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Two states in Africa have responded to the challenges of multi-ethnicity by adopting explicitly federal constitutions. Nigeria has had a federal structure since independence, though the federating units have rapidly multiplied, making the individual units paradoxically less powerful; Ethiopia has adopted a federal constitution more recently, as a response to the highly centralized structure of both the Ethiopian kingdom and the military rule of the Derg that followed it. The Ethiopian constitution remarkably provides for any self-defined group to make a bid for self-determination to the point of independence. In both cases, the federating units are designed to a large extent around ethnicity, with borders aimed at uniting the most homogenous population achievable within that area; though in both countries homogeneity is not even close to being achieved in areas of great diversity, while the definition of what is a single ethnicity can shift according to the political circumstances.

While both federal systems have brought advantages in terms of decentralization and local ownership of government, both have also brought their own problems. As the case studies below indicate, the Nigerian system in particular has inadvertently created a population of millions who are not regarded as holding full rights in the area where they live. The Ethiopian effort to give full realization to minority rights has had similar results, including the displacement of large numbers of people from areas now 'owned' by another group when the new constitution came into effect. Much as the creation of government structures that aim to resonate with popular loyalties and understanding may have many advantages, the two case studies indicate the importance of careful design of the details in relation to the entitlements of all citizens of the country, wherever they may

live. Internal rules of belonging can be as important to individual rights as citizenship at the national level; and this can be as true in states whose constitutions are formally unitary, as the experience of DRC, Kenya and others has shown.¹

Nigeria

Nigeria demonstrates within its own borders a concentrated microcosm of many of the problems of citizenship and identity that exist across Africa. In particular, a legal and policy distinction between those who are 'indigenous' to an area and those who are 'settlers' has led to the creation of a massive population of Nigerians who are 'foreigners' in the area where they live, without any of the benefits enjoyed by the 'citizens' of that place – and all without crossing any international border. Though these distinctions were in part originally designed to protect smaller ethnic groups from domination by the larger, it is today often difficult to find justification for them, or even to distinguish in historical terms between those whose ancestors were allegedly 'originally' in a place and those who supposedly came later.

Nigeria was created by amalgamation in 1914 of three separate territories: the Colony of Lagos in the south-west; the Protectorate of Southern Nigeria (including the rest of the southern half of the country) and the Protectorate of Northern Nigeria. At independence Nigeria comprised three regions: Northern, Western and Eastern, each dominated by one major ethnic nationality, the Hausa-Fulani, Yoruba and Igbo, respectively.² Nigeria's four constitutions since independence³ have all grappled with the problem of ensuring an appropriate balance of power between the three largest ethnic groups that dominated the three original regions, and the remaining several hundred ethnic groups believed to live in the country. The sub-national units have been repeatedly divided, and the three original regions have become thirty-six states today. In addition, the 1979 constitution, aiming at ending the instability, military interventions and civil war that had characterized the country since independence in 1960, introduced a new concept of 'federal character': the idea that

government positions at national level should be shared equitably among those coming from the different units that made up Nigeria's federal system.⁴ This provision is repeated in the 1999 constitution currently in force; and the idea of federal character is reflected in policies at state and local levels. Other provisions of the constitution specifically require a spread of appointments: for example, the president is required to 'appoint at least one minister from each state, who shall be an indigene of the state'.⁵ Yet 'indigene' is never defined.⁶ At the same time, the constitution guarantees freedom from discrimination or special privilege on the basis of membership of 'a particular community, ethnic group, place of origin, sex, religion, or political opinion' – with the exception of any law related to state appointments.⁷

The lack of an official definition of an 'indigene' has caused many problems. In practice, it has been interpreted to mean a person whose ancestors are claimed to have been the 'original' occupants of a particular state or other territory; an interpretation that has no basis in the constitution itself. That is, at an internal Nigerian level a *jus sanguinis* approach to citizenship is adopted, to the exclusion of any admixture of *jus soli* principles that would give rights to an individual on the basis of residence or other real connection to the state or local government area concerned.

Being labelled as a 'non-indigene' of a state has serious consequences. Many states refuse to employ non-indigenes in their civil services; non-indigenes are charged higher fees at state universities and are usually not eligible for academic scholarships; non-indigenes may have difficulty in accessing any number of other government services, including police protection in case of ethnic violence. A non-indigene may vote, but will find it very hard to run for office in the area where he or she is resident. Local governments and states throughout Nigeria issue 'certificates of indigeneity' serving as proof of an individual's rights as an indigene of that area; and often these are available only to those whose father is an indigene, and not to children of a 'mixed' marriage if only the mother is from that place.

With the creation of ever more numerous units of the federal system, Nigerians are indigenes of ever smaller units of territory; and with the constitutional changes that have created these units, millions have found themselves instantly transformed into 'foreigners' in the only place of residence they have ever known. An indeterminate but undoubtedly large number of Nigerians are now in the situation where they can claim indigeneity in no state of the federation, leaving them in practice excluded from the benefits of citizenship in the only country to which they have any possible claim to those rights. To make matters worse, increasing ethnic tensions between 'indigenes' and 'settlers' in many states, coupled with pressure on jobs and economic opportunities, have resulted in more stringent enforcement of the rules discriminating against non-indigenes in recent years.

A range of Nigerian civil society organizations, including the Citizens' Forum for Constitutional Reform, have lobbied for years for an end to the official and unofficial policies of discrimination in effect, including drafting specific constitutional amendments to ensure this result. In 2004, a group of Nigerian senators sponsored a Residency Rights Bill that would have prohibited discrimination against non-indigenes who had lived and paid taxes in their state of residence for at least five years (with an exception related only to 'traditional heritage'; presumably such matters as chieftaincy titles).⁸ The bill was never adopted, and with new elections in 2007 would need to start its passage through the National Assembly from the start.

Ethiopia

When the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) came to power in 1991, following a long war of rebellion against the highly centralized military Derg regime that had taken power in 1974, it made it one of its priorities to give political influence to minority ethnic groups. One of the first acts of the new government was even to allow the creation of the new country of Eritrea; much as it came to retreat on many aspects of that commitment later on (see Chapter 3 above). The preamble of the

1994 constitution, adopted after Eritrea was already independent, states that ‘the Nations, Nationalities and Peoples of Ethiopia’ proclaim their commitment to respect peoples’ fundamental freedoms and rights, as well as those of the individual. The country was divided into nine states, essentially on the basis of language and ethnicity, each with ‘equal rights and powers’, interacting within a federal structure; and any group within those states is given the right to mobilize to create a new state within the federation, or even to claim the right to secede.⁹ Each state, irrespective of population or territorial size, is represented in the House of the Federation, one of the two chambers of the federal parliament, by at least one representative.

The new states were given wide-ranging political and administrative powers, including the power to ‘determine their respective working languages’. So, for example, the largest of the nine states, Oromia State, uses its own Oromo language for educational and administrative functions. Other states have also adopted a similar policy to a varying degree. Although Amharic is the working language of the federal government, all state languages are to enjoy equal recognition and each state may determine its own working language.¹⁰

Although the Ethiopian federal structure has considerably empowered millions of previously neglected or oppressed ethnic groups, it has – as in Nigeria – created a class of people who are not regarded as having full rights in the region they live in, even though they are Ethiopian citizens. The adoption of the new constitution also led to the second massive wave of internal displacement in Ethiopia in recent history. The first displacement took place following the 1974 popular revolution, when a military regime took power and nationalized all land in the country and returned possession to the peasants. As a result of this measure, tens of thousands of former landlords, most of whom ethnically belonged to the northern half of the country, were dispossessed and expelled. They received no compensation for the property they had to leave behind. The second wave of displacement occurred at the end of 1990s with the introduction of ethnic-based federalism

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and the independence of Eritrea. In some parts of the country, individuals who did not belong to the dominant ethnic group in the region felt unwelcome and left, often leaving behind all their belongings. Many of the displaced took refuge in Addis Ababa and other major towns, adding to the huge army of urban unemployed.