

DISCUSSION ON CITIZENSHIP, INDIGENESHIP, LOCAL GOVERNANCE AND NATIONAL COHESION IN NIGERIA: MANAGING A DELICATE BALANCE

BY

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1. OBJECTIVES OF THE PRESENTATION

- To engage participants in a discussion on the legal foundation of citizenship, the dilemma of constitutional introduction of indigeneity as an ethnic dimension Citizenship in Nigeria, and
- On how to promote national cohesion / integration for a more responsive local governance in Nigeria.

2. LOCAL GOVERNANCE

- It is about local participation of communities in decision making processes affecting their lives, their families, their security and welfare, infrastructural development, improved revenue base, political stability, accountability to the people at grassroots level and transparency in governance.
- It is also about administrative and fiscal autonomy and adherence to constitutional responsibilities, functions and powers under section 7 and 4th Schedule to the 1999 Constitution as amended.
- The primary purpose of every government in Nigeria under section 14 (2) b) of the constitution is to “promote the security and welfare of all people”.
- **NB** :- Share implication of a recent case law and the proposed 5th Constitutional Alteration Bills, 2022 (on local governance).

3. CITIZENSHIP

- Like the 1979 Constitution, the 1999 Constitution retained the introduction of Indigeneity as an Ethnic dimension to Citizenship and moved away from rights-based on birth in the territory to towards a descent from parent or grandparents-based rules.
- Under Chapter 3, the 1999 Constitution is the legal foundation of citizenship of Nigeria today. Section 25 (1) of the Constitution provides for: -
 - I. **Citizenship** by Automatic Attribution to Birth under paragraphs (a) to (c) but tied to both indigeneity and descent rules.
- Section 309 of the Constitution States that those who were already citizens under earlier Constitutions remain citizens of Nigeria.
- II. **Citizenship by Registration(through marriage to a citizen or by descent from grandparent)**
 - Section 26 of the Constitution applies to two categories of persons who may registered as citizens of Nigeria, if The President is satisfied of the Characteristics laid down under paragraphs (a) to (c) of section 26 (1). Such persons under subsection (2) are: -
 - a. any woman who is or has been married to a citizen of Nigeria; or
 - b. every person of full age and capacity born outside Nigeria, any of whose grandparents is a citizen of Nigeria.

NB: - Issues of Gender Discrimination and lack of safeguards for children at risk of statelessness.

- First, Section 26 of the Constitution on citizenship by registration through marriage promotes gender discrimination on the basis of the sex of the spouse: - against a non-citizen man married to a Nigerian woman/citizen.
- Second, the constitution contains no protection for children adopted by Nigerian citizens, to ensure that they can acquire the citizenship of their adoptive parents.
- Third, same Constitution does not include the presumption under International law that a child found in Nigeria of unknown parents be presumed to have been born in Nigeria of parents with Nigerian citizenship. (See Article 2, 1961 Convention on the Reduction of Statelessness and Article 6 of the ACHPR).

III. Citizenship by Naturalization

- Section 27 of the Constitution provides for naturalisation based on long period of residence of 15 years (by international Standards) and other subjective/discretionary conditions quite challenging to satisfy the President under section 27 (2) (a) to (g).

NB: - Issues and Challenges

- First, the constitution does not state how an applicant is to satisfy the president about all the issues in section 27 (2) (a) to (g), except through the documentary and oral evidence.

- Second, both applicants for citizenship by Registration and Naturalisation suffer the same disadvantage as they cannot hold any elective or appointive office within 10 years of the grant of certificate of registration or naturalisation.
- Third, the above disadvantage is also subject to a further disability under sections 131 and 117 of the Constitution which provides that ONLY a citizen by birth can hold the office of the President, Vice-president, Governor or Deputy Governor.
- Fourth, challenge here is: - would it be possible for children of such persons to hold such offices since citizenship by birth is by descent (from a parent or grandparent)???
- Fifth, instead of providing for additional rules on citizenship to be set out in a legislation (like the Ghana Citizenship Act, 2000), Nigerian Constitution rather delegated authority to the President to make regulations.
 - In practice, No Such Regulations have ever been made, leaving a lack of detail that allows for a high degree of executive discretion in implementing the constitutional framework.
 - In particular, the absence of prescribed procedures, when combined with the absence of a definition of "Community indigenous to Nigeria" under section 25 (1)(a), means that there is a high degree of uncertainty about which groups would be included within that term.

IV. Dual, Renunciation and Deprivation of Citizenship

- First, section 28 of the 1999 Constitution removed the earlier prohibitions on dual citizenship for those who hold Nigerian and another citizenship from birth. However, a Naturalised citizen cannot hold any other naturalised citizenship.
- Second, Section 29 of the Constitution permits a person to Renounce Nigerian citizenship, subject to President withholding consent if Nigeria is at war or may be contrary to public policy.

NB: Issue: - This section does not, however, provide protection against statelessness by conditioning RENUNCIATION on the possession or acquisition of another nationality.

- Third, Section 30 of the Constitution permits the President to DEPRIVE a naturalised citizen of his or her citizenship on various grounds, including evidence of conviction and sentencing to a prison term, or disloyalty to Nigeria or associated with the enemy at war etc.

NB- Issue: - These rules are rather too vague and lacked due process around the mechanism by which a person who has Previously been considered a citizen and exercised rights as a citizen is effectively deprived of that status, is to assert that Citizenship was previously recognised in error and thus void (Shugaba Darman's Case in point, though the Courts revoked the deportation order).

4. INDIGENESHIP/INDEGENEITY AND FEDERAL CHARACTER

- First, in practice, categorisation such as "indigenes", "settlers" and "natives" are social and political constructions of the Nigerian elite class in their search for the legitimacy within the local community or state and their quest for access to political power and resources.

NB-issue: - This point remains a major obstacle to the universal application of citizenship rights in Nigeria.

- Second, the 1999 Constitution adopted / retained the introduction of two Concepts by the 1979 Constitution: - indigeneity as an ethnic dimension of citizenship and federal character that reinforces the concept of "indigenous community" referred to in section 25 (1) of chapter 3 of the Constitution on citizenship.
- Third, section 14 (3)(4) of the constitution established the Federal Character Principle that, in order to promote national unity and national loyalty government positions at federal, state and in local governments levels should be shared equitably among the different peoples from different ethnic groups of the federation.

- Fourth, reinforcing the concept of "indigenous Community", the federal character principle under section 147 (3) of the constitution, requires the President to "appoint at least one minister from each state, who shall be an indigene of the state"
- Section 318 (1) of the Constitution on interpretation, provides that, "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 was a member of a community indigenous to that state??
- Section 153 (1) (c) of the Constitution included the Federal Character Commission as part of the list of "certain federal executive bodies"
- Section 4 of the Federal Character Commission Act established Guiding Principles and Formulae for the Distribution of all Cadres of Posts in 1997. This includes under section 10, the definition of an "indigene" as a person, either of whose parents or any of whose grandparents was or is an indigene of the local government concerned; or who is accepted indigene by the local government. Provided that no person shall lay claim to more than one local government.

NB-issue: - The above principles/concepts established by the 1999 Constitution, combined with the interpretative principles adopted by the Federal Character Commission Act, have laid the foundation for a regime in which a "CERTIFICATE OF INDIGENEITY" Issued by a person's local government area of origin Chairman, required for many official and unofficial purposes. There is, however, no legal basis for such a document, and there are no established written criteria on basis of which a refusal could be challenged.

5. NATIONAL INTEGRATION/ COHESION - MANAGING A DELICATE BALANCE

- First, section 15 of the Constitution provides the basis for promoting national cohesion, while sections 16 and 17 provide the scale for managing a delicate balance.
- Second, under section 15, to promote national integration, the State / Government is duty bound to :- prohibit discrimination on any ground whatsoever; promote free movement of persons, goods and services throughout the Federation; promote the full residency rights for every citizen in all parts of Nigeria; encourage inter-ethnic/religions/linguistic marriages; promote multicultural associations; promote national unity and loyalty amongst all peoples.
- Third, Section 16 of the Constitution obligates the State/Government: - to harness the resources of the nation for the common good of all; and promote national prosperity by securing the maximum welfare, freedom and happiness of every citizen on the basis of social Justice and equality of Status and opportunity.
- Fourth, Section 17 of the Constitution obligates the State / Government to: -promote and protect the right of every citizen to equality of rights, obligations and opportunities before the law; protect the sanctity of human dignity, humaneness of governmental actions; ensure that exploitation of human and natural resources must be for the common good of the Community; and ensure the prevention of all forms of discrimination on access to justice, employment opportunities, basic healthcare and social protection services.



THANK YOU

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