

INDIGENESHIP AND RESIDENCY RIGHTS IN THE 1999 CONSTITUTION: MYTH OR REALITY?

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Abstract

This paper is borne out of the practical realities on ground with respect to residency indigeneship rights provision in the Constitution. We cannot shy away from discriminatory practices against the citizens in their country. Apart from states like Lagos where non indigenes can hold political or elective offices in the government across different levels of representation, it is difficult for non – indigenes to either contest or enjoy certain privileges and rights which ordinarily should accrue to Nigerian citizens notwithstanding their place of residence. It is this burden which has prompted the short discourse this paper seeks to espouse. The aim of this paper is to identify the problem of Indigene – Settler Syndrome in Nigeria, the causes and effects and the need to proffer solutions to this social menace for national unity, integration and cohesion. The paper ends with recommendations for strengthening section 42 of the Constitution of Nigeria among other international instrument in this respect.

Keywords: Indigeneship, Residency rights, non-indegenship syndrome, Citizens rights in Nigeria

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1.0 INTRODUCTION

The role of the legislative body in the process of revision and ratification of the Constitution is defined by the Constitution itself and by certain laws and bylaws, which emphasize the importance of the National Assembly in the process of passing, altering and proclaiming a new constitution. Nigeria attains 60 years of independence in 2020. Can we say that a nation of 60 years old should not have learnt the rudiments of staying together peacefully? Hence, the constitution must provide measures to encourage residence rights without its being prejudicial to the host community in order to promote oneness and brotherhood. The first part of this paper identifies the problem of indigene-settler syndrome while the second part of the paper adduce reasons for amendment of the residence rights provisions in the Constitution and other international instrument such as the African Charter on Human and Peoples' Rights, The United Nations Convention on the Status of Refugees, The African Charter on the Rights and Welfare of Children, Organisation of African Unity's Convention governing the specific aspects of Refugee problems in Africa, etc. The paper ends with recommendations on the need to amend the relevant provisions of the constitution in order to reduce tension and promote peaceful co-existence among residents.

2.0 IDENTIFYING THE PROBLEM OF INDIGENE – SETTLER SYNDROME IN NIGERIA

Nigeria is a multi-ethnic and multi-religious country. Over time, millions of Nigerians have migrated to other parts of the country for work, education or other reasons.¹ As a result, many Nigerian communities and cities have diverse populations. Often these are divided into the 'sons-of-the-soil', or 'indigenes' of such communities, and residents originating from other parts of the country who are considered as

¹ <https://www.qeh.ox.ac.uk/sites/www.odid.ox.ac.uk/files/nrn-pb05.pdf> Accessed 9 September 2022

‘settlers,’ even after continuous residence for over two generations or even more.²

Abimbola,³ in justifying the dichotomy between indigenes and settlers, protagonists would easily contend that one is mostly an indigene of a particular place. The argument was that one can only belong to a particular ethnic group and that by virtue of that, one might not be in a position to enjoy those benefits associated with settling in a place or among groups with different history, culture and language.⁴

Over the years, the way the Nigerian state has handled the interaction between ‘indigenes’ and ‘settlers’ is part of the problem. Section 25(1) of the Constitution promises a single Nigerian citizenship, while Section 42 expressly forbids discrimination against other Nigerians based on the circumstances of their birth. However, when it comes to defining membership of one of Nigeria’s 36 states, Section 318 (1) of the 2011 Constitution promotes the special interests of those ‘born of the soil’. This specific promotion of nativist rights started with the 1979 Constitution.

The constitutional provision for indigeneship has promoted discrimination and division, and the time has come for it to be abolished. On the other hand, some members of ‘indigenous’ communities who feel their interests threatened by more numerous or more economically powerful outsiders cling on to ‘indigenous rights’ as the only viable defence of their basic interests.⁵

² *Ibid.*

³ Abimbola Adesoji, Indigeneship and Citizenship in Nigeria: Myth and Reality. *The Journal of Pan African Studies*, Vol.2, No.9, March 2009.

⁴ *Ibid.*

⁵ Indigeneity, Belonging, & Religious Freedom in Nigeria Citizens’ Views from the Street. <https://www.qeh.ox.ac.uk/sites/www.odid.ox.ac.uk/files/nrn-pb05.pdf>. Accessed 9 September 2022

3.0 PROBABLE CAUSES OF THE STIGMA OF INDIGENE AND SETTLER SYNDROME

In our view, amalgamation of the different nations of Nigeria in 1914 is a major cause of the present predicament of Indigene and Settler Syndrome. This is because there were no socio cultural issues taking into consideration before this marriage of several nationalities into one entity called Nigeria. The Native Authority Law of 1954 defined a non-indigene or “stranger” as “any Native who is not a member of the native community living in the area of its authority.”⁶ Related colonial policies such as the rigid enforcement of residential segregation between “natives” and “settlers” are often explained as a deliberate attempt to discourage inter-communal integration and thereby reduce the possibilities for broad-based opposition to colonial rule.

According to Daudu, the constitutional provision for indigeneship has promoted discrimination and division, and the time has come for it to be abolished.⁷ On the other hand, some members of ‘indigenous’ communities who feel their interests threatened by more numerous or more economically powerful outsiders cling on to ‘indigenous rights’ as the only viable defence of their basic interests. In the words of Alhaji Miango, an indigenous community leader in the troubled city of Jos, even birds who fly about freely have a home within which they exercise special rights?

⁶ See Daniel Bach, “Indigeneity, Ethnicity and Federalism,” in *Transition Without End: Nigerian Politics and Civil Society Under Babangida* (London: Lynne Rienner, 1997), p. 338. Related colonial policies such as the rigid enforcement of residential segregation between “natives” and “settlers” are often explained as a deliberate attempt to discourage intercommunal integration and thereby reduce the possibilities for broad-based opposition to colonial rule.

⁷ Joseph Daudu, *Indigeneity, Belonging, & Religious Freedom in Nigeria Citizens’ Views from the Street*. NRN Brief Policy at <https://www.qeh.ox.ac.uk/sites/www.odid.ox.ac.uk/files/nrn-pb05.pdf>. Accessed 20 September, 2022.

Ethnicity is a major problem affecting the development of a human rights culture: numerous violent acts, motivated by ethnicity are still taking place. Many Nigerians also see the increasing importance of the indigene/settler divide as resulting from the increasing levels of poverty and deprivation brought on by decades of poor governance and rampant corruption, along with environmental factors such as an increasing scarcity of land caused by population growth and desertification.⁸

4.0 EFFECTS OF THE INDIGENE AND SETTLER SYNDROME ON THE POLITY

Recently, the Nigeria has witnessed incessant killings between herders and farmers which have culminated in unending communal clashes and conflicts. There is likelihood of emotional trauma on the part of a citizen who is denied certain basic rights. Denial of certain rights such as the right to contest election and be voted for or denial of citizenship of a particular Local Government Area having resided for over 15 years portrays the realities of social inequalities in one's own country are among the causes of the indigene and settler syndrome in Nigeria.

A major reason behind state policies that set discriminatory school fees for non-indigene students lay in an effort to frustrate their academic opportunities so as to ultimately "block them from political participation". It sadly helps indigenes make progress compared to residents because a non-indigene will not get education if he cannot afford it. This creates unhealthy socio cultural rivalry and defeats national unity and integration as intended by the constitution.

⁸ Brennan Kraxberger, *Strangers, Indigenes and Settlers: Contested geographies of citizenship in Nigeria*, *Space and Polity*, 9:1, 9-27, DOI: [10.1080/13562570500078576](https://doi.org/10.1080/13562570500078576), p. 9

5.0 MAKING A CASE FOR AMENDMENT OF RESIDENCY AND INDIGENESHIP PROVISIONS IN THE CONSTITUTION

Nigeria as a country grew up united but seemingly getting older in disunity. Discrimination and insecurity reigns in the land. The constitution at the moment guarantees freedom of movement, right to own property in any part of Nigeria. This paper posits that section 15 (3) of the constitution be made a provision under Chapter IV with the status of Fundamental Human Rights. Section 15(3) provides:

For the purpose of promoting national integration, it shall be the duty of the State to:

- (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation.
- (b) *secure full residence rights for every citizen in all parts of the Federation.*

However, there must be a *proviso* to the effect that a person who has been resident in a place for at least 15 years and has lived peacefully within the community should enjoy such resident rights as may be permissible by the people. Such person must have imbibed the culture and way of life of the people of such community where he wants such residents' rights.

The essence of this amendment is to reduce discrimination against citizens of Nigeria in their country and promote brotherhood within the country. There must be provisions for indigenes of a particular place to enjoy some level of privileges in order to prevent domination, subjugation and colonization of a people by another. There is no gain – saying the fact that indigene settler syndrome has caused a lot of communal clashes and breed insecurity in Nigeria. There must be a way out of this menace. Such amendments are without prejudice to the relevant provisions of the Electoral Act which preserves resident rights to vote and be voted for in the nation. Altering these provisions will help to strengthen the Federal Character principles in favour of merit based appointments.

6.0 CONCLUSION AND RECOMMENDATIONS

In theory, section 42 of the constitution provides for right against discrimination for citizens but in reality, there exists to the knowledge of all, discriminatory practices in the country against citizens by citizens and in some instances by the government. Law making for such provisions may not be the only way out but it will boost mechanisms for reducing Nigerians being discriminated against having been resident in a particular place for a longer period of time. We align with the view of the Human Right Watch, that we should reverse, eliminate and outlaw, laws and policies that deny non-indigenes equal access to educational opportunities, scholarships, , economic rights, employment and all other benefits open to state residents.⁹ As suggested earlier, there must be a *proviso* to the effect that a person who has been resident in a place for at least 15 years and has lived peacefully within the community should enjoy such resident rights as may be permissible by the people. In essence, residency rights remain myth under the various provisions of the Constitution but can be made a reality with proactive measures from the government and the governed. There should be a balance between federal character principles and indigene and residency syndrome for development.

⁹ Nigeria “They Do Not Own This Place” Government Discrimination against “Non-Indigenes” in Nigeria. A Publication of Human Right Watch. This report is available on <https://www.hrw.org/reports/nigeria0406webwcover.pdf>. Accessed September, 2022