The Abolition of Indigeneship Status in Kaduna State: A Surreptitious Decision

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Preamble: ThIs paper attempts to analyze the immediate and longtime consequences of the pronouncement of Governor Nasir Ahmed El-rufa'i of Kaduna State Nigeria abolishing indigenes/settlers dichotomy in the Kaduna State. El-rufa'i pronouncements reignited the old debate that has taken the centre stage of national discourses from mid 70s down the lane. He assumes abolishing settler/indigenes dichotomy will promote integration between and many peoples living in Kaduna State and abet the recurring skirmishes associated with the dichotomy. The policy will rather expose and overstretched the state resources because of absence of the same law in other federations units. Nigeria is still a clime with ineffective checking mechanism that can nip in the bud violations by Nigerians who don't reside in Kaduna State. If natives of Kaduna State can't have such liberties in other states, it is automatically a minus for them. Nigeria is a federation of thirty six states, and it is common knowledge people belong to certain states. Making Kaduna State a no-man's-land is outside the bracket of any federal arrangement.

Key Points: Citizenship, Indigeneship, Federation, Natives, settlers/indegines

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I. Introduction

On the 6th of August, 2015 when the Special Committee on the Killings in Southern Kaduna set up by the Executive Governor of Kaduna State was submitting its report, the Executive Governor, overwhelmed by the euphoria of the moment, abolished indigeneship status in Kaduna State vide an executive pronouncement as follows:

"The state has started implementing part of the recommendations of the committee, Mr. Chairman, even before it sees the report. Anybody residing in the state, irrespective of religion and tribes will automatically be entitled to anything in the state...There is nothing like indigenes/settlers in the state under this administration...We have abolished the settler/indigene dichotomy."

(See www.informationng.com; www.today.ng.news; www.tribuneonlineng.com)

By this pronouncement, the indigene-settler dichotomy was intended to be broken immediately. This heralded the abolition of indigeneship status in the State and the promotion of settler/residency status.

The issue of citizenship cum settler/residency status vis-a-vis indigeneship status has been a vexed one in the Nigerian context for a long time now. It has always been a recurring national issue in the past, especially whenever a National Conference was called, or the Constitution was attempted to be amended. A lot of writers have made their points for and against this issue; and their preference for one over the other. Writers like Dr Aliyu Tilde and Bala Mohammed Liman would prefer the indigeneship principle, while Professor Chidi Anselm Odinkalu and Nengak Daniel Gondyi would rather go with the citizenship principle. However it goes, this shows that this issue is still a national question begging for answer. Unfortunately, the answer is still far-fetched.

This write-up shall conceptually clarify some key terms that are recurring herein, and some that are similar or are confused with the terms "citizenship" and "indigeneship". We shall also look at the constitutional basis of citizenship and indigeneship in Nigeria; their impacts on our political, economic, social, and cultural life; why we think the decision to abolish the indigeneship principle in Kaduna State was surreptitious; and then conclude.

II. Conceptualization

To appreciate the term "citizenship", we have to first define who a "citizen" is. The Black's Law Dictionary(1999) 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 protections; a member of a civil state, entitled to all its privileges. Flowing from this definition, "citizenship", therefore,

means the legal status of being a citizen; or the legal quality of a person's conduct as a member of a community. Citizenship in a country carries with it the right to live there, work, vote, and pay taxes. Under sections 25, 26 and 27 of Chapter III of the 1999 Nigerian Constitution, citizenship can be acquired by birth, registration, and naturalization respectively. A citizen enjoys all the rights and privileges under the Constitution, especially fundamental rights and freedoms enshrined under Chapter IV thereof.

Often confused with the term "citizenship", is the term "nationality". These terms are sometimes used synonymously or interchangeably. But they differ in reality. While citizenship refers to a conferred legal status, nationality is conferred by birth. The implication of this is that, firstly, while a person may be both a national and citizen under section 25 of the Constitution, a person may only be a citizen but not a national under sections 26 and 27 of the same Constitution. Secondly, citizenship under sections 26 and 27 may be deprived or revoked by the President in certain situations (see section 30), but same cannot be done in respect of a national under section 25, except through renunciation (see section 29). Here, the right of a national qua national is inviolate, sacrosanct and inalienable. Fourthly, while citizenship can be changed, nationality cannot. Lastly, a person may have dual citizenship but cannot have dual nationality.

Also confused with citizenship is the residency status of a person. A residency status refers to a person's visa status where he is allowed to reside indefinitely within a country that he or she is not a citizen. A person with such status is referred to as a permanent resident. In the United States of America (USA), this is known informally as the Green Card because the card was green from 1946 t 1964; and was reverted to the same colour from May 11, 2010 to date. The acquisition of permanent residency status may be a prelude to becoming a citizen of that country after satisfying the requisite conditions, but it does not, ipso facto, make one a citizen. Of course, a permanent resident is never a national of that country even if he acquires the status of citizenship. Naturally, a national enjoys permanent residency as a right. In Nigeria, the term "resident" is used as the synonym for "settler"; and in contradistinction with "indigene".

Unlike "citizen", the term "indigene" is still alien in our dictionaries. Only terms like "indigenize", "indigenous", "indigenity" and "indigenization" may be found. Therefore, an attempt to define it may find one circumventing around any of these terms. However, a Human Rights Watch (HRW) report of April, 2005 entitled: "They do not own this place" defines an indigene as somebody "who can trace their ethnic and genealogical roots back to a community of people who originally settled there". To Renne, D., (2014) in his write-up entitled: "Youth Perspective on Citizenship in Nigeria", indigeneship "is a natural link between a person and a geographical location (his ancestral home) where he traces his roots through a blood lineage and genealogy that puts him in contact with his kin and kindred.

Indigeneship is most times used in contradistinction with the term "settler". The distinction is a coinage necessitated out of the fear of the unknown in a country, like Nigeria, where ancestral traditions and customs, ethnicity and communal land holding still play a major role in our psyche and national life; thereby shaping our political, economic and social life as well. A settler is a person who has migrated to an area and established permanent residence there, more often to colonize that area by being dominant, claiming land ownership and all other rights and privileges associated in their domain of settlement. Settlers are generally culturally sedentary, and different from nomads who share and rotate their settlements with little or no concept of permanent residency or individual land ownership.

A synonym of indigeneship is the term "natives". The term is more often used in the USA. A native is anautochthonous person born in a specified place or associated with a place by birth, whether subsequently resident there or not. To be native in this sense, a person's genealogical roots must be traceable to an indigenous community of people that are autochthonously resident or settled in a particular place.

We think the dividing line between indigenes and settlers is thin. While settlers are said to have migrated to a particular area and settled there, indigenes are said to be autochthonously settled there. The difference, further, is that of time and length of settlement. However, it is because of the sedentary nature of the settlers, coupled with their penchant for power struggle and claims to land ownership that conflicts (most times violent conflicts and clashes) often arise between them and the indigenes; hence the contradistinction, and, further, the desire for the dichotomy.

III. Constitutional Basis of Citizenship and Indigeneship

It is no longer open for debate that citizenship is a constitutional principle. Those in support of it, as against indigeneship, have always reminded us of this sacrosanct fact. We cannot, but agree with them. Sections 25 to 32 of Chapter III of the Constitution are dedicated to citizenship. These settled that. What is still open for debate is whether or not indigeneship is a constitutional principle. We are of the view that it is. Here are our reasons:

First, the division of the Federating unit called the Federal Republic of Nigeria into thirty six (36) States which is confirmed under section 3(1) of the Constitution is an implied way of creating State indigeneship; or, to be modest, State citizenship. The essence is to allow each State to harness its resources, both

material and human, for the benefit of the people laying claim as indigenously belonging to that State. Tilde, A. (2013) in his piece entitled: "Is the South finally set to colonize the North?" said:

"How Nigeria now became 36 states does not need any review here. It took only the first step of creating twelve and the strong thirst for each group to have its own state, no matter how unviable it would be, has never been quenched.

"The states created carried as their takeoff baggage the virus of indigenisation. Whenever one is partitioned into two or more, assets of the old state are shared among the new ones and its civil servants are redeployed each to his own state of origin. States have undoubtedly brought government closer to the people. Along with federal statutory allocations they have also brought about a more even distribution of physical development in the country."

We need not say more on this.

Second, the constitutional guarantee given to local government administrative system (see section 7(1) & (2)), and the recognition given to the seven hundred and sixty eight (768) local government areas in the country with the exception of the Federal capital Territory, Abuja (see section 3(6)) further lay credence to the constitutional recognition given to the indigeneship principle. A fortiori, section 7(2)(a)(b)(i),(ii) & (iii) provides as follows:

"(2) The person authorised by law to prescribe the area over which a local government council may exercise authority shall-

(a) define such area as clearly as practicable; and

(b) ensure, to the extent to which it may be reasonably justifiable that in defining such area regard is paid to -

(i) the common interest of the community in the area;

(ii) traditional association of the community; and

(iii) administrative convenience."

Reference to community and traditional association of the community above means reference to such community and association indigenous to that community in the local government. Therefore, the constitutional creation and recognition given to the local governments are meant to strengthen the bond of indigeneship of the people in a particular local government. The essence is to give the indigenous people of the Local Government Area some political, economic, social and cultural independence; and to enable them harness their resources, both material and human, for their benefits.

Third, the inclusion of, and anchorage given to the principle of federal character under the Constitution are affirmation of the indigeneship principle; ditto the establishment of the Federal Character Commission. Section 14(3) provides as follows:

"(3) 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 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 State or from a few ethnic or other sectional groups in that Government or in any of its agencies."

Federal character principle is entrenched in the Constitution to prevent tribal or regional domination in any government or its agency. And there is no better way to actualize it than to employ the indigeneship status of the States as the platform to determine how federal resources and appointments should be fairly and evenly spread across the country without any section being short-changed. Whether or not this principle is working as the framers of the constitution intended it to be is still a debatable issue for another day.

Last, and knitted to the third, is the provision of section 147(1), (2) & (3) of the Constitution which provides thus:

(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 provisions aforesaid the President shall appoint at least one Minister from each State, who shall be an INDIGENE of such State. (Upper case word ours for emphasis only)

The above provision further fortifies our stance to the effect that the principle of federal character is predicated on the indigeneship principle. Even the USA which has now become a model for citizenship still reserves the principle of indigeneship in a more realistic fashion than the countries that are trying to copycat it. Rinyon, J. D. in his article: "Indigeneship, Citizenship and the Lost Nigerianship: An Unpopular Essay" has this to say about the American indigeneship status:

Let's take a look at the USA which represents, to many misinformed Nigerians, the ideal of assimilated citizenship. By nature, the US is an immigrant country which means that most residents not only perceive but recognize and acknowledge themselves as settler-lords. The Native Americans (which were initially known as American Indians) are recognized as the indigenes (in fact the term native is indicative of this status) and are accorded certain rights and privileges that are not universal in the country. For instance, within the Native American colonies, traditional leadership is recognized (but does not exist or apply in the generality of the country) and small privileges like alcohol drinking is not restricted. In most states of the US, one has to reach the legal age of 21 before one could buy or be sold, and drink alcohol publicly (when in doubt of your age, identification documents that contain your legal age such as the driver license is required). Among the immigrant population (i.e. non-native Americans), there are citizens by birth (those born in the USA or whose parents are citizens of USA) and those that are bestowed (immigrants into the USA who have been accorded citizenship status). These are recognized officially as those that could contest for elections into political offices. However, no matter how long you have stayed in the US, no matter the level of contribution to the development of the country, you are not eligible to contest elections to the office of the President of the United States of America unless you are a citizen of the US by birth. This means that Arnold Schwarzenegger, the beloved governor of California who has been a citizen of the US for over 20 years cannot seek the exalted office of the President, even though he seems to have a lot of respect and support from a diversity of people, regions and states in the US. He is a native of Austria, born and bred in Austria and immigrated to the US in search of greener pastures. There are citizens and there are citizens!

Citizenship and indigeneship principles exist concurrently in the USA.

IV. Abolishing Indigeneship Status in Kaduna State

The powers of a Governor in Nigeria are enormous. This, however, does not mean that there are no check and balances put in place. But the most important check and balance on any Governor is to be guided by the consciousness and pulse of the populace on whose mandate he rode to power when taking a decision or implementing a policy. Proper consultations and synergy with the electorates will aid the Governor in making and taking popular decisions. We are of the view that the pronouncement made by the Governor on the 6th of August, 2015 abolishing indigeneship status in Kaduna State, no matter the intent, was surreptitiously made without in-depth thought on the consequences it might have on the indigenes of the State, among other reasons.

First, the occasion at which the pronouncement was made was most inappropriate. It was made when the Special Committee on the Killings in Southern Kaduna headed by General Martins Luther Agwai (retd.) was submitting its report to the Governor after a one-month assignment. The Governor should have exercised some restraints by studying the whole report first before making any policy pronouncement in respect thereof. He acted on the spur of the moment without informed considerations. Such a very important issue should not have been made a subject of pronouncement viva voce.

Second, the abolishing of the indigeneship status was not part of the social pact he entered with the people of Kaduna State during electioneering. A social contract, like all contracts known to law, is mutual. It presupposes the exchange of promises between the elected on the one hand and the electorates on the other. The elected makes campaign promises and the electorates vote him into office on the strength of his promises. A social or political contract is thus entered into. Could the Governor be hiding under the notion of the absence of a social contract in respect of this issue and thereby impose policies that are unfriendly and unpopular?

Third, there were no State-wide consultations and debates on this issue before the pronouncement was made. Even if the recommendation came from the Agwai Committee, its time frame was just a month to sit and deliberate which was too short for any meaningful contributions to be made by the general public. A highly sensitive issue like this should have been given a reasonably longer time for consultations and inputs from the people that would be adversely affected with the decision. Unfortunately, a lot of people who might have been interested in the mandate of the Committee were not aware of it.

Four, if indigeneship is abolished as the Governor pronounced, what then is the special status of the autochthonous people of the State? Is it citizenship? But citizenship status has already been constitutional bestowed on them. It would be superfluous and tantamount to an unnecessary fifth wheel to the coach to do that. Besides, citizenship principle is an exclusive Federal Government preserve jealously guided under the prestigious Exclusive Legislative List of the Constitution (see Item 9, Part I of the Second Schedule to the

Constitution). The autochthonous people of the State would certainly expect a special and preferential treat from the Governor that would make them have that sense of belonging as indigenes.

Five, the Governor must define the status of the indigenes of the State if he has to carry out his pronouncement. This is because, as is it now, only Kaduna State has seemingly abolished that status. The question is: if indigenes from other States of the Federation can lay claim to Kaduna State as their State of origin, what fate befalls the indigenes of Kaduna State in other States? Untill the abolition becomes a national policy applicable in all the States of the Federation, the Governor has short-changed his people.

Six, if indigenes from other States of the Federation can lay claim to Kaduna State as their State of origin, what then would be their status in their States of origin? Would this not be tantamount to dual indigeneship? This is alien to our Constitution; and would breed criminality and criminal tendencies. A criminal in his State may see Kaduna State as his sanctuary. Thus, Kaduna State would become a haven and hide-out for criminals and criminal elements.

Seven, Kaduna State is comparatively backward in the education industry. This informed why the State owns a good number of schools for the benefit of the indigenes. If indigenes from other States are allowed to compete for space in the State-owned schools and do same in their States of origin, would our supposed students not be short-changed? Very worrisome is the fact that Kaduna State indigenes cannot enjoy that luxury in other States. The Southern part of the country is economically and educationally better than the Northern part. One would think that a lot of premium should be placed in educating our youths to catch up by giving them some concessional considerations. Where everybody is allowed to occupy the space meant for them in their domain, then their fate is doomed.

Eight, intricately tied to indigeneship is communal land holding. What then becomes of indigenous land holding under native law and custom? Does the Governor intend to abolish that as well? Pricelessly attached to an indigene from time immemorial is his land ownership inherited or acquired through ancestral lineage. The abolition of indigeneship status would open a vista of more violent and communal clashes between the autochthonous people of the State and settlers, thereby making nonsense of the quest to find lasting peace in the State which the Agwai Committee sought to achieve. The efforts of the Committee, would, therefore, in the long run, be counter-productive.

Nine, what is the fate of the indigenous traditional rulers in the State who are the custodians of the culture and traditions of the indigenous communities they rule? They are still the relic of indigeneship.

Ten, issue of indigeneship is way beyond and more powerful than any executive pronouncement purporting to abolish it, no matter its weight and propensity. Indigeneship status is deeply entrenched in the psyche of Nigerians and it will be difficult to abolish, break, remove or replace it with the more liberal principles of settlement or residency. The people are contented with it. Sensitization and orientation would have been a better option than mere pronouncement.

Eleven, as we said elsewhere herein, the issue of indigeneship has constitutional root entrenched as federal character. Since abolishing indigeneship will also involve addressing the federal character principle, would that not be tantamount to constitutional amendment by the Governor? Would any change in the manner the principle works not lead to a new set of problems that have not yet been comprehended? What will be the criteria to determine settlement or residency in the State? What will be the period of settlement or residency in the State that will enable a person to have access to all the attendant rights in the State? What happens if a person moves from one town or community to another within the State? Will he be able to access full political and social rights in his new residence or settlement immediately, or does he have to go through another process of determining his access to these rights?

Twelve, the abolition of indigeneship will not only raise the problems we have already identified herein, it would also open a flood gate of other more complex and novel problems associated with its abolishment which the Governor may find too hot to handle. At the end, he may find himself solving more problems that he, himself, had unwittingly created.

Last, what is even wrong with the indigeneship-settler dichotomy? Would the abolition solve the many socio-economic problems of the State? We do not think so. On this, we agree with Tilde, A. (op.cit.), and Liman, B. M. (2013) in his short work: "Indigeneship or Residency? (2)". Tilde says:

The issue of indigeneship is therefore entrenched in our psyche and it will be difficult to remove or replace it with the more liberal identity of residency. That idea will definitely not be accepted in any of the Northern states, if I must put it bluntly. We are okay with the status quo. If I will move to Umuahia to stay for any reason, for example, I will be proud to answer my Bauchi origin and under no circumstance would I claim to be an indigene of Abia. I should be contented with my constitutional rights as a citizen. And those rights, mind you, are many.

I have the right to live in anywhere in the country, to run any business, to associate with anyone, to practice any religion, to hold any belief, all without hindrance, says the constitution of the Federal Republic of Nigeria. As a tax payer and a statistic in the demography of the state, I am also entitled to any welfare benefit

that might accrue to any of its residents, like electricity, water, healthcare, roads and basic education for my children. I do not think there is much contention on these things.

However, if I need any extra-privilege for myself or for my children, I should seek same from my state of origin, which I should be proud to identify with anyway. Come to think of it: What pride is there in a child that would not answer his father's name? I do not think that would hinder my development in any way. In my view, this is the most equitable arrangement that we can arrive at given our antecedents and existing realities. Since the shift of power to the south, there have been so many genuine complaints of marginalization of the docile North in appointments and general affairs of government. State indigeneship is the only remaining domain for the common man to claim a right that is beyond the reach of anyone that would be tempted to use his economic and political power to dominate him. It is also the only way an equitable representation in the management of affairs of this nation could be achieved as envisaged by the provision of the Federal Character in our constitution.

To Liman (op. cit.):

In continuance of the indigeneship versus residency discourse started last week, the question then becomes how do we address the issue? The government's decision to adopt residency as a panacea to the problem of this dichotomy certainly opens the debate to finding a solution, but is it the magic wand that can solve it?

Sadly, I think that it will not. This is because in a country where traditions and customs still play a major role in the affairs of ethnic groups, Indigeneship remains important. Citizenship rights as espoused by Marshall takes three forms; the political, economic and social... In the meantime, while we continue our political development, political rights remain within the realm of Indigeneship through the federal character principle. What we should try to ensure is that economic and social rights are accessible to everyone irrespective of where they are from or reside. The changes will then occur as we develop politically to the point where the issue of Indigeneship will then lose its luster through the enforcement of citizenship rights.

The problem with this is that so long as social and economic rights do not exist and patronage networks that are tied to Indigeneship remain important, the possibility of achieving this becomes difficult.

The identity of the people qua indigenes of the State must be preserved and upheld. The status quo should be maintained. Settlers have nothing to fear. Their citizenship status and rights are constitutionally guaranteed and can be enjoyed anywhere in Nigeria without tampering with the indigeneship status of the autochthonous indigenes of the State. For instance, the settlers have the constitutional right to vote, contest for any election and be voted for into any of the political offices anywhere in Nigeria by virtue of their citizenship status. The indigenes, on the other hand, have the corresponding right to vote for any settler into any office of their choice. This has been the practice all over Nigeria, Kaduna State inclusive. Kaduna State, at one time, had an Igbo man in the House of Assembly; Hon. BintaKoji, an Adamawa State indigene, was at a time a member of House of Representatives representing Kaduna South; and went back to her native Adamawa State, contested election into the same House of Representatives and won again. So many other instances abound in the past. If the indigenes could vote in non-indigenes to represent them, what other benefits or rights bestowed on the nonindigenes could be higher? The Governor, himself, has also presently appointed non-indigenes into key political offices in the State despite hues and cries. Thus, the settler can enjoy all their constitutionally guaranteed civil, political, economic, social and cultural rights without being "indigenes" of Kaduna State. Conversely, the indigenes can decide their fate politically by electing whoever they want to without losing their indigeneship status. It is the duty of the Governor to promote and protect this status quo through his policies. To our mind, the Governor must not abolish the indigene-settler dichotomy in order to promote settler status in the State.

Why would the Southerners always insist that their corpses be taken to their villages in the South for burial despite their huge investments in the North? The North is only for their opportunities and prosperity. And, so far, the North has been faithful in that respect. It has become a huge political and economic investment enclave for the Southerners.

The same thing applies to the majority Hausa-Fulani in the North who have advantage over the Southern Kaduna people. Those from the other core Northern Hausa-fulani States can lay claim to the indigeneship of Kaduna State as well as that of their respective States of origin, but the indigenes or natives of Southern Kaduna cannot enjoy such corresponding privilege in their States. They only have Kaduna State, and Kaduna State alone, to claim as their own. The influx of everybody from all over the country claiming Kaduna State as their State of origin would not be fair to them.

Take it or leave it, Nigeria is not yet ripe for settler/residency status. Indigeneship, like their life, is most cherished by Nigerians. Indigeneship has become an identity. Both the indigenes and the settlers/residents are contented with their identities and status quo.

V. Conclusion

We are of the view that the priority of a government that is about a 100 days in office should not be the abolition of the indigeneship-settler status of the people of its State. The main concern of the Governor should be the provision of real development, encourage peace, unity and progress, create jobs and opportunities, advance education, provide basic health facilities, etc; and fulfill electoral promises. These are issues begging for urgent attention. The Governor can do all these by still maintaining the status quo. The pronouncement of the Governor is both constitutionally and sociologically wrong. Abolishing the indigeneshipsettler dichotomy in Kaduna State at this time may signal a bad omen.

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