

SELF-DETERMINATION AS A RIGHT OF THE MARGINALIZED IN NIGERIA: A MIRAGE OR REALITY?*

Abstract

The world over, agitations for self-determination, whether internal or external (secession), are intriguingly recurring phenomena. The existence of some form of lingual, racial, religious, economic, cultural differences, among others, is exploited as a basis for such demands. In Nigeria, there has been a handful of such demands that have slightly been quieted by the roller-coaster spinning of political power; however, they keep coming back like a nightmare. The question at this point is, do the movements agitating for external self-determination qualify to assert this right under Nigerian municipal law or international law? This work contends that since the Nigerian constitution does not guarantee the right to external self-determine; and the more so that there is arguably no legal remedy for them under international law (their peoples' human rights not having been aggressively oppressed like the case in Southern Sudan and Kosovo) it is a questionable right in this context.

INTRODUCTION

The concept 'self-determination' is a complex, loaded term. As Dakas aptly remarks, '... like chameleon its colour changes with profile of those who invoke it.'¹ Similarly, some writers have asserted that '[I]t has throughout the history meant different things to different people and continues to do so today.'² Historically and from the viewpoint of pragmatism, the concept of self-determination catapulted the American and French revolutions in the 18th century as well as '... the creation of individual nation states out of the ruins of the Austria – Hungarian and Ottoman Empires.'³ In particular, prior to the Bolshevik revolution in Russia,

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¹ D C J Dakas, 'The Right to Self-Determination and The Spectre of Balkanization of Post-Colonial African States: The Challenges of Nationhood and Imperative of Good Governance In Nigeria' (Nigerian Bar Association, Jos branch, annual law week, at Crest Hotel & Garden, Jos, November 25-27, 2009) 2.

² RS Jaffrey and K Tripathy, 'Kosovo's Right to Self-Determination: A Critical Analysis' (2013) 1 (1) Galgotias Journal of Legal Studies 117.

³ D Kumbaro, 'the Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention (for north atlantic treaty organisation office of information and press 2001) 8.

Joseph Stalin and Vladimir Ilyich Lenin, drawing inspiration from the ideology of Marxism and communism, championed the cause of self-determination as an instrument for challenging imperialism and ushering in radical social, economic and political transformation. Similarly, the former U.S. President Woodrow Wilson espoused self-determination in 1918 (during the World War I era) as a tool of nationalism to press for freedom for peoples ruled by the Germans and the Hasburgs (Hapsburgs)⁴.

As if compelled by some sheer force of customary international law, the United Nations (UN) Charter regime codified self-determination as a principle of positive international law.⁵ Indeed, in the *Western Sahara case*⁶, the International Court of Justice (ICJ) held that the principle of self-determination was part of customary international law.

The dimensions of self-determination cover demands by political, racial, ethnic, linguistic, cultural and religious groups. These clustered variables have, in turn, created unresolved contradictions on how, when and to what extent, the right should be exercised. At the political level, an even more controversial variant exists: whether there is a right to external self-determination, otherwise known as 'secession'. If there is, how would this right be exercised, given the long cherished principles of sovereignty and territorial integrity of states, including the South American doctrine of *uti possidetis*, adopted by the conference of African Heads of State in July 1964 - the Cairo Resolution⁷? Also, the ICJ reaffirmed the principle of *uti possidetis* in the case of *Burkina Faso/Mali*.⁸

International treaties tend to favour a moderate version of self-determination, which apparently does not recognize or authorize secession. It posits that self-determination shall be exercised only in the contexts of colonial occupation, trust and non-self-governing territories.⁹ Thus, the right of self-determination does not extend to the peoples of an integral part of a sovereign state, because allowing this right primarily results in secession¹⁰. This is

⁴ W Danspeckgruber and A Gardner, 'Self-Determination' Encyclopedia Princetoniensis, <pesd.princeton.edu/...> accessed 6 June 2014; Steven W Sowards, 'The Legacies of 1917 and 1919' (Twenty-Five Lectures On Modern Balkan History: The Balkans in the Age Of Nationalism; Lecture 16, 25 February 1997) <http://staff.lib.msu.edu/sowards/balkans/...> accessed 5 June 2014; Jaffrey and Tripathy (n 2) 117; SP Ramet, 'Profit Motives of Secession' (1998) Society, 27.

⁵ See Arts. 1 (2), 55 and 56 of UN Charter.

⁶ ICJ Reports 1975, 56.

⁷ Dakas (n 1) 9; UO Umzurike, *Introduction to International Law* (Spectrum 1999) 75.

⁸ ICJ Reports 1986, p. 565.

⁹ See e.g. DJ Harris, *Cases and Materials on International Law* (6th edn, Sweet & Maxwell 2004) 362.

¹⁰ H. O Agarwal, *International Law and Human Rights* (17 edn, Central Law Publications 2010) 362; DS Kapoor, *International Law & Human Rights* (18th edn, Central Law Agency 2011) 500; Nina Caperson, 'From Kosovo to Karabakh: International Responses To De Facto States' *Sudosteuroopa*, 56(1) 4. See also the advisory opinion of the ICJ in *The Legal Consequences for States of the Continued Presence Of South*

in keeping with the maintenance of territorial integrity of sovereign states. To 'worsen' the matter, '[t]he vast majority of the world's sovereign states do not recognize any right of secession in their domestic constitutions.'¹¹ But current practice by the international community seems, generally, to be tilting towards a pragmatic approach to issues of secession, notwithstanding glaring treaty and constitutional stipulations to the contrary. This is evident by the wave of self-determination blowing across Europe, Africa, Asia, and Latin America, some of which have successfully produced independent entities with international support and recognition. In the *Reference Re: Secession of Quebec case*¹², while acknowledging that self-determination should be exercised by peoples within the framework of existing sovereign states 'consistently with the maintenance of territorial integrity of those states', the Canadian Supreme Court added that the right to unilateral secession 'arises only in the most extreme cases and, even then, under carefully defined circumstances'. What are those 'carefully defined circumstances'? This is not explicitly stated; but it could mean those circumstances when a people have been gravely deprived of right of participation in the economic, social and cultural affairs of their country, or their rights have been egregiously violated, and all efforts to seek redress have failed. This has to be shown as a matter of fact. But in Shaw's view, '[T]he situation of secession is probably dealt with in international law within the framework of a process of claim, effective control and international recognition.'¹³

The unilateral declaration of independence of Kosovo in central Europe, which the International Court of Justice upheld as valid, is a strong indication that international law is shifting its ground from the traditional position of self-determination (restricted to colonization and foreign occupation, or at best, internal reforms and autonomy) to right of secession in non-colonial or post-colonial contexts. This paradigm shift might well be impetus for secessionist/separatist movements to push on with their agitations for independence.

The focus of this research article is to analyze how the concept of self-determination has evolved; its variants and how pragmatism and judicial determinations have shaped the concept over time. The work covers legal provisions of some major international instruments

Africa In Namibia (South West Africa) Notwithstanding Security Council Resolution 276, 1970, ICJ Rep 1971, 16; advisory opinion of the ICJ in the *Western Sahara Case*, ICJ Rep 1975.

¹¹ A Kreptul, 'The Constitutional Right of Secession in Political Theory and History' (2004) 17(4) *Journal of Liberation Studies*, 71; S 2 (1) of the Constitution of the Federal Republic of Nigeria 1999 states this in unambiguous terms.

¹² (1998) 161 DLR (4th) 385, 436,438: cited in MN Shaw, *International Law* (6th edn, Cambridge University Press 2008) 523.

¹³ Shaw, *ibid.*

on self-determination. It also discusses some factors that have fueled self-determination movements and juxtaposing them with the yet-to-be-realized cases of self-determination calls in Nigeria. Furthermore, it takes a brief survey of some important secession cases and responses by the international community to those secessionist movements. The final part probes into the propriety and workability or otherwise of prohibition of right of self-determination brandished in some national constitutions and the implications of this for development of judicial activism and in light of vagaries of international politics concerning recognition of states. Recommendations are proffered for the attention and necessary action of groups, national governments and international organizations.

CONCEPTUAL CLARIFICATION AND DEFINITIONS OF OPERATIONAL TERMS

Self-Determination

'Self-determination' is defined as 'the right of a country and its people to choose their own government and political systems.'¹⁴ But this definition does not reckon with the concept of external self-determination, which connotes 'secession'. As was noted in the introduction, the original, orthodox position of self-determination was to enable colonial peoples to achieve independence from colonial rules or foreign occupation. However, some writers have stated that the fundamental purpose of self-determination is the democratization of government and that it can be exercised through confederation, asymmetric federalism, unitarism, self-government, association, autonomy, minority rights or other forms of political relations acceptable to the people¹⁵. Similarly, in the case of *Katangese Peoples' Congress v Zaire*¹⁶, the African Commission on Human and Peoples' Rights mentioned similar ways by which self-determination can be exercised.

Whereas self-determination is supposed to be protective of the territorial integrity or political unity of sovereign and independent states (as stated in the Declaration on Principles in International Law Concerning Friendly Relations and Cooperation among States in Accordance with Charters of the United Nations¹⁷), Umozurike has argued that there are situations when self-determination should override sovereignty, which is in a situation when

¹⁴ A. S Hornby (ed), *Oxford Advanced Learner's Dictionary Of Current English* (7th edn, OUP 2006) 125.

¹⁵ Umozurike (n 7) 52-3; CB Athrens, 'Chechnya and the Right Of Self-Determination' (2004) 42 Colum. J. Transnat'l L. 575; Danspeckgruber And A Gardner (n 4).

¹⁶ Comm. No. 75195 (1995). See also Communication No. 266/2003: *Re: Kevin Ngwane Ngumne and Co. Acting on Their Behalf and on Behalf Of The Representatives of Southern Cameroons Nation Council (SCNC) and Southern Cameroons Peoples Organisation (SCAPO): Southern Cameroons v. La Republique Du Cameroun*, African Commission On Human and Peoples' Rights, Decision on 27 May 2009.

¹⁷ Res. 26- 25 (xxv) of 24 October 1970.

the majority or minority insists on committing international crime, or enforces denial of human rights, as a deliberate policy against the other party, in the form of pogrom: the oppressed party may, in that instance, have recourse to secession¹⁸. In other words, secession is an option of last resort when gross abuse or violation of human rights is in issue.¹⁹ The ubiquity of the agitations for self-determination calls for a rethink of the concept in international relations and in state practice beyond the context of decolonization. However, this should also be handled with care because the same 'peoples' who unite today to fight for self-determination would explore other differences among them to warrant another quest for the agitation by a group within the 'peoples'.

Ozei views self-determination as '... the process in which people determine their own political status. This almost always entails territorial consideration'.²⁰ Key in this definition is the fact that the concept 'self-determination' is a process; that the determiners of the right are 'peoples' and what they determine or are entitled to determine is their 'political status'. Self-determination is a struggle that may not be achieved immediately on demand. Thus, it is a process that may take some time to achieve. The holders of the right are 'peoples'. But the definition of 'peoples' has not been given by the conventions. To confine the goal of self-determination to 'political status' is too restrictive as this captures only the political aspect of it. The meaning of the concept extends to economic, social and cultural matters, as found in the International Covenant on Economic Social and Cultural Rights (ICESCR).²¹

Sterio sees self-determination (in the context of a minority group) to involve simply political and representative rights with a central state, on the one hand, or may amount to remedial secession and ultimately independence on the other hand.²² Here, self-determination is depicted to have both internal dimension and external dimension, with the latter working as a remedial option.

A working definition may be suggested as follows: self-determination as a concept under international law is a right granted to peoples or groups to determine their political, economic, social and cultural rights, exercised through various ways within the context of a state entity, with an option of secession in exceptional cases of egregious violations of rights.

¹⁸ Umozurike (n 7) 53.

¹⁹ Ibid. 53-4; M Sterio, 'On The Right To External Self-Determination: "Selfistans" Secession and the Great Powers' Rule' (2009) Cleveland-Marshall College of Law, Cleveland State University Research Paper, 3, 7.

²⁰ ME ozei, 'Self-Determination and the Right to Secession' (2004) the International Political Review <www.theinternationalpoliticalreview> accessed 6 June 2014.

²¹ Agarwal (n 10) 361. The ICESCR was adopted in 1966 and entered into force on 3rd January 1976.

²² Sterio (n 19) 2, 3, 7.

Secession

'Secession' is a variant of self-determination and means the separation (withdrawal, dissociation or dismemberment) of one entity from another. It '...occurs when part of an existing state separates from that state to become a new state or to join with another.'²³

Danspeckgruber and Gardner say secession has to do with '...choices regarding the exercise of sovereignty and independent external relations (external self-determination).'²⁴ A state secedes if it pulls out of a parent state to form an independent entity (as in the recent case of South Suddan) or to join or merge with another state (as seen in the case of Crimea seceding from Ukraine and joining Russia). Secession is the result of exercise of external self-determination.²⁵

Sterio conceives secession under international law to refer to separation of a portion of an existing state, whereby the separating entity either seeks to become a new state or joins yet another state, and whereby the original state remains in existence without the breaking off territory.²⁶ The author rightly describes secession as external self-determination - the most drastic right to self-determination which accrues to minority groups to remedially secede. According to him, the right to remedial secession has perhaps crystallized as a norm of international law²⁷ - a view shared by Ozei.²⁸ Furthermore, the author says the concept of external self-determination is linked with international law concepts such as statehood, recognition, sovereignty and intervention. Accordingly, he has identified four criteria as necessary for an entity to fulfill in order to have its quest validated by the international community: it has to show by the relevant people that it has been oppressed; that its central government is relatively weak; that it has been administered by some international organization or group; and that it has garnered the support of the most powerful states on our planet - i.e. the 'Great Powers.'²⁹ He further contends that the fourth criterion is the most crucial one, given the great influence of the Super Powers on smaller states, but laments that this scheme '...mixes the legal with the political realms'; and that '...any rule by the Great Powers inherently challenges the notion of state sovereignty and equality.'³⁰

²³ Shireen and Tripathy (n 2) 116.

²⁴ Danspeckgruber and Gardner (n 4).

²⁵ Agarwal (n 10) 361.

²⁶ Sterio (n 19) 2.

²⁷ Ibid. 7.

²⁸ Ozei (n 20).

²⁹ Ibid. 3, 10, 24-8.

³⁰ Ibid. 3.

In fact, it is not only self-determination that attracts politics, but rather international law itself is influenced by, or interlaced with, politics. Sterio's mention of 'minority' group as the holder of right to secede may not be totally correct. As Umozurike has observed, secession may also involve 'majority' that is oppressed by a 'minority'. The power configuration in a given entity partly determines whether it is the majority group or minority group that has the capacity to oppress the other. Hence, there is a quantitative or qualitative minority/majority outside the limited context of demographic construct.

At least, within the European Union (EU) context, an entity applying for statehood, in addition to meeting the basic criteria of statehood, has to prove that it guarantees or has respect for the UN Charter and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, particularly with regard to rule of law, democracy, and human rights, including rights of ethnic and national groups and minorities (as contained in the declaration of EU Foreign Ministers on the Guidelines on the Recognition of States in Eastern Europe and the Soviet Union).³¹ The Arbitration Commission, EU Conference on Yugoslavia (the Badinter Commission) 1992, reaffirmed the EU's additional criteria for recognition of new states and added to the requirement of respect for human rights, another requirement, which is 'democratization'.³²

1.1.3 THE 'SELF' IN SELF-DETERMINATION

The holders of right to self-determination are called 'all peoples'. But the definition of 'all peoples' is not provided. Two possibilities have been suggested: It refers to the population in a state, or it refers to 'states'.³³ The 'peoples' are those of trust territories and colonial non-self-governing territories.³⁴

Those who are amenable to the thesis that external self-determination applies in both colonial and non-colonial (post-colonial) settings hold that 'peoples' refer to ethnic, racial, linguistic or religious groups.³⁵ Accordingly, such groups are entitled to secession if their rights are egregiously violated and all reasonable attempts to correct it have failed. Otherwise, the word 'peoples' refers to (totality of) population in a colonial or trust territory. It has been argued that for a people to qualify for self-determination, the following must be fulfilled: (1) it constitutes a 'people', (2) who have been systematically oppressed, (3) and have been denied

³¹ 31 ILM 1486 (1992); Sterio (n 19) 11- 12.

³² Sterio, *ibid.* 12 at footnotes 75.

³³ Agarwal (n 10) 361.

³⁴ *Ibid.*

³⁵ H Quane, 'The United Nations and the Evolving Right to Self-Determination' (1998) 47 *International Comparative Law Quarterly*, 537.

self-determination within the existing state, (4) who freely choose to secede, and (5) respect the rights to self-determination of other minorities. This proposal offers a last-resort way for a victimized people that have been denied its rights under international law to exercise self-determination.³⁶

1.1.4 UTI POSSIDETIS JURIS (IURIS)

The term *uti possidetis juris* (usually shortened to *uti possidetis*) is a doctrine or principle of customary international law ‘that serves to preserve the boundaries of colonies emerging as States.’³⁷ Literally, it means ‘as you possess under the law’; or ‘... as you possess, so you will continue to possess.’³⁸ The doctrine emerged in order to keep off European powers from re-colonizing the former (i.e. decolonized) Spanish territories of South America or unoccupied parts thereof.³⁹ Although the doctrine originated in Latin America, it eventually became a doctrine of international law on self-determination, generally adopted or applicable across the world (with modifications where necessary) ‘except where special circumstances dictate a different solution as in plebiscites.’⁴⁰ The Organization of African Unity (OAU) (predecessor of the African Union (AU)) adopted the doctrine, preserving the colonial boundaries inherited at independence and thus preventing a situation that might have caused the newly-independent African States to engage in fratricidal struggles. That although the colonial boundaries had been arbitrarily drawn, they should not be altered, as doing so would open up conflicts that could scuttle African unity and divert attention from tackling the problem of underdevelopment. Those who lay claim to territories then had to prove it by evidence and not to just claim it as of right. According to Shaw (buttressing the concept of *uti possidetis*):

[the] practice in Africa has reinforced the approach of emphasizing the territorial integrity of the colonially defined territory, witness the widespread disapproval of the attempted creation of states whether in the former Belgian Congo, Nigeria or Sudan.

By the mention of ‘Nigeria’, what quickly comes to mind is ‘Biafra Republic’, the realization of which is still a mirage. But will that always continue to be the case? Only time will tell.

³⁶ To Break Free from Tyranny and Oppression: Proposing a Model for a Remedial Right to Secession in the Wake of the *Kosovo* Advisory Opinion

³⁷ Cornell University Law School, ‘Uti Possidetis Juris’ <www.law.cornell.edu/wex/uti_possidetis_juris> accessed 21 January 2015.

³⁸ Umozurike (n 6) 76.

³⁹ Ibid.

⁴⁰ Ibid.

After all, initially, South Sudan's case was also a mirage, but eventually, independence was realized after many years of mainly bloody struggle.⁴¹

SELF-DETERMINATION AND THE MARGINALIZATION RHETORIC IN NIGERIA

In post-independence Nigeria, as in most other modern states, the clamour for self-determination as a right of 'peoples' is/has been gathering momentum. As early as 1967 the very foundations of Nigerian unity and statehood were challenged by the Biafran struggle whose intent was to secede from the Nigerian state and form the Republic of Biafra. Today, over four decades after the botched attempt, the agitation for self-determination by the masterminds of the Biafran struggle has not abated. Thus, the activities of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) in recent times are a testimony to this.⁴² Similarly, the emergence of other entities such as the Movement for the Emancipation of the Niger Delta (MEND) and the Movement for the Survival of the Ogoni People (MOSOP) represents variants of the struggle for self-determination in contemporary times.

In view of these developments, the issue now is not whether there exists a right of self-determination in post-independence contexts, at least under international law, but how to realize it under the extant legal instruments. We have lingered on that debate for too long, and there is now an emerging climate of opinion⁴³, to which we subscribe, that self-determination as a right of peoples is not limited to colonial struggles but is applicable even in post-colonial situations in certain circumstances. The issue, for us, concerns the factors that fertilize the agitations for self-determination in Nigeria, on which there has been an avalanche of

⁴¹ South Sudan's independence was achieved on 9 July 2011 after the people had voted in a referendum. See LJW Wuor, 'The Causes of Sudan's Break Up and the Future of South Sudan' <www.southsudan.net/thecauses.html> accessed 21 January 2015; New York Times, 'After Years of Struggle, South Sudan Becomes a New Nation' *New York Times* (New York, 9 July 2011) <www.nytimes.com/2011/07/10/world/africa/10sudan.html?_r=0> accessed 21 January 2015.

⁴² Even recently, an illegal Radio Biafra emerged into the Nigerian airwaves and operates from an unknown address, mobilizing support for the actualization of sovereign Biafran state from the Nigerian state, claiming the marginalization of the Igbos as the rationale for their campaign for self determination. See LC Nwobu, 'Radio Biafra, the One Nigeria Scam and the Absence of Nation Building' <<http://nigeriamasterweb.com/Masterweb/breakingnews-27715-radio-biafra-one-nigeria-scam-and-absence-nation-building>> accessed 29 July 2015.

⁴³ See, for instance, UO Umzurike, *Introduction To International Law*, (2nd edn, Spectrum Books Ltd., Ibadan 1999); AA Idowu, 'Revisiting the Right to Self-Determination in Modern International Law: Implications for African States' (2008) 6(4) *European Journal Of Social Sciences*; J Klabber & R Lefeber., 'Africa: Lost Between *Uti Possidetis* and Self-Determination' in C Brolmann, et.al., *Cases and Materials in International Law* (Martinus Nijhoff Publishers, 1993) 43-44, cited in Umzurike.

opinions.⁴⁴ For the purpose of this discourse, the factors are broadly classified into three: economic marginalization, imbalances in the political power structure of the nation, and identity related issues. This work would attempt to discuss the issues broadly under these three headings identified above.

Economic Marginalisation

In Nigeria's national politics today, issues bordering on economic participation always take the centre stage. Discourse on national issues are not without reference to words like, 'fiscal federalism', 'derivation formula', revenue sharing, etc because of the centralized nature of revenue generation and distribution among the three tiers of government. The constituent tiers of government rely heavily on revenue from the central government to meet their budgetary expenses, including even salaries of workers.⁴⁵ At the end of every month, a meeting of states and the federal government is convened for the main purpose of sharing money from the consolidated revenue account, about 80% of which is from oil and related tax.⁴⁶

This has been a subject of objection by the oil producing states. Okeke has opined that:

Since the early 1970s, the main focus of political agitation in the South-South has been revenue allocation. Individuals, associations and governments of the oil-producing states have been campaigning for a greater share of the country's oil wealth. Derivation (allocating revenue in a way that returns a high proportion of revenue to the region or state where it is derived) was a major principle of both vertical and horizontal revenue allocation in Nigeria before the 1970s... This was the period when solid minerals (mainly tin and coal) and export crops were the leading

⁴⁴ Jonathan Berg identifies them as geographical, social, and political factors. See J Berg, 'The Right to Self Determination' (1991) 5(3) Public Affairs Quarterly 211, 213 <<http://www.jstor.org/stable/40405587>> accessed 26 January 2015.

⁴⁵ Governors recently at a meeting with the newly sworn in President Muhammadu Buhari asked for a financial bailout to enable them meet them pay salaries to their workers. See C Okocha and O Ezigbo, 'Governors Meet Wednesday, Seek Bailout to Pay Salaries' *Thisday* (Lagos, 17 June 2015) <<http://www.thisdaylive.com/articles/governors-meet-wednesday-seek-bailout-to-pay-salaries/212244/>> accessed 29 July 2015. Some state governments owe salaries for up to six months. See O Gabriel, '18 States Bankrupt, Can't Pay Workers' Salaries' *Vanguard* (Lagos, 29 June 2015) <<http://www.vanguardngr.com/2015/06/18-states-bankrupt-cant-pay-workers-salaries/>> accessed 29 July 2015.

⁴⁶ US Energy Information Administration <www.eia.doe.gov/Z:/News-CABs/V6/Nigeria/Full.html> last accessed 14 June 2009; Ejobowah, B.J., "Who Owns the Oil? The Politics of Ethnicity in the Niger Delta of Nigeria" (2000) 47/1 *Africa Today* 29, 33 <<http://www.jstor.org/stable/4187306>> last accessed 2nd December, 2009.

sources of revenue. About 50% of federally collected revenue was shared on the basis of derivation.⁴⁷

The Nigerian constitution, adopting the *domanial* natural resources ownership system, vests the ownership of all mineral resources in the federal government, and further makes provision for 13% derivation revenue in favour of any state from which the resources are exploited.⁴⁸ During the 2014 national conference convened by the federal government, the delegates could not agree on an appropriate derivation formula, and had to refer it back to the federal government to determine same. The sensitive nature of this issue set the delegates of the regions against the others, hence the deadlock.⁴⁹

Suffice it to say at this point, as Obehi rightly argues, ‘the failures of successive governments to encourage genuine power sharing have sparked dangerous rivalries between the centre and the thirty-six states over revenue from the country’s oil’⁵⁰. The problem of resource sharing is most acute in the oil-rich Niger Delta Region from where there has been an incessant clamour for absolute control over the oil resources in the country in a manner that clearly suggests external self determination. Over the years, there has been “a deep sense of alienation and dissatisfaction felt by the...Niger-Delta region”⁵¹, engendered by a feeling that their environment is degraded and their wealth explored to support the federal government and the northern states. In 1998, for instance, the Izon Youth Council, an Ijaw militia group, proclaimed the Kaiama Declaration, calling for self-determination and demanding an end to oil exploration activities, an act which resulted in a war between the federal government and the Ijaw ethnic militias.⁵²

⁴⁷ EO Okeke, 'The South-South and the National Conference of 2014' (2015) 4(1) International Journal of Arts and Humanities 98 at 99.

⁴⁸ See section 44(3) and proviso to section 162(2) of the 1999 constitution of the Federal Republic of Nigeria, Cap. C23, Laws of the Federation of Nigeria, 2004.

⁴⁹ This was not an isolated case as the previous conference (National Political Reform Conference) organized by the Obasanjo government in 2005 faced a similar deadlock on issues including derivation formula and tenure of office for the president, hence it adjourned *sine die*. See The National Conference 2014, *Final Draft of Conference Report*, 43 and 44 <<https://www.premiumtimesng.com/national-conference/wp-content/uploads/National-Conference-2014-Report-August-2014-Table-of-Contents-Chapters-1-7.pdf>> last accessed 29 July 2015.

⁵⁰ OS Okojie, 'Between Secession and Federalism: The Independence of South Sudan and the Need for a Reconsidered Nigeria' (2013) 26 Global Business and Development Law Journal 416 at 423.

⁵¹ *Ibid.*, at 424

⁵² See AN Thomas, 'Beyond the Platitude of Rehabilitation, Reconstruction and Reconciliation in Nigeria: Revolutionary Pressures in the Niger Delta' (2010) 12(1) Journal of Sustainable Development in Africa 54-71

In spite of these agitations, ‘the application of the violence formula [punitive remedies] by the state apparatus has failed...’⁵³ Furthermore, government has adopted different palliative measures aimed at addressing the issue, to no avail. On this, Thomas writes that:

The palliative policies and declarations by the state in setting up of the Willink’s Commission, the institutionalization of the Niger Delta Development Board (NDDDB), the creation of the old Rivers State, the institutionalization of the Oil Mineral Area Producing Commission (OMPADEC), the Niger Delta Development Commission (NDDC), the operation of the derivation formula and other interventionist agencies and programs have failed to assuage the grievances of the Niger Deltans, as such policies are usually politicized not to address the cardinal agitations of the people.⁵⁴

Perhaps, it is germane to add that, even though the institution of the amnesty programme by the Yar’Adua Government and the subsequent creation of the Ministry for Niger Delta Affairs have achieved relative peace in the region, the agitation for self determination still remains potent and even rife, as evident from the spate of violence that still occurs in that region.

Imbalances in the Political Power Structure of the Nation

The Olusegun Obasanjo government had, due to pressure from civil society, eminent Nigerians, and representatives of the various ethnic nationalities for the convocation of a Sovereign National Conference, convened instead a National Political Reform Conference from February-July 2005. The major issues set down for deliberation and reform were: the federal structure, fiscal federalism (resource control), form of government, citizenship, accountability and ethics in government, the electoral system and political parties, the economy, foreign policy and the environment.⁵⁵ In addition to setting out the agenda of the said Conference by the former President, the scope of the agenda was also limited by announcing some ‘no-go areas’ to include the unity of the country, federal character, religion, separation of powers and the fundamental objectives and directives principles of state policy enshrined in Chapter II of the Constitution.⁵⁶

⁵³ Ibid at 67.

⁵⁴ Ibid.

⁵⁵ The National Conference 2014 (n 49) 20. This conference failed to achieve its purpose as it could not agree on a derivation formula and the contentious issue of the tenure of office for the president made it to adjourn *sine die*. For details on the Political Reform Conference, see K Ajayi, ‘From the Demand for Sovereign National Conference to National Dialogue: The Dilemma of the Nigerian State’ (2006) 4(2) Stud. Tribes Tribals 123-130.

⁵⁶ Ajayi, *ibid.*, at 127.

This aroused the curiosity of many people as to the intent of the National Political Reform Conference itself. Considering the centrality of the issues exempted from the agenda of the Conference, in the sense that they are 'vexatious issues, which have persistently undermined harmonious ethnic relations, and the stability and unity of the nation',⁵⁷ the sincerity of the government in convoking the dialogue was undoubtedly suspect. Little wonder, the Conference was dogged by the singular issue of tenure elongation for the executive and just ended up like a tea party, indicating clearly that the government, from the onset, had vested interest in the agenda and eventual outcomes of the Conference's deliberations. As a result a notable group of personalities under the aegis of Pro-Sovereign National Conference (PRONACO) rejected the Conference and its outcome.

Consequent upon the failure of the above conference, the Goodluck Jonathan government in obeisance to continuous calls for a national conference convened the National Conference in 2014. The conference's term of reference included issues which were subject of deliberations by the 2005 conference convened by the Obasanjo government. They include: devolution of powers, fiscal federalism, inclusive and participatory democracy, political parties and electoral system, socio-economic challenges, among others.⁵⁸

Like its predecessor, the 2014 conference was made up of delegates carefully selected and approved by government. Again, it was perceived largely as an attempt by the former president to garner support for his second (or third?) term ambition.

As things stand presently, there are some segments of the country that still feel that the political power structure of the nation is lopsided and therefore favours others against themselves. But whether this is the case and meets the threshold of exclusion and oppression to qualify for self-determination remains to be seen, as the ensuing portion of this work amply demonstrates. The intriguing nature of power 'rotation' in Nigeria has basically quieted some interest groups and their demand for secession. The entire southern part of the country on return to democracy in 1999 insisted that the North had had more than a fair share of political power and it was time it moved to one of the regions in the southern part of the country. The most vocal region at the time for 'power shift', the South West, got the position of the President. Similarly, the South-South region's agitation was rewarded with the position of a Vice President in 2007 and later the position of the President. Furthermore, the 'core

⁵⁷ Ibid.

⁵⁸ See The National Conference 2014 (n 49) 43.

North' regained power at the centre in 2015 after losing out due to the untimely death of President Umaru Yar'Adua, who was from that part of the country.

Identity Concerns

Identity and related issues form another important basis for the agitation for self-determination by some ethnic nationalities in Nigeria. In this context, identity embraces issues relating to religion, ethnicity, culture, and geopolitical groupings, among others. The most sensitive of these being religion and ethnicity, given that religion represents a significant element of ethnicity and an important source of identity which informs the basis of group discrimination and grievances in particular nations⁵⁹, including Nigeria. The Jama'atu Ahlus-Sunnah Lidda'Awati Wal Jihad (*Boko Haram*) insurgents, for instance, have continually maintained their attack against the Nigerian state and its people and institutions on the claim of religious insensitivity to the core values of Islam, hence it could not reconcile its puritan Islamic claims with the current moderate recognition of Islamic precepts in politics, governance and legal framework, including the constitution. They believe that northern politicians are a gang of corrupt and false Muslims; hence they need to wage a war against them and the Nigerian state generally in order to create a "pure" Islamic state governed by the ideals of Sharia law.⁶⁰ This war against the Nigerian state and corrupt political elements in the Northern part of the country has resulted in the lost of over twelve thousand lives⁶¹ and property in billions of Naira and still counting. Religion (mainly Christianity and Islam) is so sensitive in Nigeria that as a convention, the President and the Vice President do not usually come from the same religion. Voting pattern in elections in the various states, especially presidential elections, usually follow the direction of the dominant religion.⁶² People in authority manipulate the political system to favour adherents to the same religion with them, and by so doing, discriminate against those who share different beliefs.

Another variant of this concern is ethnicity. Ethnic sentiments pervade political governance and related issues in Nigeria, even till date. Claude E. Welch Jr. has posited that:

⁵⁹ H Onapajo, 'Politics for God: Religion, Politics and Conflict in Democratic Nigeria' (2012) 4(9) The Journal of Pan African Studies 44 <<http://www.jpanafrican.com/docs/vol4no9/4.9PoliticsforGod.pdf>> last accessed 29 July 2015.

⁶⁰ PJ Peter, 'Boko Haram's Evolving Threats' (2012) A publication of the Africa Center for strategic Studies 1-8 quoted in AO Shuriye and S Huud, 'Global Challenge of Manual Suapicion: Boko Haram Uprising in Nigeria' (2013) 3(5) American International Journal of Contemporary Research 105 at 106; A Walker, 'What is Boko Haram?' United States Institute of Peace (Special Report, June 2012) 1 <<http://www.usip.org/sites/default/files/SR308.pdf>>

⁶¹ Premium Times, 'Boko Haram has Killed Over 12,000 Nigerians, Plans to Take Over Country, Says Jonathan' Premium Times (Lagos, 17 May 2015) <<http://www.premiumtimesng.com/news/160942-boko-haram-killed-12000-nigerians-plans-take-country-jonathan-says.html>> accessed 27 July, 2015.

⁶² H, Onapajo, (n 59) 56.

Despite many rounds of purported decentralization and division of large regions or states, power at the centre [in Nigeria] remains tightly grasped by a largely northern military elite. Ethnic dominance exists within individual states, and many smaller groups are disaffected, mainly because of their unresolved concerns about resources and power. The communal pressures that have characterized the Niger delta and many other parts of Nigeria are not only matters of ethnic self-determination but also complex expressions of economic and political disparities.⁶³

From Welch's position, these factors are obvious: non-inclusive political power structure, ethnicity, economic disparity, control over natural resources, and concentration of power at the centre. This institutionalized discriminatory practice is one of the bases for the insistence on self-determination by certain groups, for the fear of being dominated by another group as a result of their ethnic, religious differences. All constitutional and legal checkmates against this kind of discriminations have not yielded much result, as widespread instances of religious discriminations in government abound.

THE RIGHT TO SELF DETERMINATION UNDER NIGERIAN LAW

As rightly argued in the preceding segments of this work, and as reiterated by Mnyongani⁶⁴, '[s]elf-determination is a multifaceted concept which, depending on the situation, can mean independence, self-government, federalism, confederalism, unitarism or self-rule.'⁶⁵ But it is the right to self-determination that results in secession (i.e. external self-determination) that is the concern of the present analysis. Consequently, the legality or otherwise of secession is to be gauged by the provisions of the Nigerian Constitution.

First, the Preamble to the Constitution of the Federal Republic of Nigeria 1999, as amended, much avowedly proclaims the collective resolve of the people of Nigeria '[t]o live in unity and harmony as one indivisible indissoluble Sovereign Nation under God...' Section 2(1) fortifies this position when it provides in unequivocal terms that 'Nigeria is one indivisible and indissoluble Sovereign State to be known by the name of the Federal Republic of Nigeria'. In an earlier section, the Constitution proclaims its supremacy to the effect that '[t]his Constitution is supreme and its provisions shall have binding force on all authorities

⁶³ See C.E. Welch Jr., 'The Ogoni and Self-Determination: Increasing Violence in Nigeria' (1995) 33(4) *The Journal of Modern African Studies* 635 <<http://www.jstor.org/stable/161825>> accessed 26 January 2015.

⁶⁴ F. D Mnyongani, 'Between a Rock and a Hard Place: The Right to Self-Determination versus *Uti Possidetis* in Africa' (2008) 41(3) *The Comparative and International Law Journal of Southern Africa* 463at 473.

⁶⁵ *Ibid.*

and persons throughout the Federal Republic of Nigeria'⁶⁶. As a result of this supremacy, '[i]f any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void'.⁶⁷

It is glaring from the above provisions that the Nigerian Constitution forbids, in very clear and unequivocal terms, any attempt to assert the right to self-determination that has the potentiality to undermine its territorial integrity and result in secession. But notwithstanding this, Nigeria is a party to many international instruments, including the UN Charter that provides for the right to self-determination. Nigeria, for instance is a party to the African Charter on Human and Peoples' Rights. In relation to this treaty, Nigeria has not only ratified but has also domesticated same in terms of the requirement of section 12 of the Constitution⁶⁸ regarding domestic application. The Charter contains provisions that clearly allow the exercise of the right of self-determination by peoples. For the avoidance of doubt, the Charter provides that:

All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen⁶⁹.

In addition, paragraph (2) of article 20 of the African Charter categorically provides that '[c]olonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community' with all its varied connotations.

Ordinarily, by virtue of this domestication, the provisions of the African Charter, including of course those relating to self-determination, are enforceable in Nigeria in the sense that its citizens who, though not under any colonial bondage but under some kind of *oppression*⁷⁰, can leverage on them to achieve their yearnings and aspirations. But to what extent do the above provisions of the Charter as domesticated find expression in Nigeria considering the prohibitive provisions of the Nigerian Constitution x-rayed above? Happily, the status of the African Charter as domesticated vis-à-vis the Constitution has been determined by the

⁶⁶ See s 1(1) of the Constitution (n 48).

⁶⁷ S 1(3) *ibid*

⁶⁸ See Cap A9 Laws of the Federation of Nigeria, 2004.

⁶⁹ Art. 20(1)

⁷⁰ It is noteworthy that the Charter makes reference to 'oppressed peoples'

Nigerian Supreme Court in the case of *Abacha v Fawehinmi*⁷¹. The position of the Supreme Court, with which we agree, is that although the African Charter as domesticated has international flavour, being the codification of an international treaty, its provisions do not override those of the Nigerian Constitution. Conversely, it is submitted that the Constitution would prevail in the event of any conflict between them, because the Charter is a Nigerian law only by virtue of the permissive provisions of section 12 of the Constitution itself. It would be preposterous, we submit, to suggest otherwise.

In light of this reality, it would be unconstitutional to assert the right to self-determination by way of secession or unilateral declaration of independence under the pretext that the African Charter has domesticated the right to self-determination. It would appear that the only form of self-determination permissible under the Constitution would be an arrangement short of secession, for example, autonomy or devolution of more powers to the constituent units. In this connection, Weller⁷² suggests ways through self-determination claims can be settled short of secession. These include trading self-determination for autonomy or enhanced local self-government; regionalism, federalization, or union with confirmation of territorial unity; balancing self-determination claims; deferring a substantive settlement while agreeing to a settlement mechanism; supervised independence, etc.⁷³

SELF-DETERMINATION UNDER INTERNATIONAL LAW

According to Malcolm Shaw, ‘...self-determination as a concept is capable of developing further so as to include the right to secession from existing states, but that has not yet convincingly happened.’ In any case, a right to self-determination under international law would be unenforceable in domestic courts.⁷⁴

It is important to emphasize that international law gives the principle of self-determination universal scope as a right belonging to undefined ‘peoples’ as are to be found in relevant of international treaties⁷⁵. In addition, on September 13, 2007, the United Nations General Assembly (GA) overwhelmingly adopted the United Nations Declaration on the Rights of Indigenous Peoples (DRIP), which recognized, inter alia, the rights of such peoples to ‘self-

⁷¹ (2000) 6 NWLR (pt. 660) 228.

⁷² M Weller, ‘Settling Self-Determination Conflicts: Recent Developments’ (2009) 20(1) European Journal of International Law 111- 165.

⁷³ Ibid at 115

⁷⁴ See I Halliday, *The Road to the Referendum on Scottish Independence: The Role of Law and Politics* 4 <http://www.abdn.ac.uk/law/documents/The_Road_to_the_Referendum_on_Scottish_Independence.pdf > accessed 9 March 2015.

⁷⁵ See articles 1(2), 55 and 56 of the UN Charter and article 20 of the African Charter on Human and Peoples’ Rights 1981.

determination', 'autonomy or self- government', and the development or maintenance of 'juridical systems or customs, in accordance with international human rights standards.'⁷⁶ A range of important international legal documents recognise the principle of self-determination. For instance, the principle is found in the 'Declaration of Friendly Relations'⁷⁷ and in the UN Charter⁷⁸, which acknowledges the principle of 'equal rights and self-determination of peoples'; International Covenant on Civic and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR).

But international law rejects any secession from independent states 'conducting themselves in compliance with the principle of equal rights and self-determination of peoples ...and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.'⁷⁹ Consequently, as an international concept, self-determination with external dimension is limited to colonial contexts, implying that it is only exercisable by peoples under colonial domination. In this connection, Musawa⁸⁰ submits that '[w]hile unilateral secession is not specifically prohibited it is clear that international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their parent states'⁸¹. She adds that 'self-determination is clearly acceptable for divesting states of colonial powers but the problems arise when groups not in solo occupation of a given defined territory choose to exercise self-determination'.⁸²

Because of the premium that international law places on the doctrine of *uti possidetis*⁸³, 'international law tends to lean towards territorial integrity in a clash with claims for ethnic, cultural and religious self-determination'⁸⁴. There are, however instances, as argued by Umozurike⁸⁵, where international law applies a different criterion in cases it considers extreme, such as where a state denies a group participation in the process of governance and violates their fundamental rights. In such instances, the territorial integrity of such state may

⁷⁶ CJ Fromherz 'Indigenous Peoples' Courts: Egalitarian Juridical Pluralism, Self-Determination, and the United Nations Declaration on the Rights of Indigenous Peoples' (2008) 156(5) University of Pennsylvania Law Review 1341-1381 <<http://www.jstor.org/stable/40041407>> accessed 26 January 2015.

⁷⁷ UN Friendly Relations Declaration, 1970: Article 1, Paragraph 7

⁷⁸ Charter Of The United Nations, 1945: Article 1, Paragraph 2

⁷⁹ D Sheldon, 'Self-Determination in Regional Human Rights Law: From Kosovo to Cameroon' (2011) 105(1) The American Journal of International Law 60 <<http://www.jstor.org/stable/10.5305/amerjintellaw.105.1.0060>> last accessed on 26 January 2015.

⁸⁰ H Musawa, 'Non-Right to Self Determination' *Sahara Reporters* (23 August 2013) <<http://saharareporters.com/2012/08/23/non-right-self-determination-hannatu-musawa>> accessed 26 July 2015.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Discussed supra.

⁸⁴ Ibid.

⁸⁵ Umozurike (n 7).

not be a paramount consideration⁸⁶. Article 20(2) of the African Charter on Human and Peoples' Rights appears to lend credence to this line of thought. It provides that '[c]olonized or *oppressed peoples* shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community'⁸⁷.

This appears to suggest that in an atmosphere of oppression perpetrated by a state, a segment of the people against whom this oppression is being perpetrated shall have the right to assert their self-determination. Unfortunately, what qualifies as oppression is not defined anywhere in the Charter. In a similar vein, the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations enjoins UN Member States:

[T]o continue to reaffirm the right to self-determination of all peoples taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right to self-determination⁸⁸.

The Declaration was, however, quick to caution that the exercise of the right to self-determination:

shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states *conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind.*⁸⁹

From this there is an inference that 'the general position in international law is that a sovereign state has a right to its territorial integrity only if it represent all of its peoples'.⁹⁰ For Africa in general and Nigeria in particular, this has been 'the core of the problem'.⁹¹ Many ethnic nationalities, parading as 'peoples' within the meaning of these instruments, often rise up to allege acts of oppression and violation of human rights as justification for the exercise of their right to self-determination. But in the specific case of groups clamoring for self-determination in Nigeria, are these allegations founded?

⁸⁶ See also Musawa (n 78).

⁸⁷ Italics supplied for emphasis.

⁸⁸ GARes50/60 UU GAOR, 50th, Sess Agenda Item 29, UN DocA/Res/50/6 (1995).

⁸⁹ Ibid.

⁹⁰ Mnyongani (n 64).

⁹¹ Ibid.

After a careful analysis of such claims by ethnic groups generally in Nigeria, Musawa⁹² concludes, in the specific context of the declaration by the Ogoni people of their self-determination some years ago, that:

...based on the set precedence of the international legal position that the Ogoni people seek to rely on, could their political autonomy from Nigeria succeed under the United Nations Charter? Given the fact that it would be difficult to argue that the Ogoni or Bakassi people meet the threshold of a colonial or an oppressed people or that they have been denied meaningful access to government to pursue their political, economic, cultural and social development, especially since the current [now former] president of the nation is a South-South indigene, their quest for self determination under the United Nations Charter would be unlikely to succeed.⁹³

We agree with the above view and it is on the basis of this that we undertake a comparative analysis of self-determination claims in other climes in the ensuing part of this paper in order to further ascertain the veracity and practicability of self-determination claims in Nigeria.

Furthermore, the ICJ's Advisory Opinion on the independence of Kosovo of 28 June 2010, the International Court of Justice (ICJ) stated that the United Nations has directly recognized the existence of a right to self-determination for peoples "subject to alien subjugation, domination and exploitation".⁹⁴

Additionally, though self-determination does not allow for the automatic right of secession, some scholars argue that a State's oppressive actions can lead to a rejection of the principle of territorial sovereignty in favor of self-determination as a justification for unilateral secession.⁹⁵

COMPARISON OF AGITATIONS FOR SELF-DETERMINATION IN NIGERIA WITH OTHER JURISDICTIONS

The recurring cry for self-determination by some ethnic nationalities in Nigeria is hereby considered in relation to similar agitations in some jurisdictions around the world.

⁹² Musawa (n 78).

⁹³ Ibid

⁹⁴ Government Of Catalonia, 'Internationalization Of The Poll And The Self-Determination Process Of Catalonia' <
http://presidencia.gencat.cat/web/.content/ambits_actuacio/consells_assessors/catn/informes_publicats/inf_4_angles.pdf> accessed 16 February 2015.

⁹⁵ H Jamar And MK Vigness, . 'Applying Kosovo: Looking To Russia, China, Spain And Beyond After The International Court Of Justice Opinion On Unilateral Declarations Of Independence' (2010) 11 (8) German Law Journal 921.

Scotland/United Kingdom

Scotland became part of the United Kingdom alongside England (and the Wales) as a result of the agreement of 1707⁹⁶ and is currently a self-governing territory within the United Kingdom.⁹⁷ Agitations for further devolution of powers to component units of United Kingdom resulted in the promulgation of the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Acts 1998 and 2006 which devolved powers to these self-governing entities, to thaw overbearing Westminster influence on local issues.⁹⁸ Furthermore, the Scotland National Party (SNP) insisted on self-determination with a view to independence from the United Kingdom to form an independent Scotland. One of their discontentments is with the lack of a codified constitution for the United Kingdom which allows Westminster to exercise too much power; hence the SNP promised a post independence Scotland a 'written constitution which expresses our values, embeds the rights of its citizens and sets out clearly how institutions of state interact with each other and serve the people.'⁹⁹

This quest for self-determination with a view to secession led to a referendum which was a product of agreement between Westminster and Holyrood (the Edinburgh Agreement¹⁰⁰). With the wind of the law behind their sail, the stage was set for the self determination of the future of the Scottish people as UK citizens or as citizens of a new Scotland.

On 19th September, 2014, a referendum was held in Scotland. The attempt to Scottish independence had 44.7 per cent voting 'YES' to independence and 55.3 per cent voting

⁹⁶ I Halliday, (n 74) 2; KA Kyriakides 'Scotland And The Slippery Slope From Devolution To The Independence Referendum And Beyond: Some Lessons To Be Learnt And Their Relevance To Cyprus And Its Fellow Member States In The European Union' Report, November 2014, 13.

⁹⁷ AM Loswick, 'Why Scotland and Catalonia Should not Become Independent in a Globalised World' <<http://www.goldmercury.org/wp-content/uploads/2014/02/Scotland-and-Catalonia-Independence-Report-Gold-Mercury-International-2014.pdf>> last accessed 29 July 2015.

⁹⁸ These legislation devolved powers on police, education, environment, transportation, sports, housing tourism among others to the states; while the United Kingdom parliament retained powers on issues pertaining to defence, energy, foreign affairs, immigration and the fiscal, economic and monetary system. See KA Kyriakides 'Scotland and the Slippery Slope from Devolution to the Independence Referendum and Beyond: Some Lessons to be Learnt and Their Relevance to Cyprus and its Fellow Member States in the European Union' Report, November 2014, 5 and 10.

⁹⁹ Scottish Government Publication 'Scotland's Future: From the Referendum to Independence and a Written Constitution' (February 2013) [1.4], in Halliday, (n 74) 7.

¹⁰⁰ The Edinburgh Agreement was signed on the 15th October 2012. The UK Government agreed to pass an Order in Council under section 30 of the Scotland Act, amending the Act and providing a 'clear legal base' for the Scottish Parliament to hold a referendum on Scottish Independence. This Order received consent from the Scottish Parliament and both Houses of the UK Parliament and came into force on 13th February 2013. Holyrood Subsequently passed two acts paving the way for a referendum on Scottish independence. as a result of political deliberation and compromise between the Scottish and UK governments, the law was changed and the dispute over the competence of the Scottish Parliament faded into political history. See I Halliday (n 74) 18.

'NO'.¹⁰¹ What however, might have scaled down the pro-independence agitation is the self-governing status of Scotland, the implications of independence on currency and trade with the rest of the UK and most importantly, the fear for commencing a new process for accession or membership of the European Union.

Juxtaposing this against the Nigerian situation, there is no constitutional guarantee for self-determination in the 1999 constitution (as amended)¹⁰². It would be unconstitutional for the central government, state government or any arm of government to negotiate the self-determination (with the intent to secede) of any part of the country via referendum or otherwise. That would require the amendment of the constitution. Apart from the advantage the United Kingdom's kind of devolution of powers has over Nigeria, the various component units were independent territories that agreed to come together under one roof to form a formidable state wherein their collective security and welfare is guaranteed.

However, the situation in Nigeria is clearly different. It was a composite arrangement initiated by the British colonial administration with the sole aim of simplifying the administration of the various nations and ethnic nationalities under one roof and giving it the name Nigeria.

Proponents of internal or external self-determination are always wont to harping their case on the diversity of the state or differences with the dominant (central) group as a basis for its agitation; or hinge it on the inefficiency or ineffectiveness of the present system or its players. The SNP used the same approach, though unsuccessfully, in swaying the support of the Scots to its side - to vote in favour of secession. The people were however fast to think of the implications of leaving the UK which by extension entails non-membership of the European Union (with unpredictable implications for international relations within Europe, and a tedious accession process), currency and trade issues between them and the remaining part of the United Kingdom, among other challenges and chose to keep the 1707 vows unaltered.

Catalonia/Spain

Catalonia became part of Spain consequent upon the marriage between King Ferdinand and Queen Isabella in 1469. It was the principal part of the Crown of Aragon, with enormous

¹⁰¹ Election Scotland, 'Scottish Independence Referendum 2014' <Www.Electionsscotland.info/> Last Accessed 3 February 2015.

¹⁰² Section 2(1) of the constitution provides that, 'Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria.' this provision does not give recognition for self-determination as a right at all, in so far as its purport is to allow any of the component units comprising Nigeria to secede.

trading power throughout the Mediterranean axis.¹⁰³ At the early stage, Catalonia exhibited characteristics associated with modern statehood, such as a common language and well-developed political, legal, and economic structures. Its self-governing status continued unhindered until the early eighteenth century, after it supported Hapsburg side in the War of Spanish Succession, which side lost in the war.¹⁰⁴ Consequent upon war, however, General Francisco Franco's dictatorial regime was determined 'to put an end once and for all to the "Catalan problem."¹⁰⁵ This culminated in the repressed Catalans of their 'individual and collective cultural rights, such as the prohibition of the use of the Catalan language, the public denial of the Catalan identity and the punishment [of] cultural expression.'¹⁰⁶ Culturally, there is an arguable correlation between the Catalans and the remaining part of Spain, even as some Catalans consider themselves both Spanish and Catalans,¹⁰⁷ but some of them consider themselves as Catalans only and not Spaniards.¹⁰⁸ A Madrid-based poll for instance, showed that 52.3 per cent of Catalans support secession from Spain in a referendum on the matter.¹⁰⁹

Catalonian nationalism has been majorly bolstered by the claim of inequality in the treatment of the region by Madrid. For instance, it is reputed to provide about 20 percent of its GDP and one-third of the total industrial production and exports. The region contributes about 25% of Spain's total taxes, but public investment in Catalonia is not proportionate to either its population or contribution to GDP.¹¹⁰

The autonomy offered by Spain is considered below the aspirations of Catalonia: basically administrative in nature, with no real powers to set its own policies in accordance with the

¹⁰³ The account of D Acemoglu and J Robinson varies slightly with the above account. They claim Spain was forged in 1492 after the merger of the Kingdoms of Castile and Aragon. See D Acemoglu and J Robinson, *Why Nations Fail* (Crown Publishers, London 2013) 218 - 219.

¹⁰⁴ Kenneth McRoberts, *Catalonia: Nation Building Without A State* (2001) 13 quoted in CK Connolly, 'Independence In Europe: Secession, Sovereignty, And The European Union' (2013) 24(51) *Duke Journal of Comparative and International Law* 56.

¹⁰⁵ Ibid.

¹⁰⁶ J Desquens, 'Europe's Stateless Nations in the Era of Globalization: The Case for Catalonia's Secession from Spain' (Spring 2003) *Bologna Journal of international Affairs* <<http://www.jhubc.it/bcjournal/articles/desquens.cfm>> accessed 27 July 2015.

¹⁰⁷ Miller, David (1998) 'Secession and the Principle of Nationality', In Margaret Moore, *National Self-Determination and Secession* (Oxford University Press) quoted in AM Loswick (note 90) 6.

¹⁰⁸ J Desquens, "Europe's Stateless Nations In The Era Of Globalization: The Case For Catalonia's Secession From Spain" Spring 2003 *Bc Journal Of International Affairs* <<Http://Www.Jhubc.It/Bcjournal/Articles/Desquens.Cfm#>> Accessed 18 February, 2015.

¹⁰⁹ Catalan News Agency (2013) '52% of Catalans Support Independence from Spain, According to a Madrid-Based Media', Catalan News Agency, 11 September 2013, Retrieved 1 February 2014 <<http://www.catalannewsagency.com/politics/item/52-of-catalans-support-independence-from-spain-according-to-a-madrid-based-media>> Am Loswick, Note 75.

¹¹⁰ J Desquens, "Europe's Stateless Nations In The Era Of Globalization: The Case For Catalonia's Secession From Spain" Spring 2003 *Bc Journal Of International Affairs* <<Http://Www.Jhubc.It/Bcjournal/Articles/Desquens.Cfm#>> Accessed 18 February, 2015.

interests of the Catalan people¹¹¹. Furthermore, the Catalans justify their quest for external self-determination by asserting other forms of inequalities like:

- the Spanish political system does not guarantee their political and legal rights;
- Catalonia has shown a constant will to be organized as a separate political community and to recover its political and fiscal institutions, which have been abolished several times (in 1714, 1923 and 1939);
- open nature of the Spanish Constitution as an “incomplete contract” has meant that its specification and development have always depended on those who control the fundamental institutions of the Spanish State;
- To remedy this situation of invasion of powers (and fiscal discrimination), the Government of the Generalist (Catalonia), with the support of nearly 90 percent of the deputies of the Parliament of Catalonia, approved a draft statutory reform in 2005. However, the Constitutional Court judgement on same, not only left completely inoperative the improvements introduced by the Statute regarding recognition of Catalonia’s national identity and language, the competencies (i.e. the political power) and the financing.

There are broadly three main arguments for the independence of Catalonia. The first is that since the Catalan cultural and language is neither understood nor accepted in Spain (and so is not protected nor fostered), the best way forward is an independent state. This results from three centuries of linguistic and cultural discrimination, which reached its pinnacle under Gen. Francisco Franco's 36-year dictatorship.¹¹²The second relates to unequal economic treatment of the Catalans and the third is over-concentration of political power in Madrid and granting Barcelona a mere administrative autonomy.

Legally speaking, if this agitation for secession was during the General Franco's reign of repression of the Catalan people, it would have had an indisputable merit under international law, but with the present cessation of repression coupled with power devolution to this region, it is unlikely that a legal right (by way of remedial option) to externally self-determine would avail the nationalists agitating for the state of Catalonia. The only viable option at this point is not legal but political.

¹¹¹ Government Of Catalonia, "Internationalization Of The Poll And The Self-Determination Process Of Catalonia" P. 7.

¹¹² Desquens, Note 76.

Unlike the case of Scotland which was based on an agreement between Westminster and Holy rood, the issue of 'unilateral secession' is very relevant to the Catalanian case since the Spanish central government is averse to independence for the region on constitutional grounds.¹¹³ Spain's constitution is based on the 'indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards'; interestingly though, the constitution also recognizes the 'right to autonomy of the *nationalities* and *regions* of which Spain as a collective subject is claimed to be "composed."¹¹⁴ To add vent to this, a Spanish constitutional Court refused to acknowledge Catalonia's self-recognition as a nation in the legal sense, emphasizing the 'indissoluble unity of the Spanish nation.'¹¹⁵ On July 9, 2010 Spain's court issued an opinion striking down various expansions of authority in those revisions and finding that there was no legal basis to define Catalonia as a nation¹. The result was many Catalonians arguing that autonomy within Spain was no longer feasible; hence separation was required to defend their language, their culture, their national identity.¹¹⁶

This case like the rationale for the agitations in Nigeria is based majorly on discrimination, over concentration of power at the centre and unfair treatment of the Igbo people and the people of the Niger Delta, and lack of fiscal federalism. However, there is rarely any merit in these arguments. In the case of the Niger Delta, the present President of Nigeria is from that region; the Igbos on the other hand had the position of the Senate President (the third most powerful political position in Nigeria for eight years, until 2007). Their kids and kin still hold very influential political positions currently. The issue of fiscal federalism is still not a perfect arrangement as the oil producing states get the constitutionally guaranteed 13% derivation for oil produced within their territories and also benefit immensely from the Niger Delta Development Commission which is directly saddled with the responsibility of the infrastructural and human capital development of the region. Despite these institutionalized approaches to settling the grievances of the people of the region, the funds allocated are largely diverted to personal use by corrupt government officials from these 'marginalised' regions.

Quebec/Canada

¹¹³ The Economist (2012) 'Catalonia: Europe's Next Independent State?', The Economist, 22 September 2012 <<http://www.economist.com/node/21563347>> accessed 28 January 2014.

¹¹⁴ H Jamar and MK Vigness, (n 97) 921.

¹¹⁵ CE, BOE. n. 311, § 2, Dec. 29, 1978, *translated at La Moncloa*, GOBIERNO DE ESPANA, <http://www.lamoncloa.gob.es/IDIOMAS/9/Espana/LeyFundamental/titulo_preliminar.htm> last accessed 9 January 2014, quoted in CK Connolly (note 98) 56.

¹¹⁶ CJ Borgen, 'From Kosovo To Catalonia: Separatism And Integration In Europe' (2010) 2(3) Goettingen Journal Of International Law 999

Quebec (variously known as Lower Canada and Canada East before 1867) was a pre-existing political entity (state) before joining the Canadian Confederation in 1867 and had the right to rejected membership of the confederation, if it had so decided.¹¹⁷

Quebec's desire to secede from Canada has been on the front-burner for decades. To see this desire take form, two sets of referenda have been conducted in the region concerning seceding from Canada: in 1980 and 1995. In both cases, the quest for secession failed. In 1995, the 'NO' side won by a very thin margin (51% to 49%).¹¹⁸

The consistent call for secession by Quebec bolstered the Canadian central government to refer the matter for judicial opinion in 1998. In *Reference re Secession of Quebec*, the Canadian Supreme Court examined whether Quebec was entitled to a unilateral right to secede under either municipal or international law.¹¹⁹ It also considered whether the principles of federalism, democracy, constitutionalism and the rule of law, and respect for minorities' recognised by the Canadian constitution ostensibly permits a process of negotiated secession.¹²⁰ After finding that Canadian municipal law did not support a right to unilateral secession, the court explained that under international law, the right to self-determination of a people is normally fulfilled through internal self-determination; the people's pursuit of its political, economic, social and cultural development within the framework of an existing state.¹²¹ The Court however, went ahead to hold, though *obiter dictum*, that the constitution is not a 'straightjacket', hence if majority Quebecers vote in favour of secession, it would require, as a democratic norm, for the Canadian government and Quebec representatives to negotiate separation.¹²²

Furthermore, the court stated that the people of Quebec are entitled to exercise their right to internal self-determination through their ability to 'freely make political choices and pursue economic, social and cultural development within Quebec, across Canada, and throughout the world'; but they are too integrated in the political and other spheres of human endeavour in Canada to be entitled to the right to external self-determination.¹²³

¹¹⁷ G Marchildon and E Maxwell, 'Quebec's Right Of Secession Under Canadian And International Law' (1992) *Virginia Journal Of International Law Association* 7.

¹¹⁸ M Guibernau, Etb Al, "Introduction: A Special Section On Self-Determination And The Use Of Referendums: Catalonia, Quebec And Scotland" (2013) *Int J Polit Cult Soc* (2014) 27:1-3

¹¹⁹ [1998] 2 S.C.R. 217.

¹²⁰ *Ibid* at 148

¹²¹ (n 90).

¹²² CK. Connolly (n 106) 74.

¹²³ *Ibid*, 135 - 136.

Intriguing as the advisory opinion of the Canadian Supreme Court is, the issue is, does it have the jurisdiction to adjudicate on international law? And if the answer is in the negative, can it rightly give an advisory opinion on an issue it does not have the power to determine? We are of the opinion that the court should have rightly limited its opinion on the municipal part of the issues brought before it, while the government should have referred the point on the right of the Quebecers to self-determine by way of seceding from Canada to the International Court of Justice. It is noteworthy that the Canadian constitution imposes an amending formula that is so rigid that all negotiations towards secession are most likely to end unsuccessfully.¹²⁴

Just like the Canadian and Spanish constitutions, there is no constitutional basis for secession in Nigeria. Except these constitutions are amended or the nationalists resort to unilateral declaration of independence, there is no glimmer of hope for independence for these territories considering the prevailing constitutional hurdles.

Kosovo/Serbia

Kosovo operated as an autonomous region within the Republic of Serbia, which was part of the Socialist Federal Republic of Yugoslavia (SFRY). In 1989, the autocratic regime of Slobodan Milosevic ended Kosovo's special autonomy which the Kosovar Albanians struggled to restore in the 90s. This struggle culminated in the Serbia initiated police and military actions against the Kosovar Albanians, committing widespread atrocities throughout the region which prompted NATO's intervention.¹¹ In 1999, the UN Security Council via Resolution 1244¹² placed Kosovo under a transition administration (United Nations Interim Administrations Mission in Kosovo - UNMIK). It began to determine Kosovo's political status, but resulted in an impasse between the contending sides.¹³ The UN Special Envoy, Martti Ahtisaari, recommended that Kosovo should become independent under the supervision of the international community¹⁴. Interestingly, on 17 February 2008, Kosovo unilaterally declared independence from Serbia.¹⁵¹²⁵

Consequent upon these developments, in 2008, the United Nations General Assembly, at the instance of Serbia, by resolution¹²⁶ referred this question to the International Court of Justice

¹²⁴ M Guibernau, Et Al 'Introduction: A Special Section On Self-Determination And The Use Of Referendums: Catalonia, Quebec And Scotland' (2014) International Journal of Pol Cult Soc 2.

¹²⁵ H Jamar And MK Vigness, Note 83 At 916.

¹²⁶ General Assembly Res. 63/3, 8. October 2008.

for its advisory opinion: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"¹²⁷.

On July 22 2010, the International Court of Justice (ICJ) issued its Advisory Opinion finding that Kosovo's declaration of independence did not contravene international law¹²⁸; stating that the referendum which guaranteed it was clearly remedial, as the one held in 1991 in Kosovo in response to Milosevic's abolition of Kosovo autonomy. It held further that when a constitutionally guaranteed right of a political community to self-government is abolished, those who would become citizens of an independent state should have the right to decide on whether they support this outcome¹²⁹. Self-determination becomes then a remedial right that can be exercised against the will of the central government in exceptional cases; where there is a flagrant violation of the rights of a class of people in a monumental proportion.¹³⁰

The above opinion of the ICJ, though a legal issue, has raised quite a number of politically motivated responses. The United States, major EU member states, including Germany and the United Kingdom, made statements recognising Kosovo's statehood and further acknowledging the uniqueness of the Kosovo unilateral declaration of independence. On the other hand, Spain, China, Russia, considering domestic agitations from Catalonia and Basque Republic, Tibet and Taiwan, and Chechnya, respectively, expressed, in unequivocal terms, their rejection of the unilateral declaration of Kosovo independence and the ICJ decision. The world over, nationalist movements have endorsed the ICJ decision as recognition of the rights of peoples to secede (self-determine). This decision cannot be rightly referred to as forming judicial precedent because every decision of the court operates on a stand-alone basis.

It is noteworthy that the situation in Nigeria has not drifted to the level of most of the nationalist movements in Europe, and elsewhere, hence they are still at an embryonic stage. But it is needful to nip it in the bud. There are indisputably a number of cases of discrimination among the ethnic nationalities in the distribution of common resources and appointments into offices of influence, but there is no established case of official discrimination against any group of people in such a proportion so as to attract external self-determination as a remedial right recognised under international law.

Crimea/Ukraine

¹²⁷ CJ Borgen, (n 118) 1002.

¹²⁸ Ibid at 1000.

¹²⁹ Ruvy Ziegler, Et Al (Ed) 'Independence Referendums: Who Should Vote and Who Should be Offered Citizenship?' 10

¹³⁰ Ibid.

More recently, a referendum was held in March 2014 in Crimea, which formed part of Ukraine that paved the way for Russia's controversial annexation of the former Ukrainian territory.¹³¹

The Crimea region had been part of Russia until 1954 when it transferred it to Ukrainian Republic. Consequent upon the dissolution of the USSR, the area declared itself independent, claiming a right of secession from the Ukraine,¹³² but Ukraine overruled this declaration in its 1995 Law on the Status of Crimea and in its own 1996 constitution.¹³³ The constitution provides in Article 134 that, 'the Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine'. In the meantime, the autonomous region gave itself a constitution, approved in 1998 by the Ukrainian parliament, which also determines that the Autonomous Republic as an 'inalienable component part of the Ukraine'. The declaration of Crimean independence and its subsequent annexation by Russia was done in sheer contravention of the Ukrainian municipal law and international law. However, any condemnation of such an 'illegal' secession is but crying over spilt milk. Russia has imposed a *fait accompli* on the international system that is unlikely to be reversed.

Like the case with self-governing territories, a constitutional or statutory provision on non-violability of territorial integrity usually underscores the relationship with the mainland government. For instance, Hong Kong was granted the right to 'exercise a high degree of autonomy' by China with a further agreement that 'Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China'.¹³⁴

Ukraine was clearly a victim of outside aggression, as part of its internationally recognized state territory was occupied by the armed forces of a neighbouring state and subsequently annexed by the latter, consequent upon a controversial referendum. Ukraine's decision not to resist the occupation, to withdraw its personnel, and to protest only verbally and diplomatically amounted to Crimea's surrender to the Russian Federation, under duress.¹³⁵ Russia's military invasion of Crimea and helping the local authorities secede from

¹³¹ Micha Germann & Fernando Mendez Contested Sovereignty: Mapping Referendums On The Reallocation Of Sovereign Authority Over Time And Space, Paper Presented At Ecpr Glasgow, 5-7 September, 2014, P. 2

¹³² Bowring, 'The Crimean Autonomy', in Weller and Wolff (eds), *supra* note 18, at 75, 82.

¹³³ Law on the Status of Crimea, 17 Mar. 1995, Ukrainian quoted in M Weller, 'Settling Self-Determination Conflicts: Recent Developments' *The European Journal of International Law Vol. 20 no. 1* © EJIL 2009 119.

¹³⁴ *Ibid.*

¹³⁵ A Bebler, *Freezing A Conflict: The Russian-Ukrainian Struggle Over Crimea* P. 68

Ukraine was a sheer violation of the latter's territorial integrity, hence a violation of international law.¹³⁶

This kind of arrangement and unilateral decision to secede will be an unlikely option for any of the agitating regions considering the implication of such action on the polity, if the Biafran failed attempt and its consequences is of any guide.

South Sudan/Sudan

The civil war that precipitated a referendum and final secession of Southern Sudan from the former Sudan was majorly an agitation for self-determination. It was a result of continual economic and political domination of the South by the northern government.¹³⁷ A collection of rebel groups in the South, which had lost confidence in the central government of Khartoum fought the government under the banner of the Sudan People's Liberation Army/Movement (SPLA/M).¹³⁸ The inestimable effects of this war left about two million Sudanese dead and double that number displaced."¹³⁹ Greed, retribution, poverty, external intervention, and religious and ethnic divides, all motivated the violence. However, the overarching cause of the civil war remained the same as the one before it: a historical consistency of oppressive governance from Khartoum promoting regional marginalization and exploiting social divisions.²

Khartoum encouraged ethnic clashes by granting Arabic herdsmen a covert support to plunder and destroy the communities of the Dinka and Nuer African pastoralists of the South and implement an ambitious Islamization project.¹⁴⁰

As noted above,¹⁴¹ wars and conflicts which are consequences of agitations for self-determination are usually the most destructive. The Kosovo experience, Sudan, and closer home, the Nigerian civil war are just but a few instances where lives were lost in their millions, and inestimable value of property also destroyed. It is in the light of this unwanted result that the determination of self-determination agitations through negotiations is as needful as they are civil, especially in democratically organized societies as encouraged by the Canadian Supreme Court.

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¹³⁷ State Rules: Oil Companies And Armed Conflict In Sudan Author(S): Luke Anthony Patey Source: Third World Quarterly, Vol. 28, No. 5 (2007) 997.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid at 1001.

¹⁴¹ Note 123.

The contours of present-day Catalonia, Scotland, and Quebec, etc nationalism have been shaped by three interrelated factors: identity, autonomy and the economy¹⁴². The same major issues underscore the agitations in Nigeria's Niger Delta region, as demonstrated through MEND and MOSOP; and the South East's re-drumming of support and agitation for the independent state of Biafra, through MASSOB. The presence of the above sets of nationalist movements is an indication that there are enormous political and legal issues that need to be addressed. Interestingly however, at the last national conference, some of these issues were discussed and agreements reached by the various representatives of the peoples and nationalities, except on the issue of fiscal federalism (derivation formula).

CONCLUSION

Self-determination has become a mainstay of nationalist political claim, but it holds a limited utility as a legal right and it is always at war with the principles of sovereignty and territorial integrity that form the nucleus of the international system of states.¹⁴³ Despite the celebration of this 'right' for enhancing independence and self government to oppressed groups, yet it remains a highly contentious norm of international law.¹⁴⁴ The failed attempt of the Igbos in Nigeria to secede and form the Republic of Biafra and the Katanga people of Democratic Republic of Congo (DRC) are other intriguing instances of failed attempts to secede in pursuit of the right to self-determination with colossal human and material cost on both sides of the divide. These examples are an indication that the invocation of the right, where it has an element of secession, is not granted for the asking, whether under municipal law or international law.

Furthermore, there is no established benchmark for self determination claim under international law¹⁴⁵, hence every case should be treated on its own merit. Where the decision to self-determine with a view to secession is a product of domestic agreement as in the case of Scotland/United Kingdom and by extension Sudan/South Sudan, or where it is allowed by

¹⁴² CK. Connolly (n 106) 51, 55.

¹⁴³ CK Connolly, 'Independence In Europe: Secession, Sovereignty, And The European Union' (2013) 24 (51) *Duke Journal Of Comparative & International Law* 53.

¹⁴⁴ D Sheldon, 'Self-Determination in Regional Human Rights Law: From Kosovo To Cameroon' (2011) 105(1) *The American Journal Of International Law* 60.

¹⁴⁵ A few has been suggested as noted above, that must co-exist: oppression of a people to an egregious proportion, a weak central government which is unable to address such oppression, that it has been administered by some international organization or group, and that it has the support of the 'Great Powers.' See Ozei (n 20). Another author has suggested the following requirements: (1) a 'people', (2) who have been systematically oppressed, (3) and have been denied self-determination within the existing state, (4) who freely choose to secede, and (5) respect the rights to self-determination of other minorities. Umozurike has opined that these conditions may include: where the majority or minority insists on committing international crime, or enforces denial of human rights against a people, as a deliberate policy against the other party, in the form of pogrom. See Umozurike (n 7) 53.

the municipal law, especially the constitution, it sets the ground for seamless disengagement of the new state.

Just like it has been argued that Quebec, Scotland, and Catalonia are neither colonies possessing a right to external self-determination nor victims of repression such that a right to remedial secession would apply,¹⁴⁶ we contend that the situation regarding the nationalists groups in Nigeria has not deteriorated to the level of meeting the minimum standard for invoking this right, whether under municipal or international law. The same can rightly be said of these regions in Nigeria, the Niger Delta and the South East regions, since they are not colonized territories, nor are their people victims of official egregious oppression so as to qualify under the remedial option.

A number of options are hereby available for consideration:

1. Granting of autonomous governing status to the regions so as to obliterate the campaign for the rocking the board of territorial integrity¹⁴⁷ as in the case of Catalonia, Quebec, and Scotland;
2. Re-examine the vexed issue of fiscal allocation.
3. Regrouping ethnic groups by delineating geographic boundaries, if need be.
4. Revive the federal structure to reflect the first republic system, for example, state constitutions, removing certain issues from the exclusive legislative list like culture, local government system and administration, etc.

Finally, nothing short of internal restructuring would suffice, in assuaging the various nationalist groups agitating for external self-determination, especially considering the fact that this right, even where its invocation culminates in secession, is not a cure-it-all right. The pathetic case of South Sudan¹⁴⁸ after breaking away from the old Sudan is instructive here.

¹⁴⁶ Note 91 at 76.

¹⁴⁷ See generally M. Weller And S. Wolff (Eds), *Autonomy, Self-Governance And Conflict Resolution: Innovative Approaches To Institutional Design In Divided Societies* (2005). Weller suggests trading self-determination for autonomy or enhanced local self-government; regionalism, federalization, or union with confirmation of territorial unity; balancing self-determination claims; deferring a substantive settlement while agreeing to a settlement mechanism; supervised independence. See Weller (n 72);

¹⁴⁸ The subsequent disagreement among rival groups within the nationalists Sudan People's Liberation Movement (SPLM) and the Sudan People's Liberation Movement Army (SPLA), formerly a 'people', who seceded from Sudan has led to another war and the lost of thousands of lives. See MT Maru, 'The Real Reasons Behind South Sudan Crisis' *Al Jazeera* (27 December 2013) <<http://www.aljazeera.com/indepth/opinion/2013/12/real-reasons-behind-south-sudan-crisis-2013122784119779562.html>> accessed 27 July 2015.