental rights provisions. Section 42 of the Constitution guarantees to every citizen of Nigeria, freedom from discrimination on the basis of belonging to a particular community, ethnic group, place of origin, sex, religion or political opinion.

The discrimination complained about must emanate from a law in force in Nigeria, or any executive or administrative action of the Government. This includes laws made by the legislative houses and legislation made by Local Governments, and this includes policy statements. The rights are enforceable against the state, not against individuals: Uzoukwu v. Ezeonu II (1991) 6 NWLR (Pt. 200) 708.

The policy statement by the Governor of Nasarawa State ...is discriminatory and unconstitutional and clearly offends the provisions of section 41 (1) which guarantees freedom of movement and section 42 (1) which guarantees the right to freedom from discrimination. It is contrary to the spirit and intendment of relevant sections of the Constitution.

I am in full agreement with the Court of Appeal which held that the policy does infringe the constitutional rights of the appellants (3rd – 36th respondents) against discrimination based on ethnicity or place of origin. Courts should assume an activist role on issues that touch or concern the rights of the individual and rise as the occasion demands to review with dispatch acts of Government or its agencies and ensure that the rights of the individual guaranteed by the fundamental rights provisions in the Constitution are never trampled on.

With the above dictum flowing from the stream of wisdom of the highest Court in Nigeria, one cannot but question the rationale behind the recent expulsion of Nigerian citizens from Lagos to Anambra and other States in Nigeria as well as the sack of non – indigenes by the Abia State Government. However, we find it difficult to agree with the part of the above Judgment where the Court held that “*the rights are enforceable against the state, not against individuals.*” We humbly submit that this dictum is rather too restrictive. We contend, with due respect to Their

Lordships, that that statement is without any legal leg to stand on. There is no known law which prohibits the enforcement of the right to freedom from discrimination against individuals where such individuals constitute the violators of the right. While it is true that most fundamental human rights are usually enforced against the state, it would however be too restrictive an interpretation to limit the rights violators to just the State or Government alone.

In summary on this issue, it is our submission that the present position of the law in Nigeria is that every citizen of Nigeria is to be treated as a citizen without regard to the incident(s) of his birth, including his tribe or ethnic group.⁴³

Other areas of discrimination against citizens who are non – indigenes are:

- ❖ **Admission into schools:** In today’s Nigeria, admissions into State – owned universities are mostly reserved for the indigenes of such states. In cases where non – indigenes are admitted, perhaps based on the merit and educationally disadvantaged lists, they are made to pay fees that are higher than those paid by the indigenes. The enforcement of the Federal Character Principle has worsened the whole situation as the principle has enthroned mediocrity, to the detriment of meritocracy and justice. The Courts seem to have however endorsed the principle in **Badejo v. Federal Minister of Education**⁴⁴ where the Appellant challenged the refusal of the Respondent to call her for admission interview into Junior Secondary School, on the basis of Federal Character Principle which was not in her favour, despite her outstanding performance in the entrance examination. When the matter got to the Court of Appeal, it was held that the enforcement of the Federal Character Principle, which is of course constitutionally provided for, does not infringe on the Appellant’s right to freedom from discrimination.
- ❖ **Land ownership:** This is another instance where the citizen – indigene divide is well pronounced. As a matter of fact, some if not most of the ethnic or sectarian conflicts in Nigeria are traceable to land tussle between indigenes and non – indigenes. It would be recalled that before the Land Use Act came into effect in 1978 wherein it vested land ownership in the State⁴⁵, land in Nigeria was owned by communities, family and later,

⁴³ See *Olulode v. Oviasu* Suit No. M/133/81 (unreported), cited in Osinbajo, Y., “Legitimacy and Illegitimacy under Nigerian Law”, *The Nigerian Journal of Contemporary Law*, 1984 -1987, Vol. 14, P. 42

⁴⁴ (1996) 8 NWLR (pt.464) 15

⁴⁵ See Section 1 of the Act.

individuals. Even the Act recognizes this pre – existing arrangement, thus the Act still favours customary or pre -1978 land owners by providing that all land owners before the coming into effect of the Act are deemed to be holders of either customary or statutory right of occupancy, depending on the location of the land, in respect of such pieces of land⁴⁶. Often, these deemed holders of right of occupancy are indigenes and they are usually unwilling to give land to non – indigenes among them when they are allocating communal land for farming or other purposes, even where such indigenes were in fact born and bred in the community. Some of the communities that are willing to allot a parcel of land to non – indigenes would place a condition that the citizen should first of all “acculturise” or “naturalise” into their community before he can be considered for land allotment.⁴⁷ This, to our minds, does not work in the interest of national unity.

- ❖ **Political aspiration:** While the Constitution provides for the right of citizens to vote and be voted for⁴⁸, the right to be voted for is hardly allowed full expression, for citizens domiciled outside their places of origin. Most communities in Nigeria prefer to field indigenes in elections; non – indigenes, no matter how long they have stayed or no matter the extent of contribution they have made to the community, are still very much regarded as strangers when it comes to election and appointment into political positions in Nigeria. Hence, it is difficult for a Yoruba man to win a councillorship election, say, in Ewu in Edo State and vice versa. This too, negates the philosophy behind the Nigerian Constitution which in its Preamble emphasizes the need for the people of Nigeria to live in unity and harmony as one indivisible and indissoluble Sovereign State. All these discriminatory practices negate the letters and spirit of the Constitution.

Thus, we cannot but sum up this issue with the decision of the Court of Appeal in **Asika v. Atuanya**⁴⁹ where Denton –West, JCA held that:

“However, it is my humble view that the constitutional provisions earlier mentioned in my judgment apply in situations where if a custom [we dare

⁴⁶ See Sections 34 and 36 of the Land Use Act and the case of Onwuka v. Ediala (1989) 1 NWLR (pt.96) 182

⁴⁷ See for example, *Olowu v. Olowu* (1985) 3 NWLR (pt. 13) p. 372 where a Yoruba man had to “naturalise” as Bini indigene so as to be able to acquire landed property in Benin City.

⁴⁸ See, for instance, Sections 65 (1)(a) & (b), 106 (a) and 117 (2) of the Constitution which make provisions for qualification to vote and be voted for as regards the National Assembly and State Houses of Assembly elections.

⁴⁹ (2008) 17 NWLR (pt 1117) 484 at 518 paras A – C. See also *Timothy v. Oforka* (2008)9 NWLR (pt. 1091) 204 at 216 – 217 paras B – A.

include policies or practices] tends to discriminate against a particular section of the populace, that custom even if not subject to litigation should not be allowed to prevail since it is against the tenets of the Constitution of the Federal Republic of Nigeria, 1999. Any custom or culture that does not enhance the human dignity of man or woman is inconsistent with the fundamental objectives of the Constitution and should therefore not be allowed. I therefore, with respect, call on the Nigerian state to protect, preserve or promote only the Nigerian culture which enhances human dignity and discard all cultures that are discriminatory and intolerable as repugnant to natural justice, equity and good conscience. See Sections 17 and 21 of the Constitution of the Federal Republic of Nigeria, 1999.”

We submit that the discriminatory practices against Nigerian citizens on the basis of not being indigenes of a state do not enhance human dignity, and as suggested in the above Court decision, same should not be allowed to stand. Any law, executive or administrative action of any person or Government which runs contrary to the constitutional right to freedom from discrimination should be deprecated by all law – abiding citizens, and indeed, the Courts of Law⁵⁰.

Recommendation

It has been observed in this work that the citizenship – indigeneship controversy in Nigeria portends a grave danger to the corporate existence or unity of Nigeria. As a way out of this danger, the following are our suggestions, towards dealing with the issue under consideration.

- The Constitution should make express provisions for residency rights wherein discrimination against non – indigene residents (but who are citizens) would be absolutely prohibited. We submit that the present constitutional right to residency, as embedded under Section 41⁵¹ is not explicit or wide enough. Right to residency is such an important right that should be independently recognized by the Constitution. The proposed right should expressly outlaw discrimination on the basis of state indigeneship. Nigeria can borrow a leaf from the United States of America. Article 4 Clause 2 of the

⁵⁰ Timothy v. Oforika (supra)

⁵¹ Which provides for right to freedom of movement

US Constitution states that “*The citizen of each State shall be entitled to all the privileges and immunities of citizens in the several States.*”

Hence, in the case of **Cornfield v. Coryell**⁵², the Federal Circuit Court interpreted the said Article 4 Clause 2 to mean freedom from discrimination, “*the right of a citizen of one State to pass through, or to reside in any other State, for purposes of trade, agriculture, professional pursuit, or otherwise....the right to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State.*”

- There should be a reduction of the powers vested in the Federal Government by the Constitution. In other words, the Constitution should be amended to allow for devolution of more powers to the States and Local Governments. This would make the other tiers of Government have the resources needed for economic viability and creation of job opportunities for the states’ indigenes. This would reduce inter – state exodus which ultimately worsens the citizen – indigene divide. The current situation where the Federal Government has exclusive legislative powers over 68 items as against the 30 concurrent legislative list items is not too ideal for a Federal System of Government like ours⁵³. We suggest that the Federal legislative powers should be restricted to major issues like currency, defence and foreign affairs while all other powers currently residing with the Federal Government should devolve, constitutionally, on the States and Local Governments, with a view to dousing the tension usually generated by the scramble for the limited assets or powers of the States by indigenes and non – indigenes.
- There should be serious enlightenment or sensitisation campaign for and among Nigerians. Nigerian citizens should be sensitised on the need to first of all, see themselves as Nigerians before being Yoruba, Igbo, Hausa/Fulana, Esan, etc. The Office of the National Orientation Agency should wake up and be more up and doing in this regard.
- Nigerian should take advantage of the provisions of the Freedom of Information Act to hold their leaders accountable. They should strive to get access to information on how their scarce resources are spent by the public officers and politicians, whether or not such politicians are indigenes or non – indigenes.

⁵² 6. F. Cas. 546 (C.C.E. D. Pa. 1823)

⁵³ See Second Schedule to the Constitution.

Conclusion

This paper has x –rayed issues surrounding the recent citizen – indigene controversy in Lagos and other States in Nigeria. Our findings reveal that, over the years, non – indigenes have almost always been victims of discriminatory practices in their states or places of residence. We have however found out that, pursuant to the provisions of the Constitution and coupled with the judicial pronouncements thereon, such discriminatory practices are bereft of any iota of legal justification under the Nigerian jurisprudence, save for the constitutionally flavoured exceptions, like the Federal Character Principle.