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Self-Determination and *Uti Possidetis* in Africa: The Cases of Nigeria and Sudan

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INTRODUCTION

The legal problem of self-determination and *uti possidetis* is one that has been evolutionary along with political developments in the African continent. In pre-colonial African societies, the notion of self-determination was often in the form of tribal wars either for territorial expansion or protection of territorial integrity. This was because the modern concept of statehood did not exist in traditional African societies. Besides, some African settlements were mostly migratory and consequently did not attach primacy to territorial supremacy. In addition, African societies were largely acephalous or stateless in political structure and existed as independent kingdoms, chiefdoms and emirates.¹ Although, wars between kingdoms or chiefdoms over territory were not uncommon, they did not take the form of agitations for self-determination as we understand today. Thus, self-determination within modern State constructs is distinct from tribal wars in traditional African societies.

The agitation for self-determination in Africa is one that to a great extent results from colonial delineation of territorial State boundaries in Africa. Colonialism across Africa greatly altered traditional political structures and understanding of territories. Kingdoms that were traditionally autonomous and independent were put together for administrative convenience. Even in situations where the indirect rule system was employed integrating existing traditional political structures into the colonial government system, kings who were traditionally 'sovereign' became answerable to the colonial government with uncooperative kings forcefully dethroned.² Moreover, colonialism created a new system of political authority which the people considered an imposition. Patriotism to the government was therefore compelled rather than voluntary. This to a large extent also explains the antagonist disposition to the formal government in many African countries.³ Besides, the colonial government whether a direct or indirect rule was primarily for the exploitation of the natural and human resources of Africa. The arbitrariness in the partitioning and amalgamation of traditional kingdoms and ethnic groups laid the foundation for modern agitations for self-determination in Africa.⁴

¹ J S Coleman, *Nigeria: Background to nationalism* (University of California Press 1986), p 45.

² V B Khapoya, *The African Experience: An Introduction* (4th edn, Peachpit Press 2012), pp 1-18.

³ Amadu Sesay, *African Governance Systems in the Pre and Post-Independence Periods: Enduring Lessons and Opportunities for Youth in Africa* (Mandela Institute for Development Studies 2014), p 10-11.

⁴ Crook, R., 1986. Decolonization, the Colonial State and Chieftaincy in Gold Coast. *African Affairs* 85 pp 75-105.

The point being made is that colonialism resulted in the creation of States across Africa that are not homogenous, do not have a shared history or aspiration and therefore national unity remains an overwhelming legal problem.⁵ Based on the heterogeneous nature of African States some writers insist that African States are not states in the strict political usage but ‘artificial’, ‘quasi’ or pseudo’ States.⁶ For instance, the Nigerian State in West Africa consists of over 700 ethnic groups that speak over 400 different languages forcefully forged into a State by the British government. English and a central government therefore represent the major forces holding the country together.⁷ The difficulty of maintaining stability within such States which are sharply divided by ethnic and religious allegiances is primarily responsible for increasing agitations for self-determination in Nigeria. This is because in most of the colonial created African States, loyalty is owed to ethnic groups and not the nation.⁸ What exists therefore in most African States is unity secured through the barrel of the gun which is usually short-lived. This creates a centrifugal force culminating in heated agitations for self-determination. Attainment of independence by African States did not result in national unity but only promoted ethnic based politics. Moreover, most of the leaders of the independent African States largely continued the exploitation by the colonialists.⁹ The result is a feeling of marginalisation especially by minority ethnic groups who then insist self-determination.

Unfortunately, the agitations for self-determination in Africa have often been met with brutal resistance from the organized military force of the State. The casualties and collateral damages in Africa continue to undermine peace, development and security across Africa. In Nigeria, self-determination resulted in a civil war from 1967-1970. In the ensuing pogrom and ethnic cleansing that engulfed the country, hundreds of thousands were gruesomely killed.¹⁰ In justification of the declaration of the independence of Biafra from Nigeria, Adeniran,¹¹ insisted that ‘when a people have been subjected to a degree of inhuman violation for which there is no other word but genocide, they have the right to seek an identity apart from their aggressors’. Military stultification

⁵ Henry Alapiki, *Politics and Governance in Nigeria* (S.P. Shapee Publishers 2010), pp 26- 40.

⁶ Beluce Bellucci, 2010. The State in Africa. *The Perspective of the World Review* 2(3) pp 9-10.

⁷ E O Onyenwe and Others, *Nigerian Government and Politics: A Study in Governance* (Cheedal Global Press 2007), p 9.

⁸ Okwudiba Nnoli, *Ethnic Politics in Nigeria* (Fourth Dimension Publishers 1980) pp 35-63.

⁹ F Fanon, *The Wretched of the Earth* (Grove Press 1963), p 166.

¹⁰ Emefiana Ezeani, *In Biafra Africa Died: The Diplomatic Plot* (2nd edn, Veritas Lumen Publishers 2013) pp 39-54.

¹¹ Adeniran, Adedapo, *Nigeria: The Case for Peaceful and Friendly Dissolution* (Unitype Enterprises 2002), p 101.

of the agitation for self-determination is therefore difficult to justify. The view of this research is that unity through the barrel of the gun is analogous to slavery.

In Rwanda, the ethnic killings saw the piling of over 800,000 corpses in just three months. One explanation for the inhuman massacre is a supposed ‘ancient hatred’ among the different ethnic groups that now constitute the State of Rwanda.¹² Yet, ‘ancient hatred’ cannot be taken lightly in the any examination of the root cause of ethnic killings and agitations for self-determination in Africa. The inability of colonial governments to take the diversity of the African people into consideration in the constitution of States is a perennial problem that continues to bedevil the African continent. Writers observe that the genocide in Rwanda is comparable only to the Cambodia killings in 1970 and the East Pakistan genocide in 1971 (currently Bangladesh).¹³

In Sudan, the insistence on self-determination resulted in a brutal civil war that lasted for over 20 years. The devastating effects of the civil war occasioned the recognition of the right of South Sudan to self-determination in 1994 by the Intergovernmental Authority on Development which consisted of the Ministers of Foreign Affairs of Ethiopia, Eritrea, Uganda and Kenya. All the countries are members of the North-East African Regional Organization. This regional recognition of the right to self-determination was informed by the desire to end the civil war and its catastrophic effects. It also represented a significant departure from the notion of the sanctity of colonial inherited State boundaries and the principle of non-interference in domestic affairs.¹⁴

The totality of the above is an eloquent testimony of the legal challenge of effectively managing the agitations for self-determination in Africa and the consequential problem of defining territories wherein the agitation was successful such as in the case of South Sudan. Yet, the avoidable civil wars and military hostilities and consequential widespread destruction could have been better managed with proactive legal framework. This legal problem inspired this thesis.

Essentially, this thesis aims to critically delineate the position of the law with regards to self-determination in Africa. That is, the thesis will conclusively determine the legality or otherwise of

¹² Stuart J. Kaufman, 2006. Symbolic Politics or Rational Choice? Testing Theories of Extreme Ethnic Violence. *International Security*, 30(4) pp 45-86.

¹³ Jared Diamond, *Collapase: How Societies Choose to Fail or Succeed* (Viking 2005), p 313.

¹⁴ Alex de Waal, 2020. The Ambiguities of Self-determination: IGAD and the Secession of South Sudan. *Nations and Nationalism* 1(1), pp 1-2.

self-determination in Africa and the legal challenges of implementing the *uti possidetis* rule where a new State emerges. Furthermore, the thesis seeks to determine the effectiveness of existing legal frameworks in Africa regarding self-determination.

Although the thesis examines the legal position of self-determination and *uti possidetis* in Africa, the scope is narrowed down to Nigeria and South Sudan. This is because while international law plays a crucial role in the determination of self-determination and *uti possidetis*, in constitutional democracies wherein supremacy of the constitution is upheld, a discussion of domestic legal framework become equally important to provide context specific instances. A review of the position in all African countries will therefore be too broad and outside the circumference of this thesis. Moreover, such broad approach will not allow for critical and in-depth analysis. For the above reasons, emphasis is placed on Nigeria and Sudan. The choice of these two States is very instructive. Both countries have witnessed different dimensions of agitations for self-determination. In the case of Nigeria, it climaxed in the civil war of 1967 – 1970. There is also current and fierce agitations for self-determination by the Indigenous People of Biafra and the Oduduwa group. In addition, there is militant agitation for Islamic State by the Boko Haram terrorist sect.¹⁵ Already, the agitations are heating up the polity and if not properly managed may escalate into another wave of civil war. Similarly, the road to the eventual attainment of self-determination by South Sudan from Sudan poses critical legal questions. Both jurisdictions are therefore germane examples for the discussion of self-determination in Africa.

The principal questions which this research seeks to answer are as follows:

- i. To what legal extent does international law provide a rights basis for self-determination and *uti possidetis* in Africa?
- ii. What is the legal nature and scope of the right to self-determination and *uti possidetis* in Africa and how effective are the enforcement mechanisms?

In answering the research questions, this thesis adopted the doctrinal research methodology. Specifically, the research adopted a textual analysis of international legal instruments at the international and African regional levels. It equally analysed the relevant domestic statutes in

¹⁵ E Imasuen, 2014. Insurgency and Humanitarian Crises in Northern Nigeria: The Case of Boko Haram. *African Journal of Political Science and International Relations*, 9(7), p 284.

Nigeria and Sudan which were the two case studies used. The laws formed the primary source of data for this research. In interpretation of international legal instruments, reliance was placed particularly on article 31 of the Vienna Convention on the Law of Treaties 1969. Consequently, although the literal rule of interpretation was generally employed, the context and the objectives of the international legal instruments were taken into due consideration.¹⁶ In the case of Nigerian statutes, the Interpretation Act 1964 provided the basic rules of interpretation.¹⁷ Similarly, the Interpretation of Laws and General Clause Act 1974 of Sudan was used as the primary rule of interpretation of Sudanese statutes. The textual analysis of the primary data was complimented by judicial decisions which provided authoritative interpretation of the relevant provisions of the statutes. Opinions expressed in journal articles, edited chapters of books, books and scholarly online materials were then used to further enrich the analysis. Finally, the deductive method was then applied to answer the research questions based on the information derived from both the primary and secondary data.

1.1. SELF-DETERMINATION AND *UTI POSSIDETIS*

This chapter critically examines the concepts of self-determination and *uti possidetis*. In doing so, the chapter provides a critical discussion of the relevant concepts in order to ease better appreciation of the legal analysis in subsequent chapters. It also critically examines the theories which provide philosophical and jurisprudential justification for self-determination and *uti possidetis*.

1.2 Conceptual Clarifications

1.2.1 Right

The necessity to define the concept of right flows from the rights based approach which this thesis adopts in the legal analysis of self-determination and *uti possidetis*. In this context, right is taken to mean an entitlement which is enforceable in law. It is the character of enforceability that distinguishes a right from a privilege.¹⁸ Right incorporates the totality of powers, immunities and interests which a person is entitled to enjoy under the law; such interests being legally recognized

¹⁶ Jana Maftai and Coman Varvara, 2012. Interpretation of Treaties. Acta Unversitatis Danubius, 8(2), pp 16, 23-24.

¹⁷ Ese Malemi, The Nigerian Legal System: Text and Cases (3rd edn, Princeton Publishing Co. 2009), pp 127- 130.

¹⁸ K Jagroop, *Contemporary Political Thought* (Madan Publications 2003), p 8.

as well as legally protected.¹⁹ A right based approach provides the most effective gauge for testing the effectiveness and adequacy of the legal provisions regarding self-determination and *uti possidetis* in Africa. The entitlement which is a right is secured by a guaranteed legal mechanism of enforceability without which the supposed entitlement is a mere privilege.

The broader view to the concept of legal right is that it incorporates basic socio-economic and political conditions which are important for civilized human existence.²⁰ By this interpretation, right becomes a universal entitlement which is vested in every member of the human family. Such rights are considered inalienable and naturally inherent in the human person.²¹ It has to be pointed out that the enjoyment of a right is secured by a corresponding duty. The implication of this is that right and duty are the two sides of a coin which can never be separated.²² Thus, the right of an individual or group becomes the duty of another individual or group. Where there is a right, every individual is under a duty to recognise the right and to live in a manner which enables others to realise these rights. Thus, as Wigwe insists,²³ it is only in the world of duties that rights can exist. A rights based approach to self-determination will therefore further include an analysis of the system of legal duties created to secure the enjoyment of the rights.

1.2.2 State

The entirety of the legal problem of self-determination and *uti possidetis* flows from the modern conceptualization of the State. State as a political construct refers to a group of people occupying a definite geo-political territory with a sovereign government responsible for piloting its affairs.²⁴ By this definition, the State consists of four critical features: people, territory, government and sovereignty.²⁵ The people of a State are taken in their collectivity such that self-determination by a group may easily appear as inconsistent with the statehood. Similarly, the territory of a State understood to be sacrosanct. Accordingly, self-determination and *uti possidetis* ultimately undermines the territorial integrity of the State and it is therefore not surprising that State

¹⁹ Brian A Garner (ed), *Black's Law Dictionary* (9th edn. Thompson Reuters 2009), pp 1436.

²⁰ J J Thomson, *The Realm of Rights*. (Harvard University Press 1990), p 23.

²¹ Examples include the rights contained in the Universal Declaration of Human Rights 1948 and the African Charter on Human and Peoples' Rights 1983.

²² P Jones, *Rights* (Macmillan Press 1994), p 1.

²³ Chris C. Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers, 2011), p 400.

²⁴ V D Mahajan, *Political Theory* (4th edn, S Chand & Company Limited 2013), pp 132-136.

²⁵ S I Ogundiya, 2010. Democracy and Good Governance: Nigeria's Dilemma. *African Journal of Political Science and International Relations*, 4(6), p 201.

machineries are always opposed to the notions especially in Africa. Self-determination and *uti possidetis* therefore directly affect the State structure in all its ramifications.

Consequently when self-determination is approach and rightly so from the prism of statehood, it becomes a very complex issue in international law. Even the international community functions on the principles of sovereign equality of States, respect for the territorial integrity of States and non-interference in the domestic affairs of States. These principles became more pronounced after the Second World War as a fundamental panacea to maintenance and sustenance of global peace. Thus, territoriality of States became widely respected despite the manner in which the boundaries were forcefully delineated.²⁶ The principle of inviolability of territorial integrity although a necessary character of statehood, fails to take into consideration cases where territorial borders ambiguously integrate indigenous people who would have preferred a distinct identity or cases where a particular nation falls into more than one State as minorities. These complexities in the territorial definition of States are partly responsible for the Russia-Ukraine war.²⁷

1.2.3 Self-Determination

The concept of self-determination is one that is very ambiguous and yielding to several interpretations. This fluidity in the legal definition of the concept accounts for its distortions by different groups to confer legitimacy and justification to their armed struggles against their respective States. Etymologically, self-determination was derived from the German word 'selbstbestimmung'. This is literally translated into the right of individual choice, decision making or individual ownership of himself. When applied to a people, it extends to a right of a people to determine issues which affect them.²⁸ However over the years therefore, the meaning of self-determination has become highly subjective, consistent with the interests of the groups or States employing it.²⁹ Nevertheless, researchers are fairly agreed that self-determination is employed in two respects: internal self-determination and external self-determination; both usages having

²⁶ Patricia Carley, *Self-Determination, Sovereignty, Territorial Integrity, and the Right to Secession* (United States Institute for Peace), pp 1-2.

²⁷ B. A. Bahiru, 2022. Challenges of Dispute Settlement through International Court of Justice (ICJ): The Case of Ukraine v. Russian Federation the Decision on Provisional Measures on Alleged Violation of Genocide Convention. *European Scientific Journal*, 18(29), pp 64, 71-73.

²⁸ Weitz, E, 2015. Self-Determination: How a German Enlightenment Idea Became the Slogan of National Liberation and a Human Right. *The American Historical Review*, 120(2), pp 462-469.

²⁹ Johan D. van der Vver, 2004. The Right to Self-Determination and its Enforcement. *Journal of International & Comparative Law*, 10, pp 421-422.

grossly legal opposed implications. While internal self-determination recognises and upholds self-determination only within the territorial integrity and sovereignty of the State, external self-determination recognises the right of a people to define their interests both within and beyond the framework of the State.³⁰

External self-determination therefore includes the right to demand and establish a breakaway State from the parent State, integration into another State or the establishment of other forms of political units. External determination therefore is external to the sovereignty and territoriality of the State. It is a radical right although emanating from the State, yet outside and beyond the political circumference of the State. Internal self-determination on the other hand is exercised within the State. It includes such issues as restructuring, devolution of powers, resources control and inclusivity. Here, a people retain the right to advance and protect their collective socio-political and economic interests within the existing State.³¹

Internal self-determination does not pose much of a problem in international law for two reasons. It falls squarely within the domestic affairs of the State and therefore generally covered by the international principle of non-interference. Second, in most constitutional democracies of the world, there are procedural arrangements for the exercise of the right especially through constitutional amendments or alteration of power and revenue sharing formula. This thesis therefore focuses on the legal problem of external self-determination. This involves the demand for the carving out of a State from the parent State. These demands often arise outside constitutional frameworks and usually involve armed aggressions.³² From the totality of the above, self-determination in the context of this thesis denotes an agitation or demand for a separate State by a national group or groups within an already existing State. That is, the process and acts of groups seeking independent sovereign identity from a parent State.

1.2.4 *Uti Possidetis*

Uti possidetis is a Latin maxim which was developed from the law of Roman. In ancient Rome, the maxim was associated with property ownership. It meant that in a dispute over title to proper,

³⁰ Philpott, D, 1998, Self-Determination in Practice' in M. Moore (ed.), *National Self-Determination and Secession* (Oxford University Press), pp79-102.

³¹ Ved P. Nanda, 2001. Self-Determination and Sucession under International Law. *Denver Journal of International Law & Policy*, 29(3), pp 305, 307-308.

³² Young R. 1994. How Do Peaceful Secessions Happen?. *Canada Journal of Political Science*, 27(4), p 773.

the person who was in actual possession of the property was the presume owner. It translated simply to mean thus: ‘as you possess, so may you possess’.³³ As a rule of property law, possession was considered the most authoritative proof of ownership. Contemporary usage of the maxim however differs significantly from the Roman concept of *uti possidetis*. Under Roman law, ownership through possession was a mere presumption. What this meant was that cogent evidence could override the presumption. Put differently, presumption holds only in the absence of convincing evidence to the contrary. In international law however, *uti possidetis* vests absolute ownership on the person in possession and not presumptive ownership. Furthermore, while the Roman usage was with regards to property disputes, the international law usage concerns territorial State boundaries. Moreover, while the Roman interpretation was based on actual possession, *uti possidetis* under international law focused on existing administrative boundary lines irrespective of the party in actual possession.³⁴ Nevertheless, both under the Roman and international law usages, the maxim translates to the meaning: ‘as you possess, so may you possess’.

The doctrine was widely applied during the decolonization process of Africa. Here, it was used as a rule of delimitation of territories of the emerging States and meant that States acquiring independence from colonial domination shall be entitled to the territories under as defined in the administrative borders of the colonialists. This was considered a fair and effective means of addressing border disputes post colonialism.³⁵ After colonialism, the doctrine of *uti possidetis* has remained relevant in resolving border disputes among States particularly between new breakout States and their parent States. For instance in the dissolution and partitioning of the previous Union from where Yugoslavia and Czechoslovakia emerged as independent States, the doctrine was applied in the determination of the territorial boundaries of the new States.³⁶

³³ Abraham Bell and Eugene Kontorovich, 2016. Palestine, *Uti Possidetis* Juris, and the Borders of Israel. *Arizona Law Review*, 58, pp 633, 640.

³⁴ *Ibid.*

³⁵ Steven R. Ratner, 1996. Drawing a Better Line: *Uti Possidetis* and the Borders of New States. *American Journal of International Law*, 90, pp 590, 590.

³⁶ Anne Peters, ‘The Principle of *Uti Possidetis* Juris: How Relevant Is It for Issues of Secession?’ in Christian Walter et al. (eds), *Self-Determination and Secession In International Law* (Oxford University Press 2014), pp 95-100.

1.3 Historical Development and Application of Self-Determination and *Uti Possidetis*

The twin concepts of self-determination have been evolutionary along with political developments in the field of international law. The concept of self-determination is credited to Lenin and Stalin who used the term to recognise the socio-economic rights of constituent political units within the larger communist political system. The notion was used to argue that constituent units have a right to determine their socio-economic interests which was exercisable within the communist framework.³⁷ The Declaration of Independence by the United States of America in 1776 strongly influenced the development of the idea of self-determination. The declaration reads in part as follows:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The Declaration recognises a divine right to self-determination. Yet, it has to be pointed out that the Declaration relates to internal self-determination which includes the right to form or alter political and governmental structures or even to abolish same. This is correlational or inherent in the right of the people both to happiness and safety. Put differently, the pursuit of happiness contemplates a right to self-determination for the purpose of securing happiness. Beyond the Declaration, Woodrow Wilson a former president of the United States of America is believed to have popularised the concept and elevated it to the status of right in international law. His famous ‘Fourteen Point Address’ which was delivered in January 1918 which read in part thus; ‘in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of government whose title is to be determined’.³⁸

³⁷ Robert Friedlander, 1975. Self-Determination: A Legal-Political Inquiry. *Michigan State DCL Law Review*, 1, pp 71, 73.

³⁸ Johan D. van der Vyver, 1991. Sovereignty and Human Rights in Constitutional and International Law. *Emory International Law Review*, 5, pp 321, 395-416.

From the above, although self-determination served to recognise the interests of the people in the determination of questions of sovereign political status, it only accorded the interest same political weight with the interests of the government controlling the territory. In this regard, self-determination did not enjoy absoluteness but merely recognised a right to have the interest of the affected taken into consideration. The important point however is that it goes beyond internal self-determination because even sovereignty is a matter to be self-determined. By this time therefore, the concept has expanded to recognise external self-determination.

First World War provided further impetus for the recognition and application of the concept of self-determination. At the close of the War, the concept provided legitimisation of the disintegration of several 'empires' such as Russia, Germany, Ottoman and Austro-Hungary. Self-determination at this point recognised the right of ethnic peoples united by culture or language to distinct statehood identity.³⁹ By the end of the Second World War, self-determination became the driving ideology for the independence of colonised people. It was used to denote the right of colonies to political independence in the form of States.⁴⁰ This thesis takes the considered view that with regards to decolonisation, self-determination was largely internal as the colonies were distinct from the States of the colonisers. It denoted a right of the colonised people to self-determine their political status especially a right to independent governance and sovereign status. The right was not strictly a breakaway of existing State but the acquisition of statehood by ethnic people and groups who did not previously enjoy that status. In this sense, it is no longer a claim by colonised people or people under foreign government but an internal struggle by dissatisfied minorities within a State in order to establish their own separate State.

The modern claim to self-determination extends beyond decolonisation. It is essentially a claim of a right to break-away from existing State in order to establish a new a distinct State identity. This is the context in which the agitation for self-determination in Nigeria and Sudan are to be understood.⁴¹ That is, a claim by nationalities or ethnic groups within an existing State. This is

³⁹ Nathaniel Berman, 1998. Sovereignty in Abeyance: Self-Determination and International Law. *Wisconsin International Law Journal*, 7, pp. 51, 86-87.

⁴⁰ Lynn Berat, 1990. The Evolution of Self-Determination in International Law: South Africa and Namibia, and the Case of Walvis Bay. *Emory International Law Review*, 4, pp 251, 283.

⁴¹ Awajigbana Paul Alfred and Sharaon Eruchi Ejekwu, 2022. Constitutional Perspectives to the Agitation for State Police in Nigeria: Lessons from the United States of America. *The Journal of Law and Policy*, 2(7), pp 70, 71.

significantly different from the notion of self-determination as a drive for decolonisation. This contemporary usage of the term is the perspective that this thesis focuses on.

The doctrine of *uti possidetis* has equally evolved along with self-determination. This is because external self-determination necessarily results in the delimitation of the territorial boundaries of the parent State. Thus, on achievement of self-determination, the doctrine of *uti possidetis* becomes relevant to resolve boundary disputes. The doctrine functions to guarantee to the new State, a territory. During the decolonisation process, administrative boundaries set out by the colonialists were simply transformed into State borders using the doctrine.⁴² The classical example of application of the doctrine was in the ICJ decision in the case of Burkina Faso v. Mali case.⁴³ Both States attained independence from France. During colonial rule, they were joined administered as 'French West Africa'. The principle of *uti possidetis* was applied in the determination of the border dispute. Consequently, the decision of the Court was that each party was entitled to retain the territories it held under the colonial administration. The ICJ however extended the rule beyond actual possession to colonial boundary lines irrespective of whether the State actually administered or possessed the territory.⁴⁴

The approach adopted by the ICJ is very important for maintaining stability and peace. This is because actual possession may be very problematic to prove and will therefore only exacerbate border disputes among emerging States. Adopting existing administrative colonial boundaries becomes easier and less problematic. Notwithstanding, it needs to be pointed out that existing administrative boundaries may in themselves be ambiguous and indeterminate. The application of *uti possidetis* in such circumstances will become very challenging. Resort may therefore have to be made to actual possession to complement the indeterminate administrative boundaries.⁴⁵

⁴² Ria Tri Vinata, Masitha Tismananda Kumala and Peni jati Setyowati, 2021. Implementation of the Uti Possidetis Principal as a Basic Claim for Determining Territorial Integrity of the Unitary State of Republic Indonesia. *International Journal of Business, Economics and Law*, 24(2), pp 48, 51.

⁴³ Re Frontier Dispute (Burk. Faso/Mali), 1986 I.C.J. 554, 566

⁴⁴ Ibid, Re Frontier Dispute (Supra, n 43).

⁴⁵ Ibid., Abraham Bell and Eugene Kontorovich (supra n 32), p 647.

1.4 Theoretical Underpins of Self-Determination

In the legal analysis of the self-determination, this thesis adopts two theoretical approaches: the human rights theory and the social contract theory of the State. This section provides a discussion of the theories and demonstrates their relevance to the thesis.

1.4.1 Natural Rights Theory

The human rights theory is an offshoot of the natural law theory. Jonathan,⁴⁶ avers that natural law theory is broad and its particularities differ according to writers. Nevertheless, all natural law theorists are agreed on a central point in natural law that there exist in human nature a rational order based on reasoning which promotes justice and peace. Consequently, they argue that Law should be consistent with this rational natural order.⁴⁷ In this regard, Augustine,⁴⁸ insists that for any rule of law to be valid, it must promote justice in accordance with reason. Any law which is inconsistent with the above becomes a corruption of law for which there is no duty to obey or observe.

The most important character of this theory as it relates to this thesis is the recognition of natural rights which derive their legitimacy from human nature and morality.⁴⁹ Natural rights vest in all members of the human family by the simple reason of their humanity. The rights exist in nature outside positive law although positivist codification of natural rights represents the extent to which the State recognises and enforces the rights.⁵⁰ Liberty is one of the fundamental rights recognised by the theory. Liberty is a precondition for securing all other rights and includes political liberty.⁵¹ This thesis adopts this natural rights approach in the legal analysis of self-determination. It proceeds on the theoretical basis that self-determination is inherent in natural rights and therefore examines the relevant legal provisions in the context of a natural right to self-determination.

⁴⁶ Edwyn Jonathan, *Legal Method Plus* (TBNET House Ltd 2008) , p 36.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, p 37.

⁴⁹ L. W. Sumner, *Moral Foundations of Rights* (Clarendon Press 1987), p 1.

⁵⁰ R. J. Vincent, *Human Rights and International Relations* (Cambridge University Press 1986), p 17.

⁵¹ Rubio Medina E., 2019. Three Theories about the Right to Self-Determination. *Diálogos de Saberes*, 50, pp 119, 127.

1.4.2 Social Contract Theory

Related to the theory of natural rights is the social contract theory of the State. The theory holds that before the evolution of the State, man existed in a state of nature. In that state, there was no law, rights or duties. Survival was the only law. According to Hobbes,⁵² in the state of nature, life was nasty, s nasty, brutish and short. It was a state of man's inhumanity to man; a war of every man against every man where man was the predator and also the prey. In that state, physical might was right and physical brute was supreme. In order to evolve out of this unsustainable situation of socio-political relations, the State was created through a social contract.⁵³ According to Appadorai, the substance of the social contract theory is this: the State is the result of an agreement entered by men who originally had no governmental organisation. The history of the State is thus divided into two: the period before the State was instituted and the period after. In the first period, there being no government, there was no law which could be enforced by coercive authority. Men lived in a state of nature, in which they were subject only to such regulations as nature was supposed to prescribe.⁵⁴ In support of social contract, Locke,⁵⁵ insists that no man can be subject to the governance of another person unless he consents to it.

The social contract theory of the State pivots on the idea of freedom of contract. Conceptualisation of the State in terms of social contractual relations carries with it the implication of freedom of parties to contract as well as to alter the terms of the contract. That is, the State is not or should not be an imposition but a creation of the will of the people for which the people in the exercise of that collective will can equally alter the constitution of the State however they so choose. Accordingly, the thesis approaches the State as fundamentally a social contract and being such, subject to continuous social bargaining and alteration through social contract. Self-determination therefore becomes an expression of the social contractual freedom of the people.

Furthermore, the social contract provides justification for agitations for both internal and external self-determination in Africa. This is because as already pointed out, most of the African States were products of colonial imposition which violated the social contractual rights of the African

⁵² M. D. A Freeman, (ed), *Lloyd's Introduction to Jurisprudence* (8th edn, Sweet & Maxwell 2008), p 108.

⁵³ *Ibid.*

⁵⁴ A Appadorai, *The Substance of Politics* (11th edn, Oxford University Press 2004), p 19.

⁵⁵ John Locke, *Two Treatises on Civil Government* (George Routledge and Sons 1884), pp 163-164.

people. Self-determination therefore operates to or is justified as a social bargaining through which States will emerge as true products of social contract. Thus, self-determination offers Africa a new opportunity for social contract beyond the application of *uti possidetis* in the decolonisation process. Besides, colonial administrative boundaries do not form a basis for sustainable statehood or social cohesion within African States that emerged. The social contract therefore offers strong theoretical foundation for justifying and advancing self-determination in Africa and this thesis adopts this approach.

2.0 LEGAL APPRAISAL OF SELF-DETERMINATION AND *UTI POSSIDETIS* UNDER INTERNATIONAL LAW

The meaning, nature and extent of the right to self-determination and *uti possidetis* under international law have remained a subject of controversy. This section provides a critical legal analysis of the concepts and their application in international law. This is done through a critical textual analysis of the relevant international legal instruments.

2.1 Self-Determination and *Uti Possidetis* under the Charter of the United Nations 1945

The demands of globalisation necessary require interrelationship among States. Accordingly, the United Nations is the most universal international organisation.⁵⁶ The near universality of its membership implies that the UN Charter and instruments adopted by the UN fairly represent international consensus on the issues of self-determination and *uti possidetis*.

2.1.1 Self-Determination under the Objectives of the UN

The objectives of the UN include the development of friendly inter-relations among nations. This relationship is based on a double barrelled principle of ‘equal rights and self-determination of peoples’.⁵⁷ It is to be observed that the right to self-determination is vested in ‘peoples’. Clearly it is not a right that is exercisable by an individual but by peoples in their collectivity. Dinstein,⁵⁸ takes a more elastic interpretation of peoplehood which is not defined by territorial habitation but based

⁵⁶ Hans J. Morgenthau, *Politics Among Nations* (6th edn, Kalyani Publishers 2012) 130

⁵⁷ Charter of the United Nations 1945, article 1(2).

⁵⁸ Yoram Dinstein. *Collective Human Rights of Peoples and Minorities*. *International Law Quarterly*, 25, pp 102, 103.

on two tests. The first being objective and referring a common heritage collectively shared such as history, ethnicity or language and the second being a subjective sense of a shared unity- a feeling of constituting a distinct group. Similarly, Petre,⁵⁹ submits that ‘peoples’ was deliberately used to emphasise the broad scope of the right to self-determination and therefore does not imply the entirety of the people of a sovereign State. Similarly, ‘nation’ for the purpose of self-determination includes non-State groups.

Although the interpretations hold true in the discussion of peoplehood and nationhood in general, it can hardly be justified when referring to the context used in the UN Charter. Admitted, the Charter itself does not define the category or number of people that is required for the purposes of self-determination. In fact it opens with the collective noun phrase: ‘We the peoples of the United Nations’. Nevertheless, since the entirety of article 1(2) relates to nations, the principle of equality of rights must be understood as equality of rights of nations and similarly, the peoples refer to the peoples of the respective nations. The view of this thesis is that ‘nation’ in the context of article 1(2) of the UN Charter refers to States. Consequently, self-determination becomes the right of the peoples of nations and not of a section or group of a people of nations.

In addition, self-determination under the Charter is merely a principle upon which friendly relations among nations is to be based. This provides a very narrow application of the concept. Put differently, the Charter recognises a right to self-determination only to the extent that it is foundational to development of friendly relations. A similar approach is adopted under article 55 of the Charter and therefore the above submissions equally apply to the said article 55. From the observation of Mälksoo,⁶⁰ it is deducible that the understanding and application of self-determination precedes the UN Charter. He noted for instance the application of the principle by the Soviets as early as 1920 not just as a political principle but including a justification for secession. His conclusion that self-determination by the Soviets was rooted in hypocrisy,⁶¹ provides useful insights into understanding the States seem to employ double standard on the issue of self-determination depending on their vested interests.

⁵⁹ Petr Kilian, 2019. Self-Determination of Peoples in the Charter of the United Nations. *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito*, 11(3), pp 342, 347.

⁶⁰ Lauri Mälksoo, 2017. The Soviet Approach to the Right of Peoples to Self-determination: Russia’s Farewell to *Jus Publicum Europaeum*. *Journal of the history of International Law*, 19, pp 200, 201-202.

⁶¹ *Ibid*, 216.

Nwogu and Oraeto,⁶² are however of the considered view that the right to self-determination under the UN Charter extends to a right to secession. This conclusion was arrived at by highlighting the mention of the right in the Charter and other international legal instruments. While this may represent perhaps a popularly desired view, it is however difficult to sustain such interpretation from the clear provisions of the Charter. Article 31 of the Vienna Convention on the Law of Treaties is clear that treaties are to be read in context and with regards to their stated objectives. Thus, although it is conceded that the Charter recognises a right to self-determination, such recognition is only to be understood in the context used in the Charter which does not include a right to secession.

2.1.2 Self-Determination in the Context of Prevention of War

It is necessary to pursue a possibility of a right to self-determination under different perspectives under the limited scope of articles 1(2) and 55. The preamble to the Charter expresses the determination to protect future generations against the scourge of war. One cannot deny the international security implications of the agitations for self-determination and the human crisis that often occasion such agitations. Examples are in the cases of Nigeria and Sudan. Thus, the question arises whether a right to self-determination can be claimed as inherent in the determination to avoid war. It seems obvious that war which the UN Charter seeks to prevent is war in the international context. This is clear from article 1(1) of the Charter which states the first objective of the UN as the maintenance of international peace. Accordingly, unless the agitation for self-determination constitutes a threat to peace in the international context, it is outside the scope of the UN.

Besides, article 2(7) of the UN Charter divests the UN of any authority to intervene in any matter which is essentially within the internal of a State. It is therefore not surprising that the powers of the Security Council only extends to the maintenance of international peace and not domestic peace.⁶³ Nevertheless, the Security is vested with powers to determine the existence of threat to international peace and security and to recommend appropriate measures.⁶⁴ Even then, linking

⁶² Ken Nwogu1 and Amucheazi Chibike Oraeto, 2021. Contextual Expansion of the Right of Self-Determination. *International Journal of Business and Law Research* 9(3), pp 228, 235.

⁶³ Charter of the United Nations 1945, article 24 (1).

⁶⁴ *Ibid.*, art 39.

domestic agitations for self-determination to a threat of international peace remains a hurricane task.

This thesis submits that the Charter of the United fails to recognise and protect a right to external self-determination. It merely recognises the right of a nation to self-determine issues affecting it and not the right of ethnic people or groups within the nation to secede. Although this is a necessary consequence of sovereignty, the Charter fails to address situations where State forces are employed in the inhuman oppression and subjugating of ethnic or religious minorities within a State.

2.1.3 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Although the UN is not unaware of the reality of oppression of minorities in some States, it tiptoes around the issue of justifying self-determination in such circumstances. Member States of the UN seem very united in their efforts to protect their own territorial integrity. This is very clear from the evasive posture of the UN under the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.⁶⁵ The Declaration merely mandates States to recognise and protect minorities and the right of minorities to their culture, language and identity.⁶⁶ More particularly, minorities have a right to internal self-determination which the State is mandated to protect. The Declaration does not by stretch of interpretation recognise the rights of minorities to external self-determination. In fact the Declaration states emphatically that nothing it is provision is to be construed as affecting the territorial integrity of States. The rights of minorities under the Declaration do not therefore extend to an act such as external self-determination which will undermine the inviolability of the territory of the State.

2.1.4 UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States 1970

The Declaration supports the argument of this thesis regarding the proper interpretation of articles 1(2) and 55 of the Charter of the United Nations. The relevant provisions are hereunder highlighted. First, the Declaration equally prohibits intervention both direct and indirect and

⁶⁵ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/136

⁶⁶ Ibid, articles 1-2.

irrespective of the reason in the domestic affairs of another State. The Declaration also underscores self-determination as the right of a State to freely determine its social, political, economic and other interests. When not with reference to State, self-determination only recognises the right of a people to freely determine the political status and pursue their social, economic, cultural and political development. This does not include a right to seek a separate sovereign identity from their State.

With regards to independent sovereign identity, self-determination under the Declaration only relates to colonised people and people under foreign subjugation, exploitation or domination. For the above peoples, self-determination includes a right to establish sovereign States, associate with other States and integrate with other States. This is because it takes the view that colonies do not form part of the sovereign territory of the colonising State but exists as separate entities. The peoples of therefore have a right to self-determination. The Declaration does not therefore concern itself for people under domestic exploitation or subjection in an already existing State. To be clear, the Declaration reiterates that ‘Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.’ Thus, self-determination in the context of the UN Charter and related instruments does not operate to undermine territorial integrity of an existing sovereign State.

2.1.5 United Nations Declaration on the Rights of Indigenous Peoples 2007

The United Nations Declaration on the Rights of Indigenous Peoples 2007 deals more particularly with the rights of indigenous peoples. This is particularly relevant especially in the context of the agitation for self-determination by the indigenous people of Biafra in Nigeria. The Declaration among other things expresses concern of the historical injustices against indigenous peoples especially from colonisation and forceful acquisition of their indigenous lands and exploitation of their natural resources which undermined their right to development.⁶⁷ Article 3 of the Declaration provides as follows:

⁶⁷ United Nations Declaration on the Rights of Indigenous Peoples 2007, preamble.

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The above is the thrust of the Declaration as relating to the issue of self-determination. Although it recognises a right to determination, it limits the right to the following areas:

- i. Political status;
- ii. Economic self-determination;
- iii. Social self-determination and
- iv. Cultural self-determination.

Self-determination with regards to political status is the most directly relevant right to this thesis. The Declaration does not define 'political status'. However, Appadorai,⁶⁸ defines politics as dealing with the State: a group of people organised within a legal framework in a definite territory. If political status is understood in this sense, one may be hasty to conclude that self-determination of political status includes right to secession. However, the Declaration mischievously avoids the right to secession as a derivative of political self-determination. Thus, although the Declaration recognises the right of indigenous people to self-government, it is only with regards to internal and local matters.⁶⁹ The self-government so contemplated does not therefore suppose a sovereign self-government. The same principle applies to the right of indigenous people to nationality under article 6 of the Declaration.

Article 26 of the Declaration recognises the right of indigenous people to lands which they owned traditionally, possessed or acquired in accordance with the *uti possidetis* doctrine. For the avoidance of all doubts, article 46 of the Declaration makes it abundantly clear that the provisions of the Declaration do not confer a right on any people to or encourage dismembering the territorial integrity of any State. The rights of indigenous people are therefore to be enjoyed within the circumference of the territorial integrity of the State they belong to.

⁶⁸ Ibid., Appadorai (Supra n 53), p 3.

⁶⁹ United Nations Declaration on the Rights of Indigenous Peoples 2007, article 4.

2.1.6 Self-Determination and Enforcement Mechanisms under the UN Charter

Based on the submissions above, it is not surprising that the UN Charter does not have an effective enforcement mechanism as it relates to self-determination. This is to be expected as the Charter fails to expand the scope of self-determination to political independence of peoples from their respective States. There are three basic mechanisms for enforcement of the UN Charter. These will now be discussed in the particular context of enhancing a right to self-determination.

2.1.6.1 Expulsion for Persistent Violation of Principles of the UN

The first is the use of expulsion. Where there is a persistent violation of the guiding principles of the UN, the violator-State-member may be expelled.⁷⁰ It needs to be emphasised that violation of ‘principles’ is sufficient to trigger the sanction of expulsion. This emphasis is important given that self-determination is stated to be a principle. Equally important is that the violation of the principle of self-determination must be persistent. A fundamental limitation of the enforcement mechanism is the failure to define what amounts to persistent violation. For instance how often or how long should a party be in violation of the principle to attract expulsion? Second, expulsion of a member must be on the recommendation of the Security Council. However, the Charter fails to address the issue of who may bring a report of violation of principles of the Charter to the Security Council and the procedure which the Council may adopt to vary the recommendation before exercising its power of recommendation of expulsion.

Another interesting aspect of the issue is the non-clarity of the possible effects of expulsion in deterring violation of the principles of the UN. Put differently, what does a party stand to lose from forfeiting membership of the UN through expulsion? Beyond reputational damage at the international arena, it is not clear whether expulsion provides reasonable incentives for the observance of the principles of the UN such as self-determination. Moreover, violation of the principle must be understood only in the normative context that the principle is used in the Charter which has already been extensively discussed. Although the mechanism is weak, it may still be useful in providing political pressure to compel State parties of the UN to respect the principle of self-determination at least to the extent guaranteed in the UN Charter.

⁷⁰ Charter of the United Nations 1945, article 6.

2.1.6.2 UN Security Council and Enforcement of Self-Determination

The Security Council of the United Nations is the principal organ for the enforcement of the Charter of the UN particularly its guiding principles and for the maintenance of international peace and security. The Council consists of 15 members of which 5 are permanent members while 10 are elected by the General Assembly of the United Nations.⁷¹ The responsibility to maintain international peace is conferred on the Council by the members of the UN such that the Council acts on behalf of the entire members of the UN. Consequently, all members of the UN undertake to accept and implement decisions taken by the Security Council.⁷² The Council therefore reports to the General about its activities usually annually.⁷³ The Council has the power to investigate disputes or conflicts and to determine whether the said dispute has the tendency to undermine international peace and security.⁷⁴

It is submitted that the powers of the Council with regards to self-determination only becomes activated where the Council determines that the agitation to self-determination has the likelihood to threaten international peace. In the absence of such threat, peoples seeking self-determination cannot resort to the enforcement powers of the Council. Besides, the constitution of the Council and particularly the framework of permanent membership and veto power of the permanent members, encourages politicisation of the Council.⁷⁵ A permanent reserves the right to veto any decision of the Council and does not need to even provide any justification for the veto. This framework often results in gridlock on critical matters.⁷⁶ The implication is that vested political interests of the permanent members promote abuse of powers of the Council. Moreover, the composition of the Council undermines the fundamental principle of equality of members of the UN. Permanent membership undermines principle of sovereign equality.⁷⁷ The decisions and actions of the Council are therefore often criticised as politically bias. Example was the invasion of Iraq by the United States of America and the ineffectiveness of the Security Council due to the

⁷¹ Charter of the United Nations 1945, article 23 and UNGA A/RES/1991(XVIII) 1963.

⁷² Ibid., article 25.

⁷³ Ibid., article 24.

⁷⁴ Ibid, article 34.

⁷⁵ T G Weiss, 'The Illusion of UN Security Council Reform' (2003) 26(4) *The Washington Quarterly*, 147

⁷⁶ Justin S. Gruenberg, 2019. An Analysis of United Nations Security Council Resolutions: Are All Countries Treated Equally?. *Case Western Reserve Journal of International Law*, 41(2), pp 467-475.

⁷⁷ N J Schrijver, 'The Future of the Charter of the United Nations' (2006) 10 *Max Planck UNYB* 1.

veto power of the US.⁷⁸ Based on the above, the Council does not represent a veritable institution for the advancement of the right to self-determination.

2.1.6.3 ICJ and the Enforcement of Self-Determination

The International Court of Justice (ICJ) is another important institution for the enforcement of the provisions of the UN Charter. The ICJ is the primary judicial arm of the UN. Its constitution and function are as provided in the Statute of the Permanent Court of International Justice. The Statute forms a part of the UN Charter.⁷⁹ All the members of the UN gave an undertaking to abide by the decisions of the Court. Where a party fails or refuses to comply with any decision of the Court, recourse is to be made to the Security Council by the other party. The Council in such circumstances may decide on measures to take or make recommendations as it sees necessary.⁸⁰

The Court should ordinarily serve as global judicial forum for the determination of rights and duties regarding self-determination. However, the jurisdiction of the Court is limited to States exclusively.⁸¹ The legal implication is that peoples of sovereign States do not have the *locus standi* to approach the ICJ for judicial determination of a right to self-determination. This thesis asserts that the absence of such judicial forum at the international level such as the UN encourages a resort to self-help by peoples seeking a distinct sovereign identity from their host States. The wave of armed hostilities which have become a consequence of almost all claims to self-determination in Africa is therefore not unconnected with the absence of effective judicial remedy at the international level which is independent of the State from which external self-determination is claimed.

2.2. Self-Determination under the Universal Declaration of Human Rights 1948

The inter-relationship between universally recognised human rights has remained a subject of controversy. Although for instance Saul,⁸² favours a human rights basis for self-determination, he fails to conclusively justify his position with regards to specific human rights instruments at the international level. The debate therefore remains widely open. In determining the nature and scope

⁷⁸ Mats Berdal, 2003. The UN Security Council: Ineffective but Indispensable. *Survival*, 45(2), pp 7-9.

⁷⁹ Charter of the United Nations 1945, article 92.

⁸⁰ *Ibid*, article 94.

⁸¹ Statute of the International Court of Justice 1945, article 34.

⁸² Matthew Saul, 2011. The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?. *Human Rights Law Review*, 11(4), pp 609-644.

of the right to self-determination in international law, it is important to critically examine relevant human rights instruments at the international levels. In this regard, the Universal Declaration of Human Rights adopted by the United Nations' General Assembly in 1948 becomes important. This is because the Declaration represents the global human rights standard of universal validity even if in principle only. The Declaration exerts political, legal and moral influence as the fundamental rights instrument at the international level. It is the primary codification of internationally recognised human rights.⁸³

The Declaration opens in its preamble with the recognition that the foundation of global peace and justice lies in the inherent dignity and equality of rights of all humans. Although the Declaration does not specifically recognise the right to self-determination, for reasons hereunder canvassed, this thesis submits strongly that self-determination is driveable from the right to dignity. It seems that the entirety of the declared rights is rooted in the notion of dignity. For instance, it is because of inherent dignity that a person is entitled to freedom from discrimination, right to life, liberty and other expressly defined rights. Dignity as a concept refers to worth, honour and glorified status of the human person. This as Okene and Akani,⁸⁴ rightly observe, includes a right to personal autonomy otherwise known as personal self-determination. Dignity is therefore the fulcrum on which all other human rights revolve. Although the dignity is ordinarily inheres in personhood, its contemporary interpretation extends to dignity of peoples as a group.⁸⁵ The legal question arises whether the right to dignity under the Declaration creates a consequential right to self-determination.

2.2.1 Implication of the Status of Freeborn on Self-Determination

Article 1 of the Declaration protects the right to dignity in the following words: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.' The first important thing to notice is the allusion to being born free- a status that all humans enjoy. Thus, irrespective of social, political

⁸³ Hurst Hannum, 1995. The Status of the Universal Declaration of Human Rights in National and International Law. *GA. Journal of International and Comparative Law*, 25, pp 287, 289.

⁸⁴ O. V. C. Okene and Nnamdi K. Akani, 2019. Human Dignity and Human Rights: The Nigerian Question. *Maiduguri Law Journal*, 17, pp 196, 199-200.

⁸⁵ J. Resnick and J. C. Suk. 2003. Adding Insult to Injury: Questioning the Role of Dignity in Conceptions of Sovereignty. *Stanford Law Review*, 55, p 1921.

and economic circumstances of birth, every human is born free. It needs to be pointed out that every person is born into a family and by extension into a political unit which may be a State, colony or un-governed area. The notion of being free must be taken as implying that the rights of a person are not impeded by the political system to which he is born into. He retains his freedom to either retain or renounce the political unit to which he was born into. It is therefore argued that being born free includes a right to external self-determination.

To argue otherwise is to fundamentally deny the right to the political status of a freeborn. Another way to look at the argument is that persons who are compelled to remain within a political unit against their free will cannot be said to be free-born. Being born free as the Universal Declaration of Human Rights provides, absorbs a person of any eternal obligation, bond or allegiance to any unit whether political, social, economic or religious. The State cannot therefore operate to extinguish this freeborn status of people. Anything to the contrary is analogous to slavery except that in this case, peoples become slaves to their State of birth or inherited State. Freeborn must therefore also include freeborn in the political context of statehood which ultimately translates to self-determination.

2.2.2 Right to Dignity as a Rights Basis for Self-Determination

Article 1 of the Universal Declaration of Human Rights cited above declares a right to equality of inherent dignity of the human person. It further recognises the endowment of all humans with the faculty of reasoning and conscience. The two endowments: reason and conscience further enhance the dignity of the human person. Although the declaration protects equality in dignity and rights, it understandably did not ascribe equality to reason and conscience. Understandably because human reasoning and intelligence differs, so do human conscience. Yet, it is fairly sufficient to recognise that at the very least, every human being, has conscience and reasoning faculty. The implication is that every human has the legal capacity to make his own rational decisions including a right to be wrong or to make mistakes. Thus, the concept of dignity includes a right of freedom of choice which is deemed to be based on individual reasoning and conscience. Freedom of rational choice translates loosely into self-determination.

This thesis takes the considered view equality of dignity presupposes equality of freedom of choice. The decision of a political is therefore not to be imposed on another person. This includes

political choice. Furthermore, considering that every human is endowed with the twin faculties of reason and conscience, no human or group can arrogate to himself the right or power to unilaterally determine the political interests of another group including the imposition of a supposed indissoluble statehood on a people. Since every human enjoys cognitive freedom they are necessarily entitled to political self-determination.

Accordingly, Boire,⁸⁶ summarises this line of thought in the following words:

If freedom is to mean anything, it must mean that each person has an inviolable right to think for him or herself. It must mean, at a minimum that each person is free to direct one's own consciousness; one's own underlying mental processes, and one's beliefs, opinions and worldview. This is self-evident and axiomatic.

Put differently, the imposition of statehood on peoples, deprive them of their right cognitive freedom and choice. Moreover, freedom of choice is a natural character of inherent human dignity. This choice must necessary extend to political fields. Raj,⁸⁷ observes that freedom of political choice does not only flow from human dignity but that is a necessary condition for the enjoyment of all other rights. The reason is that political dynamics defines every other index of human living. The right political firmament is therefore fundamental to the enjoyment of human rights. Thus, self-determination becomes a derived right from expressly protected rights because it is a primary precondition for the enjoyment of other rights.

In highlighting the importance of freedom of choice, Singer,⁸⁸ states thus:

A free society, one might think, gets out of the way and liberates each of us to pursue our path, to live our dreams, to choose our associations, to make our own plans, to make up our own minds. Others may think they know what is good for us, and sometimes they are right. But it is another thing entirely for them to impose their will on us and prevent us from making our own choices and our own mistakes.

Furthermore, in the enjoyment of the rights which are guaranteed under the Declaration, there is the prohibition of discrimination. More importantly, political status such as statehood, non-self-governing or trusteeship is not to be used to derogate from the rights so provided.⁸⁹ Accordingly,

⁸⁶ R G Boire, 1999/2000. On Cognitive Liberty (Part I). *Journal of Cognitive Liberties*, 9, pp 7, 12.

⁸⁷ Prithivi Raj, 2020. Right to Self Determination as Human Right. *ACCLAIMS*, 9, pp 1, 6.

⁸⁸ J. W. Singer, 2016. Anti-Paternalism. *New England Law Review*, 50, pp 101, 102.

⁸⁹ Universal Declaration of Human Rights 1948, article 2.

the right to dignity which it is submitted includes self-determination cannot be limited by sovereign State status. Interestingly the Declaration although recognises a universal right to have a nationality, equally recognises a right to change nationality.⁹⁰ It is submitted that changing nationality is not limited to renunciation of citizenship but extends to the right of a people to establish separate, distinct and independent national identity. The Universal Declaration of Human Rights provides a strong rights basis for self-determination particularly as an extension of the right to dignity.

2.2.3 Enforcement of the Right to Self-Determination under the Declaration

Although the Universal Declaration of Human Rights provides a strong arguable human rights basis for self-determination, it falls short of providing any system for the enforcement of the rights so provided. The entirety of the declared rights appears to be mere statements of intentional cosmetic good intentions. This is because enforceability is a fundamental character that distinguishes a right from a privilege. In this regard, the Universal Declaration of Human Rights can hardly qualify as a rights instrument. In fact the Declaration does not pretend about its lacking in legal force as it merely requires State organs and individuals to ‘strive’ to promote respect for the rights through teaching and education.⁹¹ From the above, there is only legal obligation to guarantee the rights beyond mere striving. The right to self-determination under the Declaration is therefore a right without a right. It amounts to putting something which will stand.

2.3 International Covenant on Civil and Political Rights 1966

The International Covenant on Civil and Political Rights adopted by the UN in 1996 contains rights which are directly relevant to the legal discourse of self-determination under international law. Article 1 of the Covenant provides for a right to self-determination. It links self-determination to political, economic, social and cultural rights.⁹² In addition, the right under the Covenant applies to all peoples thus expanding the scope beyond States, colonised or people under foreign dominations.⁹³

⁹⁰ Ibid, article 15.

⁹¹ Charter of the United Nations 1945, preamble.

⁹² Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial ‘National’ Identity* (Martinus Nijhoff Publishers 2000), p 15.

⁹³ Ibid, pp 32-33.

However, its wordings are essentially the same with that of article 3 of the United Nations Declaration on the Rights of Indigenous Peoples 2007. It will amount to vain repetition to pursue the same argument. The provisions suffer the same limitations as that of article 3 of the United Nations Declaration on the Rights of Indigenous Peoples 2007 already discussed.

A very important feature of the Covenant is its enforcement framework vested with the Human Rights Committee.⁹⁴ There is an obligation on States to report on the measures they have taken to realise the achievement of the rights. The first report is to be submitted within one year of the coming into force of the Covenant while subsequent reports are to be made at the request of the Committee.⁹⁵ Furthermore, where a State Party considers that another State party has failed to implement the provisions of the Covenant, it has a right to notice that other State in writing. The receiving State then has an obligation to explain the measures it has actually taken.⁹⁶ The final reporting stage is to be made by the Committee to the United Nations' General Assembly.⁹⁷

Essentially therefore, the Covenant adopts a reporting framework to facilitate the implementation of the rights. Reporting is very important to provide transparency and checks on the measures so adopted by State parties. Nevertheless, the system of reporting has some short-comings.⁹⁸ First, the Committee States are to provide the reports. There is therefore a real possibility of bias as State will almost certainly not report its negative performances or its breach of the rights. There is no system to ensure that the reports represent truly and fairly the position in the respective State. Second, failure to report does not attract any sanction. A State party may therefore choose not to report at all. Third, the Committee saddled with responsibility to oversee the implementation of the Covenant merely has the power to receive reports and to report to the General Assembly. The framework is therefore too weak to effectively promote the attainment of the right to self-determination.

⁹⁴ International Covenant on Civil and Political Rights 1966, article 28.

⁹⁵ Ibid, article 40.

⁹⁶ Ibid, article 41.

⁹⁷ Ibid, article 45.

⁹⁸ James Summers, 2019. The Right of Peoples to Self-Determination in Article 1 of the Human Rights Covenants as a Claimable Right. *New England Journal of Public Policy*, 31(2), 1-3.

3.0 LEGAL CRITIQUE OF SELF-DETERMINATION AND *UTI POSSIDETIS* IN AFRICA

The claim to self-determination is not peculiar to the African continent. However, the increasing wave of violent conflicts and civil wars which follow such claim in Africa has been a perennial legal issue. Kimemia,⁹⁹ notes that ‘Conflicts remain a hallmark of life on the African continent, which is prone to civil conflicts, discord, strife, civil wars, and cases of genocide.’ Two theories are advanced for the explanation of armed conflicts in Africa: grievance and greed. The first is dissatisfaction with existing political and economic structures/relations within the State. Issues under this theory include resource control and devolution of powers. This dissatisfaction is the primary motivation for the agitation for self-determination. The theory of greed on the hand refers to tendency for undue enrichment through looting of common resources. This theory is used to explain the activities of armed rebel groups in Africa. Yet in both instances, the right of self-determination is argued to be the justification for the actions.¹⁰⁰ It becomes therefore necessary to critically examine the legal content of the right in Africa.

3.1 Constitutive Act of the African Union 2000

The Constitutive Act of the African 2000 established the African Union (AU) as a successor to the Organisation of African Unity (OAU).¹⁰¹ The AU draws inspiration from the ideals of pan-Africanism, solidarity, unity, cooperation and cohesion among the peoples of Africa and among the States of Africa. In addition, it considers the struggle of the African people for independence and economic emancipation from colonial exploitation.¹⁰² One would have therefore expected that for a continent with a history of colonial domination, the notion of independence would include a liberal approach to self-determination. That is, the consolidation of freedom from external colonialism should have provided a strong ideological basis against internal colonialism or any form of internal domination. Surprisingly, independence in the post-colonial African context was to be understood only with regards to independence from foreign occupation while internal

⁹⁹ Douglas Kimemia, 2021. The Impacts of Political Conflicts in Africa. *Journal of African Conflicts and Peace Studies*, 4(2), pp 1-2.

¹⁰⁰ Collier Paul and Hoeffler Anke, 2002. On the Incidence of Civil War in Africa. *Journal of Conflict Resolution*, 46 (1), pp 13-28.

¹⁰¹ Constitutive Act of the African Union 2000, article 2.

¹⁰² *Ibid*, preamble.

independence in the form of self-determination was to be aggressively opposed. This assertion derives from the provisions of the Constitutive Act of the African Union.

The Objectives of the AU are largely the same with that of its predecessor, the OAU. One of the objectives is especially important to self-determination. It is to ‘defend the sovereignty, territorial integrity and independence of its Member States’.¹⁰³ The AU leaves no doubt about the premium that it places on territorial integrity. It clearly sets out to defend it, presumably at all costs. For a people that have been victim of decades of foreign domination, the importance of the protection of territorial integrity from a possible foreign re-invasion cannot be over-emphasised. The defence of territorial integrity is therefore justified as a fundamental objective of the AU. Nevertheless, it needs to be clarified that this thesis only justifies the objective against externalities. It is not to be understood as supporting territorial integrity at the cost of the right of the African people to self-determination.

However, territorial integrity which the AU is committed to defending is just against externalities but also against claims to self-determination. This is clear from the guiding principles of the AU which includes the following:

- i. Sovereign equality of all the member States;
- ii. Respect for borders of member States as existing on the date of attainment of independence;
- iii. Non-interference in the affairs that are internal to a member State;
- iv. Rejection and condemnation of any change of government which is inconsistent with the Constitution of a member State; and
- v. Interference only in grave situations such as genocide, war crimes and crimes against humanity and such intervention must be approved by the Assembly of the Union.¹⁰⁴

3.1.1 Sacrosanctity of Borders at Independence

The principle of respect for colonial boundaries which was incorporated into the Constitutive Act of the AU was first adopted by the OAU in 1964 as the ‘Cairo Declaration’ to the effect that ‘all

¹⁰³ Ibid, article 3(b)

¹⁰⁴ Constitutive Act of the African Union 2000, article 4.

member States pledge themselves to respect the borders existing on their achievement of national independence'.¹⁰⁵ The above guiding principles of the AU undermine a right to self-determination in several ways. For instance, by upholding colonially defined boundaries and transforming them into sovereign borders, the Act directly prohibits every claim to external self-determination. In addition, the Act strictly upholds *uti possidetis* regarding territories held before independence. The Constitutive Act of the African followed the familiar part of the Charter of the OAU which did not recognise a right to self-determination beyond the right of independent African States to self-determine the political, social, economic and cultural interests. Thus, what exists under both continental organisations was State centred approach to self-determination not individual or groups. This was because African leaders were more concerned with protecting the acquired statehood against external invasion while stultifying any claim by groups to external self-determination.¹⁰⁶

Several reasons have been advanced to explain the religious commitment to the principles of *uti possidetis* and territorial integrity as colonially defined. A convenient place to begin is the observation that upon attainment of independent, the claims to self-determination in the form of sovereign distinct identity heightened across the newly created States. The various ethnic and religious groups within the States claimed a right to secession.¹⁰⁷ While these agitations in the considered view of this thesis revealed at the earliest opportunity, the unsustainability of most of the colonial imposed States and offered an opportunity to address the issues from its root, African leaders rather choose to silent all claims to self-determination. The concern was that the States in Africa will utterly disintegrate if the different constituent groups who desired were allowed to secede. Observes such as Hardy,¹⁰⁸ noted that in fact within the period of 1950 to 1970, there was widely held belief that colonial boundaries which had become borders will be fundamentally altered and fragmented by different groups seeking their own sovereign statehood.

¹⁰⁵ Organisation of African Unity 'Resolutions adopted by the first Ordinary Session of the Assembly of Heads of State and Government held in Cairo 17-21 July 1964' (1964) (Cairo Declaration).

¹⁰⁶ Rachel Murray, *Human Rights in Africa: From the OAU to the African Union* (Cambridge University Press 2004), p 7.

¹⁰⁷ Redie Bereketeab, *Self-Determination and Secession: A 21st Century Challenge to the Post-colonial State in Africa* (Nordic Africa Institute, Policy Notes 5, 2012), p 1.

¹⁰⁸ S Hardy, *A Brief History of Mapping* (Chimurenga Chronic 2015), pp 2-3.

Self-determination was therefore viewed as disruptive of the status quo and the accordingly, the AU just like the OAU was more committed to stability.¹⁰⁹ Indeed, the potentiality of self-determination resulting in the proliferation of States cannot be denied even by the most political optimist. The fear was immense as well as justified. The United States of America in its scepticism about self-determination expressed concern that it may represent ‘Pandora’s box that might lead to state-fragmentation, genocide, or the proliferation of states too small or too primitive to merit self-government’.¹¹⁰

Based on the above reason, the AU just like its predecessor the OAU treats claim to external self-determination as treason for which maximum State force is to be unleashed in order to suppress wherever and whenever it arises.¹¹¹ While preserving colonial boundaries served the useful purpose of promoting stability post-colonialism and effectively minimised border related disputes, it totally stripped the African people of any right to external self-determination. The African system effectively denies legitimacy to any form of disintegration of States outside the boundaries as existed on the date of independence.¹¹²

3.1.2 Stability through defending Colonially Defined Boundaries: How Effective?

The assumption that the strict maintenance of borders based on colonial boundaries will create and sustain stability in Africa is one that is not free from challenges. While this thesis concedes that the principle may have helped in minimising inter-State border conflicts, it nonetheless asserts that the religious commitment to upholding colonially defined boundaries has contributed to the escalation and sustenance of internal conflicts within States across Africa. The principle fails to recognise that colonial boundaries were arbitrarily imposed on the African people without regards to the diversity and sometimes ‘ancient hatred’ existing among the people. The belief that forced unity was sustainable or that statehood cured historical incompatibilities among peoples has been effectively dismantled by the implosion of several African States.

¹⁰⁹ Constitutive Act of the African Union 2000, article 3(f).

¹¹⁰ B Simpson, 2012. The United States and the Curious History of Self-Determination. *Diplomatic History*, 36, p 676.

¹¹¹ Redie Bereketeab, *Self-determination and Secession: African challenges* (Routledge 2015), p 3.

¹¹² R Emerson, 1962. Pan-Africanism. *International Organization*, 16, p 35.

By defending colonial imposed boundaries, the Constitutive Act of the African Union retained and advanced colonial vestiges which deprived the African people of a right to self-determination. Just as the colonialists did not consult the African people in the arbitral partitioning of Africa like cake, the AU Act also deprived the African people a chance to independently define their identity. The social contract theory of the State envisages freewill in the constitution of the State. Such freewill is not only important to promote patriotism but is consistent with the natural rights of dignity and liberty. Decolonisation ordinarily offered a rare opportunity for true social contracting in Africa towards statehood which it is submitted, is the more sustainable approach to stability. Thus, the insistence on colonial boundaries becomes comparable to substituting foreign colonisers with African colonisers.

As expected therefore, the constitution of statehood along colonially defined boundaries has not been effective in engineering sustainability in Africa. In Sudan, the principle resulted in a civil war which spanned a total of over 20 years. Another case is that of Somalia. The Republic of Somalia was formed through the amalgamation of Somaliland, a British colony and Somaliland an Italian Colony. The unworkability of the union engulfed the country with armed civil unrest while the AU continues to deny a right to self-determination in the Republic of Somalia.¹¹³ On the whole, stability has remained elusive in Africa due to the uprising of several secessionist movements. The prohibition of peaceful disintegration has inevitably encouraged armed efforts at disintegration with attendant human, economic and social loss as the conflicts continue to slow the wheel of sustainable development in Africa.¹¹⁴

A related question may be asked: ‘what is even bad about fragmentation of States?’ This line of interrogation has become necessary considering that preventing fragmentation of States is the nucleus of the argument in support of prohibition of right to external self-determination in Africa. As far as political theory is concerned, there is no ideal population ratio or territorial space required to constitute a State. Moreover, the size of a State in terms of population or territory is not definitive of the developmental trajectories of the State. Consequently, this thesis finds it difficult to justify the argument against fragmentation of States. Moreover, it is also possible that fragmentation may

¹¹³ Ibid., Emerson (Supra, n 106).

¹¹⁴ Burke Roland, *Decolonization and the Evolution of International Human Rights* (University of Pennsylvania Press 2010), p 57.

promote development, national cohesion, unity and stability. It is therefore strongly submitted that the denial of the right to self-determination under the Constitutive Act of the African Union is not properly aligned to the desire to promote stability in Africa but only perpetuates colonial vestiges and injustice against peoples who would otherwise have chosen their own separate and sovereign identity.

3.1.3 Non-Interference

Another principle under the Constitutive Act of the African Union which derogates from the right to self-determination is non-interference in the domestic affairs of States. Although a universally accepted principle of customary international law,¹¹⁵ the principle provides an excuse for the AU to overlook the violation of human rights by member States especially in cases involving claim to self-determination. The issue is easily swept under the carpet as an internal affair which the Union has no jurisdiction to intervene in. The AU does not therefore have any system of protection to protect peoples seeking self-determination. The right to self-determination only arises in cases which the Act states to be grave. This includes war crimes, genocide and crime against humanity. Even then, the approval of the Assembly of the Union is required.¹¹⁶ The nature of the intervention which the AU may make is not stated. Thus, the Act fails to provide sufficient deterrence against wholesale abuse of the human rights of peoples claiming a right to self-determination.

3.2 African Charter on Human and People's Rights 1981

The Charter is the primary human rights instrument at the African continental level. The adoption of the Charter was basically a response to political necessities at the time. Understandably, human rights have been a popular rhetoric in Africa. In the build up to the attainment of independence through this dismantling of colonialism in Africa, human rights were used to demonise colonialism and to justify the claim to a right to self-determination which in the character of independent self-rule.¹¹⁷

¹¹⁵ Zhang Naigen, 2016. The Principle of Non-Interference and its Application in Practices of Contemporary International Law. *Fudan journal of the Humanities and Social Sciences*, 9(3), pp4499-464.

¹¹⁶ Constitutive Act of the African Union 200-, article 4(h).

¹¹⁷ Makau wa Mutua, 1993. The African Human Rights System in a Comparative Perspective. *Review of African Committee on Human and Peoples' Rights*, 3(5), p 7.

Other issues which human rights were effectively deployed against in Africa included the apartheid regime in South Africa and racial based discrimination in Mozambique, Angola, Namibia and Zimbabwe (then Rhodesia). Furthermore, on the attainment of independence, most African States were ruled by despotic dictators who flagrantly abused the human rights of their citizens. The African Charter was therefore a child of necessity to salvage the battered international image of Africa as an uncivilised community of human rights violators. Africa therefore needed to convince the international community of its commitment to human rights post-colonialism.¹¹⁸

The Charter contains a broad framework of rights covering political, economic, cultural and social fields. However, the focus of this thesis is on the right to self-determination under the Charter. The Charter provides as follows:

(1) 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 chosen.

(2) Colonized 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.¹¹⁹

3.2.1 The Concept of All Peoples

The right to self-determination under the Charter is one that is vested on ‘all peoples’. However, like the approach under the Universal Declaration of Human Rights and other related instruments, the Charter totally avoided the definition of ‘peoples’ especially for the purpose of self-determination. This deliberate omission has only but compounded the controversies over peoplehood in Africa. Ouguergouz,¹²⁰ opines the ‘people’ in the African Charter has become a ‘chameleon-like concept’ capable of different interpretations that contributes to conceptual difficulties in the implementation of the Charter. The deliberate omission he argued is clearly to create a vacuum which can easily be exploited.

¹¹⁸ Ibid.

¹¹⁹ African Charter on Human and Peoples’ Rights 1981, article 20(1) and (2).

¹²⁰ Fatsah Ouguergouz, *The African Charter on Human and Peoples Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (Leiden 2003), p 204.

Castellino,¹²¹ contends that ‘indigenous’ people would have been cliché. He hinged his argument on the observation that indigenous people is a less ambiguous term in international law while ‘peoples’ remains largely unclear. Thus to him, indigenous people was a better approach both for anti-colonial agitations and for self-determination. However, on closer examination, it is observed that indigenous people is not very different from peoplehood in the general sense. This is because the same criteria are used. According to Wheatley,¹²² indigenous people are defined by territory which they have occupied through their traditional history; they share of sense of self-identification as a single people and are culturally unique and they have a system of governing themselves even not formal but at least in governing some areas of their collective life. These criteria are not very different from the indexes of peoplehood. The difference between peoplehood and indigenous people seems therefore not more than the difference between six and half-a-dozen.

In any case, it should be observed that the Charter employed the adjective ‘all’ in the qualification of people. The use of ‘all’ clearly makes arguments as to the meaning of peoplehood unnecessary since ‘all people’ is taken as meaning nothing less than all people. If the Charter had intended to qualify peoplehood under the section, ‘all’ would not have been included. This line of interpretation is further justified by the reference in article 20(2) of the Charter to ‘[c]olonized or oppressed peoples’ which clearly qualifies the peoples referred to in that sub-article. Thus, the rights in article 20(1) are rights of all the peoples of Africa without any qualification whatsoever and howsoever.

This is without prejudice to the assertion of the African Commission on Human Rights that peoplehood must satisfy certain objective and subjective criteria. The objective criteria include common history, tradition, ethnic identity, culture, language, ideological and territorial infinities.¹²³ They must also collectively identify themselves as a separate a distinct community of people. The said identity is psychological and represents a strong sense of bond and cohesion among the people. This identity exists even if not recognised by people outside the group.¹²⁴ This

¹²¹ Joshua Castellino, 2014. ‘International Law and Self-determination: Peoples, Indigenous Peoples and Minorities’ in Christian Walter et. al., (eds.), *Self Determination and Secession in International Law* (Oxford University Press 2014), pp 27-33.

¹²² Steven Wheatley, 2014. *Conceptualizing the Authority of the Sovereign State over Indigenous Peoples*. *Leiden Journal of International Law*, 27, p. 376.

¹²³ Centre for Minority Rights Development (Kenya) and Minority Rights Group, Comm. 276/2003 (ACHPR, 25 November 2009), para. 73.

¹²⁴ Kevin Mwanganga Gunme and Others v. Cameroon, Comm. 266/03 (ACHPR, 27 May 2009), para

position can be reconciled with the interpretation of peoples argued by this thesis. This is because the criteria for determination of peoplehood only arise where it is necessary to draw a distinction between different peoples. However, as in this case where the reference is to ‘all’ peoples, there is absolutely no need for any criteria to distinguish peoples since ‘all’ over-rides the need for distinction.

3.2.2 Right to Existence

The first right with regards to self-determination under the Charter is the right to existence. It has been rightly observed that the right to existence as derived from the right to self-determination does not mean to physically exist alone or having life alone. The proper interpretation of the right is to found in the preamble to the African Charter which takes into consideration issues such as the history of values of the African people.¹²⁵ Existence therefore covers a right to exist as a people and enjoy such conditions necessary for civilised existence such as culture, values and self-determined political systems. That is, a right to exist as distinct people and to enjoy the features of that distinction.

Right to existence will therefore prohibit annexation, genocide and domination of a people. The history of Africa makes the right very important. For instance, the trans-Atlantic and trans-Sahara slave trade systems occasioned the dehumanisation of the African people and the denial of their peoplehood. This was peoples slaves were considered chattels and treated in most instances worse than animals. Africans were stereotyped as savages who were incapable of self-governance. Ideologically, they were considered inferior and therefore subject to slave for other races. The system denied Africans a right to exist a distinct people with a distinct cultural and political identity.¹²⁶

Another historical experience which makes the right to existence germane was the apartheid system in South Africa wherein blacks less of a people. The apartheid regime was a hierarchical segregation of people based on race. Whites were considered civilised and humane while blacks

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¹²⁵ Dina Shelton, 2011. Self-Determination in Regional Human Rights Law: From Kosovo To Cameroon. *American Journal of International Law*, 105, p 64.

¹²⁶ Patricia M. Muhammad, 2003. The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity. *American University International Law Review*, 19(4), pp

were regarded as apes. This racial hierarchy was used to justify all forms of dehumanising treatment of blacks and to protect white supremacy in South Africa.¹²⁷ Issues of racial discrimination across the globe also persisted. For instance there was the anti-Semitism of the Nazi regime in Germany which sort to exterminate the entire Jewish people. Various forms of gruesome mass murder were employed. These included supervised starvation to death, poisonous gasification in inhuman concentration camps and use of German death squads.¹²⁸ When these issues are taken into proper perspective, the importance of a right of ‘all peoples’ to existence becomes self-evident.

The international law response was a declaration of the inalienable right of every person to be recognised as a person everywhere and under every law.¹²⁹ This was complementary to the recognition of equal dignity of all members of the human family. Recognition as a person therefore crucial to addressing racial based injustices and discriminations. The African Charter seemed to have built on this historical foundation to specially recognise a right to exist as peoples. This right falls within the broader undertaking of the AU to end apartheid, colonialism, foreign domination and neo-colonialism.¹³⁰

3.2.3 Normative Content of Self-Determination under the African Charter on Human and Peoples’ Rights 1981

The first normative content of the right to self-determination is the right to existence which has already been discussed. However, two related norms are noteworthy. The first is a right to determine political status freely. This further includes the right to pursue economic and developmental policies chosen freely by the people.¹³¹ It is submitted that the determination of political status under the Charter does not suppose a right to independence. This is clear from the distinction between the right of all peoples and the right of colonised/oppressed people under article 20 of the Charter. For all peoples, self-determination has the following legal implications:

¹²⁷ Melike M. Fourie, Melanie Deist and Samantha L Moore-Berg, 2022. Hierarchies of Being Human: Intergroup Dehumanization and its Implication in Present-day South Africa. *Peace and Conflict Journal of Peace Psychology*, 1(1), pp 1-5.

¹²⁸ R. S. Landau, *The Nazi Holocaust: Its History and Meaning* (3rd edn, B. Tauris and Company Ltd., 2016), 1-32.

¹²⁹ Universal Declaration of Human Rights 1948, article 6.

¹³⁰ African Charter on Human and Peoples’ Rights 1981 preamble

¹³¹ *Ibid*, article 20(1)

- i. Right to existence;
- ii. Right to political status;
- iii. Right to determine economic development; and
- iv. Right to determine social development.

The right to self-determination in the form of secession is covered by the Charter.

A separate implication of self-determination exists for colonised or oppressed people. Unlike all peoples, they have a right to ‘free themselves from the bonds of domination’. Even at the risk of tautology, it needs to be emphasised that this right inures only to people that are under colonialism or oppression.¹³² Colonialism does not pose much of a conceptual dilemma. However, the concept of oppression cannot claim equal obviousness from the entirety of the Charter. If the concept of oppression is approached from article 1(1), it would include such notions as political oppression, economic oppression and social oppression. Furthermore, the denial of ‘freewill’ in the determination of the above issues to wit: political, economic and social issues will be sufficient to amount to oppression.

This thesis observes that oppression is not limited to external oppression. The article covers both internal and external oppression in the absence of any intention to the contrary. On this premises of oppression, a people acquire the right to free themselves. Disappointingly, the Charter dribbles around the important issues of ‘freeing’ themselves. That is, whether for people internally oppressed, freedom includes a claim to secession or merely taking steps within the internal legal system to surmount the oppression. Curiously, in the pursuit of freedom, the people only have a right of resort to means recognised under international law. This way, the Charter fails to provide any practical means to achieve freedom from oppression but merely throws the issue to international law.

A holistic reading of article 20 is suggestive that secession is not contemplated. Put more directly, internal colonisation or oppression does not create a right to secede. Self-determination is therefore very limited. This is because article 20(3) of the Charter, the right to assistance by the members of AU is only with respect to agitation against alien domination. Such assistance does not exist in

¹³² Ibid, article 20(1) and (2)

respect of domestic domination. The Charter therefore fails to adequately protect minorities who are being oppressed or colonised by their State government.

The above submission is supported by the decision of the African Commission in the case of *Katangese Peoples' Congress v. Zaire*.¹³³ The Applicants sought a declaration to that the Katangese Peoples' Congress should be recognised as freedom movement entitled to be assisted by members of the AU under article 20(2) of the Charter in order to achieve independence. They based their claim on the allegation that their right to self-determination was violated. The Commission in its rejection of the Claim held as follows:

In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in Government as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.

What the Commission has sanctioned is different variant of self-determination according to the whims and caprices of the respective State. The Commission also suggests that once a people participate in government, self-determination is achieved. It is submitted that the Commission falls to take into consideration that participation in government may be superficial such that it does not translate into any influence on governmental policies and decisions. This is because although the minority ethnic groups may have their say, the majority ethnic groups will always have their way. Participation without more does not therefore satisfy the requirements of self-determination. What article 20(1) requires is that the policies must have been freely determined by the people. This is not met by mere reason of participation.

Thus, as Shivji,¹³⁴ has rightly commented, the Charter promotes internal domination. It merely substitutes foreign oppression with domestic oppression and offers no solution in that regard. The ideology of State supremacy without regards to the interests of the peoples of the State runs riot throughout the Charter. In addition, the Charter is notorious for its vague language which is deliberately used to allow States derogate from the rights so conferred.¹³⁵ Example is the right of

¹³³ Case No. 75/92, 8th Annual Activity Report 1994–1995 (ACHPR/RP/8th).

¹³⁴ Issa Shivji, *The Concept of Human Rights in Africa* (CBS 1989), pp 1-12.

¹³⁵ Nnamdi Ogbu, 2005. 'The African Charter on Human and Peoples Right as Compatible with Despotism: The Nigerian Experience. *University of Benin Law Journal*, 8(1), p 113.

oppressed people to free themselves rather than use of more positive terms like secession. Of course, 'free' is vague term which can be easily exploited. The provisions on self-determination are therefore grossly inadequate taking into consideration the heterogeneous nature of African States and the reality of domination by majority ethnic groups in the States.¹³⁶ Makua,¹³⁷ in his criticism of the Charter observes a deliberate use of claw-back clauses which allow for the derogation of the rights contained in the Charter. Normatively and structurally, he contends that the Charter lacks the capacity to address human rights violations in Africa.

3.2.4 African Commission on Human Rights and the Enforcement of Self-Determination

The African Commission on Human Rights was created to oversee the implementation of the rights contained in the Charter including the right to self-determination.¹³⁸ The specific functions of the Commission are as follows:

- i. Promotion of human rights. The Commission is to employ several means such as education, research, enlightenment and encouragement of governments and relevant agencies and institutions.
- ii. Protect the enjoyment of humans in Africa in accordance with the provisions of the Charter.
- iii. Interpret and apply the provisions of the Charter. However, the interpretation must be at the request of member State of the AU, an institution set up by the AU or any organisation recognised by the AU.¹³⁹

The Commission suffers several structural problems which make it inefficient. One is that only State parties or organisations recognised by the AU may approach the Commission for interpretation of the Charter. This limits the right of access of several peoples and subjects them to recognition by the AU and such recognition may be unduly withheld. Further, although the Commission has the power of interpretation, it can only make report to the AU Assembly. It has no any inherent judicial powers and therefore cannot issue any binding declaration or injunction.¹⁴⁰

¹³⁶ Christof Heyns, 2003. African Regional Human Rights System: The African Charter. *Pennsylvania State law Review*, 108, p 679.

¹³⁷ Mutua wa Makau, The African Human Rights System: A Critical Evaluation (United Nations Development Programme, Human Development Report 2000), pp 1-6.

¹³⁸ African Charter on Human and Peoples' Rights 1981, article 30.

¹³⁹ Ibid, article 45.

¹⁴⁰ Ibid, article 52.

At best, the Commission can only make recommendations to the Assembly and the said recommendation is not binding.¹⁴¹ It has therefore been common for member States to totally disregard the decisions and recommendations of the Commission. Consequently, the Commission has remained effective in compelling adherence to the provisions of the Charter.¹⁴²

The structural inefficiencies of the African Commission on Human Rights led to the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights in 1998. The Court under article 3 of the Protocol has jurisdiction to interpret the African Charter on Human Rights. However, article 5 of the Protocol limits access to the Court in a way that excludes peoples of Africa. Only the Commission, State Parties and AU organisations have access to the Court. These structural inefficiencies led Nmehielle,¹⁴³ to conclude that under the African Charter itself, there is no remedy for the breach of the rights provided. The rights become largely political statements where African States were careful to avoid any binding and enforceable obligations. Of course, the position of this thesis that rights not secured by binding and enforceable duties are mere privileges. This is enforceability is the legal dichotomy between right and privilege.

3.3 Self-Determination and *Uti Possidetis* in Africa: The Case of Nigeria

In the discussion of the right to self-determination in Africa, it is necessary to draw examples from African countries. This is because as a result of sovereignty and non-interference in domestic affairs, domestic laws are crucial to the restriction or expansion of the right to self-determination even Africa is the context. Accordingly, this section provides a critical review of the legal status of self-determination under the Nigerian law.

¹⁴¹ Ibid, article 53.

¹⁴² Makau Mutua, 1999. The African Human Rights Court: A Two-legged Stool? *Human Rights Quarterly*, 29, p 342.

¹⁴³ Vincent Nmehielle, 2000. Toward an African Court of Human Rights: Structuring and the Court. *African Society of International and Comparative Law*, 6, p 27.

3.3.1 Historical Context of Self-Determination in Nigeria

The geopolitical territory now known as the Federal Republic of Nigeria originally consisted of independent and unrelated ethnic groups that were self-governing units. Modern Nigeria started with the British annexation of Lagos in 1861 and in 1886, a Charter was granted to the Royal Niger Company both to trade and to administer entire area. It also had powers to levy and collect taxes and custom duties.¹⁴⁴ In 1914, the Colony of Lagos and the Protectorate of Southern Nigeria were amalgamated with the Protectorate of Northern to become what is today known as Nigeria. However, despite the amalgamation, the South and North were administered as separate units. While direct rule was used in the South, indirect rule was employed in the South.¹⁴⁵ This was a result of the sharply distinct cultural and political setting of Southern and Northern Nigeria- a situation which inspired Yakubu,¹⁴⁶ to refer to Nigeria as a nation consisting of several unrelated nations.

The diversity of the Nigerian State has always represented ethno-religious rivalry and distrust. According to Okeke,¹⁴⁷ quoted Abubakar Tafawa Balewa, he foremost Northern Nigerian politician, later the first prime minister of independent Nigeria, thus:

The Southern people who are swarming into this region daily in large numbers are really intruders. We don't want them and they are not welcome here in the North. Since the amalgamation in 1914, the British Government has been trying to make Nigeria into one country, but the Nigerian people are different in every way including religion, custom, language and aspiration. The fact that we're all Africans might have misguided the British Government. We here in the North, take it that 'Nigerian unity' is not for us.

National unity has therefore been difficult to secure. To demonstrate this challenge, in 1953 when a southern member moved a motion for the independence of Nigeria, it was opposed by northerners with a threat that the north will secede. The attainment of independence on 1st October 1960 did not address the people of ethnicity in national politics. This was despite the fact that the Independence

¹⁴⁴ K O Dike, *Trade and Politics in the Niger Delta, 1830-1885: An Introduction to the Economic and Political History of Nigeria* (Oxford Clarendon Press 1956), pp 12-27.

¹⁴⁵ Alan Burns, *History of Nigeria* (George Allen and Unwin Ltd., 1929), p 214.

¹⁴⁶ John Ademola Yakubu, 2010. Trends in Constitution-Making in Nigeria. *Transnational and Contemporary Problems*, 10, p 423.

¹⁴⁷ Odinakachukwu E. Okeke, 2020. The Indivisibility and Indissolubility of Nigeria Vis-À-Vis the Right of Self-Determination. *IJOCLLEP*, 2(2), pp 70-71.

Constitution introduced a loosed federal system which granted wide autonomy to the different regions. Each of the regions had its own constitution and a governance system that was suited to its socio-cultural situation.¹⁴⁸ This did not however address of the problem of building national cohesion. On the contrary, it only aggravated it. The political space became chaotic and notorious for ethnocentrism, regionalism, political thuggery and nepotism.¹⁴⁹ The aftermath of the 1964 general elections which noted for rigging, kidnapping and manipulation was the military coup of 15th January 1966 led by an Igbo Southerner, Major Kaduna Nzeogwu. During the coup, the Prime Minister who was a northerner and some senior northern military officers were killed. A southerner of Igbo ethnicity, General Johnson Aguiyi Ironsi, emerged as the head of State of Nigeria.¹⁵⁰

The north considered the coup an Igbo ethnic coup and in July 1966, a revenge coup against Igbo soldiers was led by a northerner, Murtala Muhammed. Over 180 Igbo soldiers were murdered including the head of State. A northerner, Yakubu Gowon became head of State.¹⁵¹ The revenge coup quickly degenerated into ethnic pogrom against the *Igbos* in Nigeria. The events that followed resulted in the declaration of the Republic of Biafra out of Nigeria. This sparked a civil war that lasted from 1967 to 1970. Although at the end of the war, there was a declaration of ‘NO VICTOR, NO VANGUSIH’, the Igbos have continued to be alienated from national politics.¹⁵² The resurrection of the Biafra secessionist agitation is a consequence of a feeling of victimisation and alienation by the Igbo people. Interesting, State forces have continued to be unleashed against the agitators and it is feared that Nigeria may be heading for another civil war.

3.3.2 Political Self-Determination in Nigeria

Nigerian operates a constitutional democracy. Accordingly, the Constitution of the Federal Republic of Nigeria (CRFN) 1999 as amended is the fundamental legal framework that constitutes Nigeria, defines the powers of government and the rights and duties of the citizens.¹⁵³ The court

¹⁴⁸ Ben O. Nwabueze, *Constitutional History of Nigeria* (Spectrum Books Ltd., 1995), p 11.

¹⁴⁹ Isa Ishaq Ojibara, 2016. Biafra: Why Igbo Want to Secede. *Arabian Journal of Business and Management Review*, 4(1), pp 53, 57.

¹⁵⁰ Ibid.

¹⁵¹ A. Madiebo, *The Nigerian Revolution and the Biafra War* (Fourth Dimension Publisher 1980), p 14.

¹⁵² Emefiena Ezeani, *In Biafra Africa Died: The Diplomatic Plot* (2nd edn, Veritas Lumen Publishers 2013), pp 39-54.

¹⁵³ Chukwuma A. J. Chinwo, *Principles and Practice of Constitutional Law in Nigeria* (2nd edn, Princeton and Associates Publishing Co Ltd, 2020), p 3.

in *Rabiu v The State*,¹⁵⁴ stated that the constitution performs several functions such as establishment of guiding principles for the government and the framework for exercise of power which are necessary for development. Relatedly in the case of *Attorney-General Ondo State v Attorney-General of the Federation*,¹⁵⁵ it was observed by the court that the constitution is organic in nature; it creates and vests powers and defines the limits for the exercise of the powers. It also defines the rights of the citizens.

Section 2(1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 absolutely precludes any claim to external self-determination. It declares as follows: ‘Nigeria is one indivisible and indissoluble sovereign State to be known by the name of the Federal Republic of Nigeria.’ Two things are precluded under the section: indivisibility and indissolubility. The first deals with the creation of another State or States out of Nigeria while the second deals with winding up the Nigerian State.

The notion of indivisibility of Nigeria was not present in the Independent Constitution of 1960 or the Republican Constitution of 1963. Section 2 of the 1963 Republican Constitution simply provided that: ‘Nigeria shall be a Federation comprising of Regions and a Federal territory and shall be a Republic by the name of the Federal Republic of Nigeria.’ The inclusion of indivisibility and indissolubility was first introduced in the 1979 Constitution perhaps as a response to the secession attempt by Biafra. However, the provision has not only failed to address the people but only escalated it. Political self-determination is therefore not permitted under the Nigerian Constitution.

The inter-relationship between the Nigerian Constitution and the African Charter is worth mentioning. Ordinarily, an international treaty to which Nigeria is a party does not have any force in Nigeria except to the extent that the treaty has been passed into law by the National Assembly of Nigeria.¹⁵⁶ The African Charter has however been passed into law by virtue of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act 1983. Section 1 of the

¹⁵⁴ (1980) 8-11 SC 130 at 148

¹⁵⁵ (2002) 9 NWLR (Pt. 772) 418-419

¹⁵⁶ CFRN 1999, section 12.

Act makes the provisions of the African Charter enforceable in Nigeria. Accordingly in *Peter Nemi v Attorney General of Lagos State & Another*,¹⁵⁷ the Court stated thus:

It is not enough that we (Nigeria) have ratified the African Charter. We must move with the rest of the human race in the implementation of those rights. While the Executive may take steps to examine or set in motion ways of improving human rights situations, the Judiciary should actively show its impetuous readiness to complement or indeed surpass the efforts of the Executive by an inspiring judicial approach to, or definition and recognition of, circumstances of human rights where appropriate and feasible.

What the above applies is that the entire provisions of the Charter as relating to self-determination are enforceable in Nigeria. Although the provisions for self-determination under the Charter are very limited, it should be noted that the provisions of the Charter are still subject to the overriding effect of the provisions of the Constitution. This is clearly from the tenure of section 1(3) which invalidates any law that is inconsistent with the Constitution. The Charter can therefore not confer a right to self-determination where such run contrary to the provisions of the Nigerian Constitution. On the whole, the right to political self-determination is non-existent in the Nigerian law.

3.3.3 Economic Self-Determination in Nigeria

Equally important is the right to economic self-determination better understood as resource control in Nigeria. This is because beyond the Biafra agitation for sovereign State, other agitations have been rooted in the controversy of resource control. The agitations by the *Yorubas* in the South West of Nigeria and the Niger Delta in the South-South have strong roots in resource control.¹⁵⁸ The ownership and control of the most crucial resources in Nigeria which are petroleum and natural are vested exclusively in the federal government of Nigeria. Onu,¹⁵⁹ that the control of resources has been one of biggest issues in Nigeria and a major economic incentive for the agitation for self-determination. It is therefore not surprising that fiscal federalism and resource control have been at the nucleus of several constitutional agitations. In dealing with the issue, the 1963 Constitution in section 140(1) states that:

¹⁵⁷ (1996) 6 NWLR 42 at 58

¹⁵⁸ Aniobi Chiemiwo Sunday, Ngozi C. Ewuim and Zayum Solomon Sumumma, 2021. Effect of Growing Insecurity on Agitation for Self-Determination in South-Western Nigeria. *Nigerian Journal of Social Development*, 10(1), p 17.

¹⁵⁹ E Onu, *Struggle for Redemption: Selected Speeches of Muhammadu Abubakar Rimi* (Northern Nigerian Publishing Company 1981), p 9.

There shall be paid by the Federation to each Region a sum equal to fifty percent of (a) the proceeds of any royalty received by the Federation in respect of any minerals extracted in that Region and (b) any mining rents derived by the Federation from within that Region.

Thus, the 1963 Republican Constitution adopted a derivation principle of fifty percent to the region where the resources was derived. According to Emerie,¹⁶⁰ this principle gave the regions fiscal advantage over the central government and because of regional and ethnic based politics, the central governed was economically weakened. This was perceived as a threat to the unity of Nigeria. Upon the military usurpation of power, the regions were considerably weakened through the alteration of the revenue sharing formula. For example, the 1979 constitution, in section 149 jettisoned the principle of derivation and gave the National Assembly unfettered in the determination of revenue sharing criteria.¹⁶¹ The 1999 CFRN 1999 in section 162(2) merely required the National Assembly to consider population, derivation and equality of States in developing revenue sharing formula. The federal government therefore controls all the resources.

Nwaeze,¹⁶² in condemning the fiscal model states that:

Nigeria's version of Federalism could be best described as "feeding bottle" Federalism. A situation where the existential of the 'federating states' and the federal government is dependent on 'sharing' oil rent monthly is far from being an ideal situation that stimulate economic growth as well as sustainable development.

The implication is that the constituent peoples of Nigeria are denied the right to self-determine their economic development as they must necessarily depend on the federal government for sustenance. Nigeria therefore denies its constituent peoples a right both to political and economic self-determination. Nigeria leans heavily on the AU approach which emphasises self-determination of the State and not the constituent peoples of the State. This is the colonial approach of domination which imposes the will of State on the people. This unfavourable posture towards self-determination has continued to fuel the violent agitations for self-determination across Nigeria.

¹⁶⁰ V.T. Emerie, 2014. How True is Nigeria's Federalism: A Theoretical Perspective. *Public Policy and Administration Research*, 3(4), pp 78, 83-88

¹⁶¹ Ibid.Emerie (Supra n 160).

¹⁶² N.C. Nwaeze, 2017. True Federalism in a Well-structured Nigeria: The Panacea to her Economic Development Challenges. *Greener Journal of Economics and Accountancy*; 6(2), pp 26, 31- 35

3.3.4 Social Contract in Nigeria's Statehood: A Basis for Self-Determination?

Interestingly, the Nigerian State is constitutionally stated to be rooted on the theory of social contract. The above is deducible from the preamble to the Constitution of the Federal Republic of Nigeria, 1999 which provides inter alia:

We the people of the Federal Republic of Nigeria:

Having firmly and solemnly resolved:

To live in unity and harmony as one indivisible and indissoluble sovereign Nation under God dedicated to the promotion of inter-African solidarity, world peace and international co-operation and understanding:

And to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people.

The constitution opens with the assertion that it is a creation of the firm and solemn resolve of the Nigerian people. It also alludes to freedom as one of its founding bedrocks. This thesis is mindful of the criticism of the peoplehood in the constitution of the Nigerian State.¹⁶³ The expression is often criticized as misleading. This submission is based on the argument that the Nigerian State as structured in the constitution is a colonial imposition and thereafter a military imposition. The reference to 'we the people' therefore only serves to confer unearned legitimacy on the Nigerian State.¹⁶⁴ Even in strict constitutional making process, the phrase is argued to be contradictory of the reality leading to the promulgation of the Nigerian constitution.¹⁶⁵

These arguments are beyond the scope of this thesis. It suffices to say that at least in principle, the Nigerian State claims to be a product of the freewill of the people. Moreover, the social contract theory of the State does not require direct participation of the people in the social contracting process. Participation can be direct or indirect and the Nigerian State as currently constituted under

¹⁶³ Julius O. Ihonvbere, 2000. How to Make an Undemocratic Constitution: The Nigerian Example. *Third World Quarterly*, 21(2), pp 343-366, 355-358.

¹⁶⁴ Amah, Emmanuel Ibiam, 2017. Nigeria - The Search for Autochthonous Constitution. *Beijing Law Review*, 8(1), pp 141-142.

¹⁶⁵ Eresia-Eke, Agha, 2012. The Contradictions of Constitution-Making in Nigeria. *African Research Review*, 6(4), pp 76-92, 78-79

the 1999 Constitution may lay claim to legitimacy through indirect participation of the people.¹⁶⁶ Yet, the interest of this section is the theoretical implication of the constitutional assertion that the people constituted the State.

This thesis submits that under a social contract basis of statehood, the peoples who constituted the State retain the inalienable right to alter, reconstitute or de-constitute the State. The Nigerian constitution provides further that sovereignty is vested in the people of Nigeria and that the powers of government are derived from the people through the Constitution.¹⁶⁷ The constitution of Nigeria therefore is deemed an act of the sovereign will of the people. The people of Nigeria retain their sovereignty and such right cannot be derogated even by the constitution. After all, since in principle, the people made the constitution, the people retain the eternal right to unmake the constitution. By extension, the State which the people created by the constitution can well be fragmented by the exercise of the sovereign will of the people. It is contended that such will supersedes even constitutional provisions. The right to self-determination is therefore one which the people of Nigeria have not lost to the constitution which they themselves made. It is contended that the supremacy of the constitution of Nigeria stated in section 1 of the constitution cannot extinguish or limit the sovereign right of the power to social contract.

Yet, the rule is well cast in law that parties are bound by their contract. Thus, the people of Nigeria haven (presumably) made for themselves a constitution, it becomes the terms under which they are to relate. This way, although sovereignty ultimately vests in the people, it can only be exercised in accordance with the terms which the people have set for themselves. The argument still stands that the constitution does not extinguish the sovereign power of the people save to add that sovereign power is to be exercised as provided in the constitution otherwise the Nigerian State may degenerate into a state of chaos. One way this sovereignty can be exercised is through the amendment of the constitution by the people to delete the indivisibility and indissolubility clause and provide a system for peaceful disintegration based on criteria that they will freely decide.

¹⁶⁶ Niki Tobi, 2000. 'Legitimacy of Constitutional Change in the Context of the 1999 Constitution' in I. Ayua, A. Guobadia and A. Adekunle (eds.) Nigeria: Issues in 1999 Constitution (Nigerian Institute of Advanced Legal Studies 2000) pp. 21 - 42.

¹⁶⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), section 14(2)(a).

Surprisingly, successive agitations for self-determination in Nigeria have missed this constitutional avenue. So far, no attempt has been to restructure Nigeria through constitutionally allowed means. The first resort has usually been propaganda followed by armed agitations. The only feeble but misplaced attempt was the clamour for a purported sovereign national conference.¹⁶⁸ A sovereign national conference is one whose resolutions have binding effects over and above the constitution.¹⁶⁹ The attempt is misplaced because in a constitutional democracy a conference cannot claim a right to sovereignty. At best, it can only help in providing a platform for holistic discussions across ethno-religious divides which may be transmitted to the National Assembly for action. Yet, the appellation of sovereignty to the conference is one that is grossly misplaced. In the final analysis, the social contract basis of the Nigerian State provides strong ideological impetus for self-determination. The major issue has been the misplacement of appropriate procedures to activate the social contracting right. In indirect democracy which Nigeria practices, the National Assembly which consists of the representatives of the people provides the avenue for re-negotiating the Nigerian State in accordance with the right to self-determination and not the taking up of arms against the Nigerian State.

3.4 Self-Determination and *Uti Possidetis* under Sudanese Law

Like Nigeria, the claim to self-determination in Sudan by South Sudan triggered decades of civil war and consequential loss of lives and properties. Sudan was engulfed in two civil wars. The first was from 1955 to 1972 while the second was from 1983 to 2005. This section provides an overview of the historical development of the claim for self-determination and critically examines the legal issues that arose in the eventually attainment of independence by South Sudan. This is to provide a case specific analysis of the legal dynamics of the problem of self-determination in Africa.

3.4.1 Historical Context of Self-Determination in Sudan

Sudan was a sharply divided country along racial and religious lines. In the north were Arab Muslims while the South was populated by black African Christians. The centre of the conflict appears to be this ethno-religious difference although resource control was another causal factor

¹⁶⁸ Cali Ojimba, 2012. A Case for And Against the Convocation of Sovereign National Conference in Nigeria. *Multi-disciplinary Journal of Research and Development*, 18(1), p 1.

¹⁶⁹ Kunle Ajayi, 2006. From the Demand for Sovereign National Conference to National Dialogue: The Dilemma of the Nigerian State. *Studies in Tribes and Tribal Society*, 4(2), pp 123, 124.

of the conflicts.¹⁷⁰ Prior to the attainment of independence, Sudan was under a joint control of Britain and Egypt through the Anglo-Egyptian Agreement of 1899 which lasted to 1953. Egypt which was a Muslim country favoured the Arab Muslim north over the Southern Christian Sudan. Developments were focused in the north of Sudan while the South was gravely oppressed, dominated and alienated. Thus, the hostile division between north and south Sudan increased during this period.¹⁷¹

In 1953, Britain and Egypt agreed to grant Sudan independence in 1956. As independence approached, the tensions between the north and south became even more heightened. Although it was agreed that independent Sudan will operate a decentralised federal structure which will allow both regions a level of self-determination within the federal structure, it was clear the north was going renege on the political structure. This was obvious from the Call of the northern controlled National Unionist Party and the Umma Party which contended that Sudan was a Muslim and should therefore be under sharia law. Autonomy was not to be granted to be southern region. Thus by the attainment of independence, Sudan was almost already headed for disintegration.¹⁷²

As feared, independent Sudan quickly became a northern controlled oligarchy. Tribalism and religious intolerance were institutionalised. Only two ministers were appointed from south Sudan. Again with regards to 800 offices vacated by Britons and Egyptians, only 4 persons were employed from south and they were junior workers. The remaining vacancies were filled by northern Muslims.¹⁷³ The south that housed the oil and natural gas resources became marginalised while development was focused in the north. Economic and social equality between the north and south was extreme.¹⁷⁴ Other ills which characterised the central government were ethno-religious exclusion of the south and widespread looting of resources by the northern oligarchs.¹⁷⁵ Corruption was so grandiose that a commentator referred to as to as ‘fifth factor of production’ in Sudan. The

¹⁷⁰ Berkley Center for Religion, Peace, and World Affairs, *Sudan: Race and Religion in Civil War* (Berkley Center for Religion, Peace, and World Affairs 2013), p 4.

¹⁷¹ Ibid, 4-6.

¹⁷² Ibid, Berkley Center for Religion, Peace, and World Affairs (Supra n 170).

¹⁷³ Salman M. A. Salman, 2013. South Sudan Road to Independence: Broken Promises and Lost Opportunities. *Global Business & Development Law Journal*, 26(2), pp 344, 531.

¹⁷⁴ Alex de Waal, 2014. When Kleptocracy becomes Insolvent: Brute Causes of the Civil war in South Sudan. *African Affairs*, 113 (452). pp 347-353.

¹⁷⁵ Joseph U. Garang, 2010. The Dilemma of the Southern Intellectual: Is it Justified?. *South Atlantic Quarterly*, 109 (1), pp 175-96

south which was the goose that laid the golden egg quickly mobilised into armed rebellion groups.¹⁷⁶

In 1971, Lagu Joseph was able to unite most of the rebellion groups into the Southern Sudan Liberation Movement/Army (SSLM/A). Upon the intervention of several bodies, the Addis Ababa Agreement was signed in 1972 and officially ended the first civil war. However, the Agreement failed to sustainably address the issues and ethno-religious tensions in Sudan. The immediate cause of the second civil war was the decree of Sharia as the national law of Sudan by then President Gaafar Nimeiry. In response the SPLM/A declared the south independent. In the about 22 years of the civil war, a population of over two million were killed and mostly civilians. The war only ended in 2005 with the adoption of a Comprehensive Peace Agreement. Southern Sudan eventually gained independence through referendum in 2011 which was observed by the AU and UN.¹⁷⁷

3.4.2 Self-Government Agreement 1953 and Self-Determination in Sudan

Sudan achieved the status of self-government in 1953 from Britain and Egypt.¹⁷⁸ The Agreement expressed firm believe that the people of Sudan have a right to self-determination and the conferment of self-government was a result of the believe.¹⁷⁹ Interestingly, the Agreement provided a transition period to liquate the joint administration of Britain and Egypt in Sudan. Although it persevered the territorial integrity, of Sudan, it stated expressly that it was to last only until full self-government and self-determination are attained.¹⁸⁰ It is submitted that clearly therefore, Britain and Egypt did intend a sacrosanct territorial delamination of Sudan upon attainment of independence but only considered it obligatory to hold Sudan together until full self-government is achieved at what point the Sudanese people will enjoy unfettered right of self-determination both internal and external.

Although the government of Britain and Egypt noted their shared principle of maintaining Sudan as a united single territory, they only foreclosed the transitional governor-general from exercising

¹⁷⁶ El-Wathig Kameir and Ibrahim Kursany, *Corruption as the 'Fifth' Factor of Production in Sudan* (Nordiska Afrikainstitutet, 1995), p. 26.

¹⁷⁷ Charles Okeke, 2020. The Right to Self-Determination and Secession in Africa: The Case of South Sudan and Lessons for ohe Region. *Journal Of Legal Studies and Research*, 6(5), pp 197, 413.

¹⁷⁸ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Egyptian Government 'Concerning Self-Government and Self-Determination for the Sudan' 1953.

¹⁷⁹ Ibid, preamble and article 1.

¹⁸⁰ Ibid.

his powers in a manner that will conflict with the united Sudan policy. The Agreement did not however preclude Sudan upon attainment of self-government from deciding on partitioning of Sudan especially between North and South Sudan.¹⁸¹ To buttress this point, article 8 of the Self-Government provided for the establishment of a ‘Sudanisation Committee’ with a mandate to provide a secure a neutral atmosphere for self-determination on the attainment of self-government. The tension between the two regions was one which was duly noted but Britain and Egypt decided to leave it to Sudan, an approach that is consistent with the right of Sudan to self-determination.

In the exercise of the right to self-determination, the Agreement established a Constituent Assembly for Sudan with power to decide the future of Sudan including whether to keep Sudan one or partition between the two regions. The second function was to draft a constitution and electoral law for Sudan. The political future of Sudan was effectively one which was left to be self-determined by Sudan.¹⁸² Accordingly Britain and Egypt undertook under article 13 of the Agreement to respect and give effect to whatever decision the Constitute Assembly adopted concerning the future of Sudan. It is therefore difficult to conceive Sudan post-independence is a colonial imposition. The Sudanese people through their Constituent Assembly had the opportunity for social negotiation in the establishment of statehood. The conflicts which eventually resulted in civil wars were therefore largely engineered internally, at least from the point of self-government.

3.4.3 Addis Ababa Peace Agreement of 1972 and the Right to Self-Determination

The Addis Ababa Peace Agreement of 1972 was the first major milestone in addressing the conflicts in Sudan post-independence. The Agreement brought temporary peace to Sudan although it eventually collapsed in 1983 resulting in another civil war.¹⁸³ Notwithstanding, the provisions of the Agreement are worth discussing as regards self-determination in Sudan. The noted in its preamble that a united Sudan cannot be built on a foundation of force or any form of coercion but rather but freewill of the Sudanese people is the only bases of unity. It is unexplainable how Africa missed this fundamental right of freedom to associate and disassociate in its approach to self-determination. It is equally unexplainable that although the warring parties of Sudan agree in

¹⁸¹ Ibid, article 5.

¹⁸² Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Egyptian Government 'Concerning Self-Government and Self-Determination for the Sudan' 1953, article 12.

¹⁸³ David H. shinn, 2005. Addis Ababa Agreement: Was it Destined to Fail and are there Lessons for the Current Sudan Peace process?. *Amales d’Ethiopie*, 20, pp 239-258.

principle to the right of free choice in the constitution of statehood, implementation revealed a total lack of commitment to the principle. Yet, this evidences the chiasm between ideological professions of the right to self-determination and actual implementation in Africa.

The Agreement provided for interim period of four years during which South Sudan was to enjoy a special status which was defined in the Agreement. During the period, the parties agreed to a cease fire and there also automatic amnesty for all the freedom fighters. Within the four years interim period also, arrangements were to be concluded for the conduct of referendum in South Sudan. Because the Agreement was ultra vires the constitution, it was to be adopted by the National Assembly of Sudan as constitutional decree. This way, the Agreement became a part of the constitution. This provided constitutional flavour and legal validity to the Agreement.¹⁸⁴

Paragraph 3 of the Agreement is worth reproducing because its language which deserves scrutiny. It provides thus:

Sudan is a multi-racial, multi-ethnic, multi-cultural and multi-religious society. Islam is the religion of the majority of the population and Christianity and the African creeds are followed by a considerable number of citizens. Nevertheless the basis of rights and duties in the Sudan shall be citizenship, and all Sudanese shall equally share in all aspects of life and political responsibilities on the basis of citizenship.

For a country that at the time of the Agreement deeply polarised along ethnic and religious lines, it is curious that the Peace Agreement had to emphasise that the majority of the population are Muslims and seems to wave other religions off as merely ‘considerable’ in number. This creates the impression of an arrogant north which carries religion like a trophy. Moreover, such carefree religious declaration is not only insensitive to existing religious tensions but in the opinion of this thesis reveals a genuine lack of commitment to the peace process. Since the point had to be constantly made that Muslims are the majority, it signals a dangerous sense of religious superiority which perhaps made the peace process in Sudan very difficult.

The declaration of equality of rights based on citizenship was introduced with ‘nevertheless’, after the point of Muslim majority has been effectively brandished. The language of the provision when read in context is better understood as follows: ‘know that we Muslims are the majority while you

¹⁸⁴ Addis Ababa Peace Agreement of 1972, paragraph 2(2).

Christians are just considerable in number. Nevertheless citizenship shall be the basis of rights'. It is a subtle protest, an unwilling surrender which was clearly not intended to last. The declaration of Sharia law as the national law of Sudan in 1983 was therefore not to be surprise where this Peace Agreement is taken in proper perspective. This is because fundamentally, the Agreement failed to address the religious tensions for reasons just above adduced.

Similarly, this thesis takes the view that the issue of equal political participation of was not effectively addressed by the Agreement. Admitted, the Agreement noted the need to balance personnel in federal institutions and agencies. However, it merely declared that the 'Southern citizens shall participate in all Federal, political and constitutional institutions in numbers commensurate to the demands of the interim period taking into consideration population size and provided that the criteria for eligibility are met.' Such a vague declaration without at least a quota system to enable Southern citizens catch up with the North in employment inequalities, served no real purpose. A defined quota structure would have better addressed the issue. Nevertheless, the Agreement commendably affirmed the right of South Sudan citizens to political, economic, cultural and social self-determination. This right was secured through referendum that was to be conducted during the four years interim period. For this affirmation alone, perhaps the Agreement would have prevented the next civil war if it was implemented in good faith. However, as already pointed out, good faith was lacking from the beginning particularly from the religious perspective.

3.4.4 IGAD Declaration of Principles and Self-Determination in Sudan

The Intergovernmental Governmental Authority on Development (IGAD) played a significant role in the build-up to the eventual independence of South Sudan. IGAD meeting of 20th May 1994 which consisted of the ministers of foreign affairs of Ethiopia, Eritrea, Uganda and Kenya adopted the Declaration of Principles (DoP) upon which the resolution of the conflicts in South Sudan was to be based. The Principles further entrenched the right to external self-determination in Sudan.¹⁸⁵ Although the Declaration contained principles, yet its influence on the conflict cannot be denied. First, it represented the position of the Eastern African block on the conflict. Ethiopia provided the much of the political and military muscle which compelled the parties to accept the Declaration.¹⁸⁶

¹⁸⁵ Helen F. Johnson, *Waging peace in Sudan: The Inside Story of the Negotiations that ended Africa's Longest Civil War* (Sussex Academic Press 2011), pp 14-29.

¹⁸⁶ *Ibid.*

The Declaration contains principles which are very useful for addressing claims to self-determination. The principles are hereunder highlighted.

- i. Holistic resolution of the conflict involves the acceptance and commitment to the position that military action cannot address the issues and thereby accept and commit to political solution that is just and peaceful.¹⁸⁷ This thesis asserts that a political solution which will provide an avenue for the parties to discuss and to compromise is very crucial to addressing secession related agitations in Africa. However, as the principle rightly observes, the acceptance and commitment of the parties to the political solution is very definitive. Again, where free, fair and just atmosphere must be provided for the solution to be effective. The major limitation of this type of approach is its non-binding nature and the chances of a party pulling out of the negotiation at any time.
- ii. The principle recognised and affirmed that South Sudanese have a right to self-determination which is exercisable through referendum.¹⁸⁸ This is a very fundamental departure from the position of sacrosanctity of colonial boundaries. It needs to be emphasised that the principle recognised the right of the peoples of South Sudan. It takes a more progressive approach to peoplehood which is not limited to the entire people of the State but a people constituting a section of a State. Thus, self-determination becomes both a right of peoples of the whole State and of different constituent peoples of the State.
- iii. Principle of priority of the unity of Sudan subject to full accommodation and recognition of all the diverse peoples, guarantee of complete social and political equalities, federal system that allows for regional autonomy, upholding a secular State and fair formula for sharing of common wealth.¹⁸⁹ The commendable approach under this rule is that national unity is merely a priority not a religious dogma which must be maintained even at the cost millions of lives. This is crucial step in the demystification of colonial boundaries which Africans seem to uphold as divinely arranged. In addition, while it is important to prioritize national cohesion, this is subject to the germane conditions laid down in the DoP. Territorial integrity is therefore to be earned through the fair accommodation of diversities without which it ceases to be a priority. This thesis reiterates that the insistence on territorial

¹⁸⁷ IGAP Declaration of Principles (DoP) 1994, principle 1.

¹⁸⁸ Ibid, principle 2.

¹⁸⁹ Ibid, principle 3.

integrity where same does not serve the interests of all the constituent peoples, amounts to internal colonisation.

- iv. The DoP therefore makes it clear that where there is lack of full accommodation of all the diverse groups, a right to self-determination arises and this includes independence. Referendum is started as the mode of determination of the independence.¹⁹⁰

It is strongly submitted that the principles contained in the IGAD DoP are very crucial in resolving the multi-faceted agitations for self-determination in Africa. The DoP provided a more specific and positive statement of the right to self-determination compared with other instruments including the African Charter which were largely evasive.

3.4.5 Comprehensive Peace Agreement 2005

The Comprehensive Peace Agreement (CPA) provided the legal and procedural framework for an interim period during which a referendum was conducted for South Sudan. The CPA is a compendium of several agreements reach between the Sudanese Governments and the SPLM/M. the CPA represents widespread consultations and compromises between the parties. It was very critical to ending the years of civil and providing the fulcrum for peaceful self-determination by South Sudan.¹⁹¹ Although as noted, the CPA consists of several Agreements, however, only two of these agreements which directly deal with the framework for the exercise of the right to self-determination will be reviewed.

3.4.5.1 Machakos Protocol 2002

The Machakos Protocol 2002 provides the fundamental principles which were to guide the relations between the warring parties. Like other Agreements, it reiterated the freewill of the people of Sudan as the basis of continued unity. Similarly, it is stated the unity of Sudan as a priority and expressed optimism that the aspirations of all the peoples of Sudan can be realised within a united Sudan. The Protocol also reiterated the right of the People of Sudan to self-determination and the right of all people to equitable participation at the national government level.¹⁹²

¹⁹⁰ IGAP Declaration of Principles (DoP) 1994 , principle 4.

¹⁹¹ Asli Ozcelik, 2020. Entrenching Peace in Law: Do Peace Agreements Possess International Legal Status?. Melbourne Journal of International, 21(1), pp 190-229.

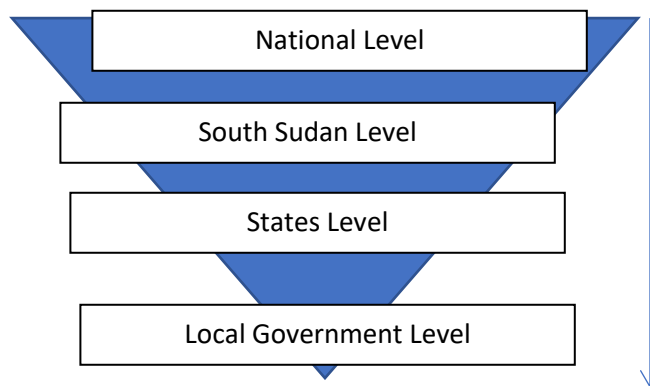
¹⁹² Machakos Protocol 2002, article 1.

The Protocol provided for years interim period within which a referendum to be monitored by the international community shall be organised to enable the people of South Sudan self-determine whether to remain in a united Sudan.¹⁹³ In order to implement the Protocol, a National Constitutional Review Commission (NCRC) was set up consisting of representatives of the warring parties. The NCRC was to work out a constitutional framework to accommodate the interim and transition period. The Protocol was also to be incorporated into the Constitution.¹⁹⁴

3.4.5.2 Power Sharing Agreement 2004

The Power Sharing Agreement (PSA) is arguably one of the most crucial Agreements in the CPA. This is because the control of the national governmental architecture was a major cause of the conflict. Another reason is that power configuring is essential for the implementation of the CPA itself, the conduct of the referendum and eventual transition. The PSA was therefore the engine room of the CPA. Another perspective to the importance of the PSA is the need to build trust and transparency. The sharing and joint exercise of power in the interim period allowed for free flow of information and inclusivity in governance during the period. The PSA opened with a declaration of the guiding principles contained in the Machakos Protocol 2002.¹⁹⁵

The PSA structured government into four levels in a descending order under article 3 of the PSA as follows:



To avoid conflicts in the exercise of power among the levels of government, the PSA provided that in ‘their relationships with each other or with other government organs, all levels of

¹⁹³ Machakos Protocol 2002, article 1. , article 2.5

¹⁹⁴ Ibid, article 3.1.2.

¹⁹⁵ Power Sharing Agreement 2004, preamble.

government and particularly National, Southern Sudan, and State Governments shall respect each others' autonomy.'¹⁹⁶ The national level government under the PSA was as Government of National Unity. The legal implication was that the government was required to be inclusive, promote unity and peace in Sudan and abide by the implementation of the Peace Agreement. To ensure inclusivity, the PSA provided for a defined quota system in the sharing of positions both at the national level government and the national civil service.¹⁹⁷

Observers submit that the PSA played a significant role in the overall success of the peace process in Sudan. Two aspects of the PSA are particularly important: inclusivity at the national government level, and autonomy for South Sudan.¹⁹⁸ Unlike previous peace agreements which merely declare equitable sharing of offices in general, the PSA was able to work on a quota based system of inclusivity not only in the constitution of the national government but also in the national civil service. This inclusivity was important for the implementation of the entire CPA. Another commendable part of the PSA was its comprehensiveness in detailing a workable power sharing configuration at the national level. It covered both legislative powers, executive powers and judicial powers. Again, it also dealt with rebuilding of areas which had devastated by the effects of the war.¹⁹⁹ Thus, it was a far reaching Agreement in the peace building process in Sudan.

3.4.6 Interim National Constitution of the Republic of Sudan 2005

The CPA of Sudan was essentially a politically negotiated agreement which did not have any force of law. This is especially so considering that its provisions were largely ultra vires the constitution. Enforcement and legitimisation therefore required its transposition into the constitution of Sudan. Consequently, the Interim National Constitution of the Republic of Sudan 2005 was adopted to give constitutional effects to the CPA. The provisions of the Interim Constitution as expected are largely a restatement of the various Agreements in the CPA.

¹⁹⁶ Power Sharing Agreement 2004, article 1.5.

¹⁹⁷ Ibid, article 2.1.

¹⁹⁸ Elke Grawert, *Challenges of Regional Peace after the Comprehensive Peace Agreement in Sudan* (International Conference on African Development Archives 2007), pp 103, 109.

¹⁹⁹ Madhav Joshi, and Michael J Quinn, 2015. 'Is the Sum Greater than the Parts? The Terms of Civil War Peace Agreements and the Commitment Problem Revisited. *Negotiation Journal*, 31(1), pp 2-30. 1: 7–30.

The constitution opened with a sigh of relief as it expressed gratitude to God Almighty for ‘the wisdom and will to reach a Comprehensive Peace Agreement that has definitively put an end to the longest running conflict in Africa’.²⁰⁰ Indeed considering the years of wars, the millions of lives lost; the devastating impacts on the people, and the tortuous road to reaching and actually implementing a Peace Agreement to a constitutional level, it was appropriate and utterly necessary for the people of Sudan to be grateful ‘[h]aving survived the tragic consequences that have characterized that debilitating conflict’.²⁰¹ It was indeed, a ‘Long Walk to Peace’, and more appropriately, the ‘Longest Walk to Peace in Africa’.

The Constitution vested sovereignty in the people of Sudan and exercisable by the State. It goes further to provide that the exercise of sovereignty is not to prejudice the autonomous status of South Sudan.²⁰² Thus, the distribution and devolution of power took into consideration the autonomy of South Sudan.²⁰³ Interestingly, section 7(1) simply declared that ‘Citizenship shall be the basis for equal rights and duties for all Sudanese.’ Interesting because previous Agreement had to first emphasise the majority status of Muslims before reluctantly providing for citizenship based equality. The Interim Constitution therefore de-emphasises the place of region which is very important for addressing the religious tensions. Section 79 of the Constitution mandated the president to implement the CPA. Section 80 reiterated the quota based system for sharing offices in the national government. As already pointed out, the Interim Constitution essentially consists of the CPA. Repeating its provisions will therefore be unnecessary repetition.

Conclusion

There are multi-dimensional developmental and security challenges confronting Africa. The claim to a right to self-determination both internal and external has remained a recurring decimal in the circumference of these challenges. The root of these challenges is traceable to a reasonable extent to colonialism which resulted in the forced aggregation of peoples who are ethnically and culturally distinct and sometimes seemly incompatible into a common colonial administrative unit. Nigeria and Sudan are good examples of such arbitral colonial imposition. The consequences

²⁰⁰ Interim National Constitution of the Republic of Sudan 2005, preamble.

²⁰¹ Ibid.

²⁰² Ibid, section 2.

²⁰³ Ibid, section 25.

include that claim to self-determination has remained a resounding gong across Africa. It is often met with brutal resistance from the State which boomerangs into civil war with devastating impacts.

Although self-determination has become a popular cliché to justify all cases of ‘rebellion’ against the State, its legal meaning, inuring rights and procedural requirements have remained controversial. The aim of this thesis was therefore to conclusively determine the legal nature and extent of the right to self-determination in Africa. The human rights theory and the theory of social contract were used as the theoretical basis of the research. Nigeria and Sudan provided State specific contexts of the analysis of the right in Africa.

The dissertation found that under the Charter of the United Nations, self-determination exists merely as one of the principles upon which the development of friendly relations among nations is based. Moreover, self-determination is a right of States not a section of peoples within a State. The UN Charter therefore fails to adequately secure a right of external self-determination for peoples who are under internal oppression or domination. Similarly, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities merely recognises the right of minorities to their identity, culture and language but fails to recognise a positive right to self-determination. Relatedly, the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States 1970 prohibits interference in the domestic affairs of another State. This reflects the right of each State to self-determination. For peoples within the State, it only recognises a right to internal self-determination. A similar approach is adopted under the United Nations Declaration on the Rights of Indigenous Peoples 2007.

The Self-Determination under the Universal Declaration of Human Rights 1948 contains express rights which reflect a right to self-determination. The Declaration recognises the inherent and equal dignity of all members of the human family. This includes that every person is a freeborn and that every person is endowed with reason and conscience. The status of freeborn provides strong human rights basis for self-determination both internal and external. The central argument here is that the notion of being free must be taken as implying that the rights of a person are not impeded by the political system to which he is born into. He retains his freedom to either retain or renounce the

political unit to which he was born into. It is therefore argued that being born free includes a right to external self-determination. Similarly, since all humans are endowed with reason, they reserve the rational right to determine their political, social, economic and political interests. The major limitation of the Declaration is a weak framework for the enforcement of the rights provided.

The totality of the review of international legal instruments show that international customary law and rights instruments tiptoe around the issue of positive recognition of a right to self-determination. Even where such rights purport to exist, it is in the exclusive context of internal self-determination. The only exceptions are colonised people and people under foreign domination which have a recognised right to external self-determination. International law therefore fails to address the plights of peoples who are internally colonised, dominated or oppressed.

The position in international law is equally the same in Africa. Legal instruments adopted at the African continental level religiously commit to upholding territorial integrity of States in line with the principle of *uti possidetis*. Here, a strong commitment is made to protecting and preserving borders in accordance with colonially defined boundaries. Self-determination is therefore only applicable in the context of internal State affairs and does not extend to a right to independent sovereign identity. Under the Constitutive Act of the African Union 2000 for instance, member States commit to the defence of sovereignty and territorial integrity as existing based on colonial boundaries. This effectively robs the African people of a right to external self-determination under the AU Act. The two main argued justifications for the above posture is that external self-determination if recognised will result in fragmentation of States and the springing up of new States in all nooks and crannies of Africa and that it will create instability. Yet, the argument fails to convincingly show in any particular way how new States or small States are undesirable or are inconsistent with the development of Africa. Similarly, the insistence on colonially drawn boundaries has not entrenched stability in Africa. On the contrary, it has largely promoted armed agitations for self-determination.

The African Charter on Human and People's Rights 1981 recognises a right of all peoples to existence. All peoples also enjoy a right to self-determination which is only with respect to political status, economic, social and cultural policies. Self-determination in the context of secession is however limited to colonised or oppressed people. On the whole, under the African Charter,

secession is not contemplated. Again, internal colonisation or oppression does not create a right to secede. Self-determination is therefore very limited. The African Charter therefore encourages or at best is unconcerned with protecting internally colonised or dominated peoples in Africa. In addition, the African Commission which is responsible for enforcing the provisions of the Charter merely has a reporting system without any effective means of compelling State parties to respect the provisions of the Charter. The African Human Rights Court also suffers jurisdictional deficiencies as the Commission, State Parties and AU organisations have access to the Court. Internally oppressed peoples cannot access the Court to enforce a right to self-determination.

The legal position to external-self-determination at the African continental level naturally spills over into the African States. Nigeria and Sudan provide good example of organised State denial of the right and the brutality of military force which African States deploy against agitators for self-determination. The Nigerian case resulted in a civil that consumed hundreds of thousands of lives and destruction of properties. The case of Sudan was worse with over 2 million people estimated to have been killed in the civil wars that engulfed Sudan. The Nigerian constitution upholds the indivisibility and indissolubility of the Nigerian State. Nevertheless, it is argued that since the constitution claims to be based on solemn and freewill of the Nigerian people, it provides a social contract basis for self-determination. However, appropriate constitutional procedures need to be followed. The Sudanese example on the other hand provide rich into the employment of political resolutions to the agitation for self-determination using politically negotiated Peace Agreements which are then incorporated into the constitution. However, the lack of commitment in good faith to implementation remains a great obstacle.

In the final analysis, considering the devastating impacts of armed agitations for self-determination in Africa, the African antagonistic attitude towards external self-determination needs reconsideration in the overall interest of peace in the continent for two related reasons. The first is part of the larger framework of fundamental human rights. The right of peoples to dignity and liberty should be understood as precluding even imposition of statehood on them. This is because as this thesis has repeatedly insisted, unity through the barrels of guns is slavery or colonialism and at best internal domination. This rights based approach is important to address unjust and arbitral delimitation of boundaries in Africa. The African people even post-colonialism cannot be said to have been freed of colonial appendages if they must ultimately be subject to colonially

defined boundaries without a right to self-determine their membership of the consequential colonial States. The second and related reason for the recognition of a right to external self-determination lies in the social contractual basis of statehood. External self-determination will allow Africans to freely negotiate and social-contract on the fundamental basis of their statehood. This reconsideration is necessary for true and sustainable stability in African on the basis of fundamental freedom of the African people outside their colonially defined territorial identity.

This thesis recommends that the African Union (AU) should adopt a Protocol on the African Charter on Human and Peoples' Rights on the Right to Self-Determination. This is to clearly define the nature and extent of the right and the procedural steps for the activation of the right. In order to create a functional balance between protecting territorial integrity on one hand and the right to self-determination on the other hand, a two-step approach to self-determination is recommended. The first is substantive and procedural arrangements for internal self-determination which should be interim for four years. This can be achieved through a quasi con-federal structure which allows for regional autonomy. This should be a mandatory first action point under the proposed Protocol in addressing self-determination. The extent of the autonomy should be mutually agreed upon by the parties with the AU acting as mediator. Provided that where such mutual negotiations fails, the Parties should have a right of access to the African Court on Human and Peoples' Rights for the determination of the issue.

Where internal self-determination fails to address the root causes of the agitation after the interim period of four years, the AU should be under a binding legal obligation to recognise the right of the affected peoples to self-determination. However, to avoid malicious, vexatious and unfounded claims to self-determination, it is recommended that the Protocol should define the 'peoples' entitled to self-determination. Two criteria are recommended: minimum population and minimum territory occupied by the people demanding external self-determination. The two can be taken from the average of the 20 smallest countries in the world in terms of population and territory. This will avoid undue fragmentation of States. Furthermore, the African Commission on Human Rights should have a legal obligation to investigate all claims to a right to external self-determination in Africa and to make appropriate recommendations. Provided that under the Protocol, in no case shall defending territorial integrity against internal claims to self-determination, justify the unleashing of the military might of a State against its people.

Enesemääramine ja *uti possidetis* Aafrikas: Nigeeria ja Sudaani juhtumid - Kokkuvõte

Käesolev magistritöö räägib rahvaste enesemääramisest ja *uti possidetise* põhimõttest Aafrikas, keskendudes eelkõige Nigeeriale ja Sudaanile. Sissejuhatuses on esitatud taustateavet ja enesemääramise arengut Aafrikas. Tehti kindlaks, et Aafrika enesemääramisnõuete haldamisel on õiguslikke probleeme ja sellest tulenev probleem territooriumide määratlemisel, kus enesemääramisnõue oli edukas, nagu näiteks Lõuna-Sudaani puhul. Siiski oleks ennetava õigusliku raamistiku abil olnud võimalik vältida kodusõdasid ja sõjategevusi ning sellest tulenevat ulatuslikku hävitustööd ära hoida. See õiguslik probleem inspireeris käesolevat magistritööd ja peamised küsimused, millele tööga püütakse vastuseid leida, on järgmised: a) Millises õiguslikus ulatuses määratleb rahvusvaheline õigus enesemääramise ja *uti possidetise* õiguse aluseid Aafrikas?, b) Milline on enesemääramisõiguse ja *uti possidetise* õiguslik olemus ja ulatus Aafrikas ning kui tõhusad on jõustamismehhanismid?

Nendele küsimustele vastamiseks kasutati käesolevas magistritöös õigusteaduslikule uurimisele omast metoodikat. Konkreetsemalt, uuringus kasutati rahvusvahelise ja Aafrika piirkondliku tasandi rahvusvaheliste õigusaktide tekstianalüüsi. Samuti analüüsiti Nigeeria ja Sudaani asjakohaseid siseriiklikke õigusakte, mis olid kaks töös kasutatud juhtumiuuringut. Vastavate riikide seadused ja välislepingud moodustasid käesoleva uurimuse esmase andmebaasi. Rahvusvaheliste õigusaktide tõlgendamisel tugineti eelkõige 1969. aasta lepinguõiguse Viini konventsiooni artiklile 31. Kuigi üldiselt kasutati tõlgendamisel sõnasõnalist reeglit, võeti mh arvesse ka rahvusvaheliste õigusaktide konteksti ja eesmärke.

Rahvusvaheliste õigusaktide läbivaatamine tervikuna näitab, et rahvusvaheline tavaõigus jt õigusaktid on enesemääramisõiguse positiivse tunnustamise küsimuses äraootaval seisukohal. Isegi seal, kus sellised õigused väidetavalt eksisteerivad, on see üksnes sisemise enesemääramise kontekstis. Ainsad erandid on koloniseeritud rahvad ja võõrvõimu all olevad inimesed, kellel on tunnustatud õigus välisele enesemääramisele. Rahvusvaheline õigus ei tegele seega nende rahvaste hädaga, kes on sisemiselt koloniseeritud, domineeritud või allasurutud. Rahvusvahelise õiguse olukord on sama ka Aafrikas. Aafrika kontinendi tasandil vastu võetud õigusaktid kohustuvad usinalt kaitsma riikide territoriaalset terviklikkust kooskõlas *uti possidetis* põhimõttega. Siinkohal on võetud kindel kohustus kaitsta ja säilitada piire vastavalt koloniaalajast pärit piiridele.

Enesemääramisõigus on seega kohaldatav ainult riigi siseasjade kontekstis ja ei laiene õigusele iseseisvale suveräänsele identiteedile.

Lõppkokkuvõttes käsitleti relvastatud enesemääramliikumiste laastavat mõju Aafrikas, kuna Aafrika antagonistlik suhtumine välisesse enesemääramisõigusse vajab kontinendi rahu üldistes huvides ümbervaatamist. Rahvaste õigust väärkusele ja vabadusele tuleks mõista nii, et see välistab isegi riikluse kehtestamise neile. Seda seetõttu, et nagu see magistritöö korduvalt rõhutas, on riikliku ühtsuse säilitamine peamiselt vaid relvade abil orjandus, kolonialismi jätkumine uuel moel ja parimal juhul riigisise domineerimine.

Bibliography

Cases

Attorney-General Ondo State v Attorney-General of the Federation (2002) 9 NWLR (Pt. 772) 418

Centre for Minority Rights Development (Kenya) and Minority Rights Group, Comm. 276/2003 (ACHPR, 25 November 2009)

Congress v. Zaire Case No. 75/92, 8th Annual Activity Report 1994–1995 (ACHPR/RP/8th).

Kevin Mwanganga Gunme and Others v. Cameroon, Comm. 266/03 (ACHPR, 27 May 2009)

Peter Nemi v Attorney General of Lagos State & Another (1996) 6 NWLR 42

Rabiu v The State (1980) 8-11 SC 130

Re Frontier Dispute (Burk. Faso/Mali), 1986 I.C.J. 554

Treaties and International Legal Instruments

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Egyptian Government 'Concerning Self-Government and Self-Determination for the Sudan' 1953.

Charter of the United Nations 1945

Implication of the Status of Freeborn on Self-Determination

International Covenant on Civil and Political Rights 1966

Statute of the International Court of Justice 1945

UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States 1970

United Nations Declaration on the Rights of Indigenous Peoples 20

United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Universal Declaration of Human Rights 1948

Vienna Convention on the Law of Treaties 1969

African Regional Legal Instruments

African Charter on Human and People's Rights 1981

Constitutive Act of the African Union 2000

Organisation of African Unity 'Resolutions adopted by the first Ordinary Session of the Assembly of Heads of State and Government held in Cairo 17-21 July 1964' (1964) (Cairo Declaration).

Nigerian Domestic Statutes

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983

Constitution of the Federal Republic of Nigeria 1999

Interpretation Act 1964 provided the basic rules of interpretation.

Sudanese Domestic Statutes and Legal Instruments

Addis Ababa Peace Agreement of 1972 and the Right to Self-Determination

Comprehensive Peace Agreement 2005

Interim National Constitution of the Republic of Sudan 2005

Interpretation of Laws and General Clause Act 1974

Machakos Protocol 2002

Power Sharing Agreement 2004

Books

Adeniran, Adedapo, *Nigeria: The Case for Peaceful and Friendly Dissolution* (Unitytype Enterprises 2002)

Alan Burns, *History of Nigeria* (George Allen and Unwin Ltd., 1929),

Amadu Sesay, *African Governance Systems in the Pre and Post-Independence Periods: Enduring Lessons and Opportunities for Youth in Africa* (Mandela Institute for Development Studies 2014)

Anne Peters, 'The Principle of *Uti Possidetis Juris*: How Relevant Is It for Issues of Secession?' in Christian Walter et al. (eds), *Self-Determination and Secession In International Law* (Oxford University Press 2014)

Appadorai A., *The Substance of Politics* (11th edn, Oxford University Press 2004)

Ben O. Nwabueze, *Constitutional History of Nigeria* (Spectrum Books Ltd., 1995)

Berkley Center for Religion, Peace, and World Affairs, *Sudan: Race and Religion in Civil War* (Berkley Center for Religion, Peace, and World Affairs 2013)

Brian A Garner (ed), *Black's Law Dictionary* (9th edn. Thompson Reuters 2009)

Burke Roland, *Decolonization and the Evolution of International Human Rights* (University of Pennsylvania Press 2010)

Chris C. Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers, 2011)

Chukwuma A. J. Chinwo, *Principles and Practice of Constitutional Law in Nigeria* (2nd edn, Princeton and Associates Publishing Co Ltd, 2020)

Coleman J S, *Nigeria: Background to nationalism* (University of California Press 1986)

Dike K.O., *Trade and Politics in the Niger Delta, 1830-1885: An Introduction to the Economic and Political History of Nigeria* (Oxford Clarendon Press 1956)

Dina Shelton, 2011. Self-Determination in Regional Human Rights Law: From Kosovo To Cameroon. *American Journal of International Law*, 10

Elke Grawert, *Challenges of Regional Peace after the Comprehensive Peace Agreement in Sudan* (International Conference on African Development Archives 2007)

Emefiena Ezeani, *In Biafra Africa Died: The Diplomatic Plot* (2nd edn, Veritas Lumen Publishers 2013)

Emefiena Ezeani, *In Biafra Africa Died: The Diplomatic Plot* (2nd edn, Veritas Lumen Publishers 2013)

Ese Malemi, *The Nigerian Legal System: Text and Cases* (3rd edn, Princeton Publishing Co. 2009)

Fanon F, *The Wretched of the Earth* (Grove Press 1963)

Fatsah Ouguergouz, *The African Charter on Human and Peoples Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (Leiden 2003), p 204.

Freeman M. D. A., (ed), *Lloyd's Introduction to Jurisprudence* (8th edn, Sweet & Maxwell 2008)

Hans J. Morgenthau, *Politics Among Nations* (6th edn, Kalyani Publishers 2012)

Hardy S., *A Brief History of Mapping* (Chimurenga Chronic 2015)

Helen F. Johnson, *Waging peace in Sudan: The Inside Story of the Negotiations that ended Africa's Longest Civil War* (Sussex Academic Press 2011)

Henry Alapiki, *Politics and Governance in Nigeria* (S.P. Shapee Publishers 2010)

Issa Shivji, *The Concept of Human Rights in Africa* (CBS 1989)

Jagroop K, *Contemporary Political Thought* (Madan Publications 2003)

Jared Diamond, *Collapse: How Societies Choose to Fail or Succeed* (Viking 2005)

John Locke, *Two Treaties on Civil Government* (George Routledge and Sons 1884)

Joshua Castellino, 2014. 'International Law and Self-determination: Peoples, Indigenous Peoples and Minorities' in Christian Walter et. al., (eds.), *Self-Determination and Secession in International Law* (Oxford University Press 2014)

Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity* (Martinus Nijhoff Publishers 2000)

Khapoya V B, *The African Experience: An Introduction* (4th edn, Peachpit Press 2012)

Landau R. S., *The Nazi Holocaust: Its History and Meaning* (3rd edn, B. Tauris and Company Ltd., 2016)

Madiebo A., *The Nigerian Revolution and the Biafra War* (Fourth Dimension Publisher 1980)

Mahajan V D, *Political Theory* (4th edn, S Chand & Company Limited 2013)

Mutua wa Makau, *The African Human Rights System: A Critical Evaluation* (United Nations Development Programme, Human Development Report 2000)

Niki Tobi, 2000. 'Legitimacy of Constitutional Change in the Context of the 1999 Constitution' in I. Ayua, A. Guobadia and A. Adekunle (eds.) *Nigeria: Issues in 1999 Constitution* (Nigerian Institute of Advanced Legal Studies 2000)

Okwudiba Nnoli, *Ethnic Politics in Nigeria* (Fourth Dimension Publishers 1980)

Onu E., *Struggle for Redemption: Selected Speeches of Muhammadu Abubakar Rimi* (Northern Nigerian Publishing Company 1981)

Onyenwe E O et. al., *Nigerian Government and Politics: A Study in Governance* (Cheedal Global Press 2007)

P Jones P, *Rights* (Macmillan Press 1994)

Patricia Carley, *Self-Determination, Sovereignty, Territorial Integrity, and the Right to Secession* (United States Institute for Peace)

Philpott, D, 1998, Self-Determination in Practice' in M. Moore (ed.), *National Self-Determination and Secession* (Oxford University Press)

Rachel Murray, *Human Rights in Africa: From the OAU to the African Union* (Cambridge University Press 2004)

Redie Bereketeab, Self-Determination and Secession: A 21st Century Challenge to the Post-colonial State in Africa (Nordic Africa Institute, Policy Notes 5, 2012)

Redie Bereketeab, *Self-determination and Secession: African challenges* (Routledge 2015)

Steven Wheatley, 2014. Conceptualizing the Authority of the Sovereign State over Indigenous Peoples. *Leiden Journal of International Law*, 27

Sumner L.W., *Moral Foundations of Rights* (Clarendon Press 1987)

Thomson J J, *The Realm of Rights*. (Harvard University Press 1990)

Vincent R. J., *Human Rights and International Relations* (Cambridge University Press 1986)

Journal Articles

Abraham Bell and Eugene Kontorovich, 2016. Palestine, *Uti Possidetis Juris*, and the Borders of Israel. *Arizona Law Review*, 58

Alex de Waal, 2014. When Kleptocracy becomes Insolvent: Brute Causes of the Civil war in South Sudan. *African Affairs*, 113 (452)

Alex de Waal, 2020. The Ambiguities of Self-determination: IGAD and the Secession of South Sudan. *Nations and Nationalism* 1(1)

Alex de Waal, 2020. The Ambiguities of Self-determination: IGAD and the Secession of South Sudan. *Nations and Nationalism* 1(1)

Amah, Emmanuel Ibiam, 2017. Nigeria - The Search for Autochthonous Constitution. *Beijing Law Review*, 8(1)

Aniobi Chiemiwo Sunday, Ngozi C. Ewuim and Zayum Solomon Sumumma, 2021. Effect of Growing Insecurity on Agitation for Self-Determination in South-Western Nigeria. *Nigerian Journal of Social Development*, 10(1)

Asli Ozcelik, 2020. Entrenching Peace in Law: Do Peace Agreements Possess International Legal Status?. *Melbourne Journal of International*, 21(1)

Awajigbana Paul Alfred and Sharaon Eruchi Ejekwu, 2022. Constitutional Perspectives to the Agitation for State Police in Nigeria: Lessons from the United States of America. *The Journal of Law and Policy*, 2(7)

Bahiru B. A., 2022. Challenges of Dispute Settlement through International Court of Justice (ICJ): The Case of Ukraine v. Russian Federation the Decision on Provisional Measures on Alleged Violation of Genocide Convention. *European Scientific Journal*, 18(29)

Beluce Bellucci, 2010. The State in Africa. *The Perspective of the World Review* 2(3)

Boire R. G., 1999/2000. On Cognitive Liberty (Part I). *Journal of Cognitive Liberties*, 9, pp 7, 12

Charles Okeke, 2020. The Right to Self-Determination and Secession in Africa: The Case of South Sudan and Lessons for ohe Region. *Journal Of Legal Studies and Research*, 6(5)

Christof Heyns, 2003. African Regional Human Rights System: The African Charter. *Pennsylvania State law Review*, 108

Collier Paul and Hoeffler Anke, 2002. On the Incidence of Civil War in Africa. *Journal of Conflict Resolution*, 46 (1)

Crook, R., 1986. Decolonization, the Colonial State and Chieftaincy in Gold Coast. *African Affairs* 85

David H. shinn, 2005. Addis Ababa Agreement: Was it Destined to Fail and are there Lessons for the Current Sudan Peace process?. *Amales d'Ethiopie*, 20

Doughlas Kimemia, 2021. The Impacts of Political Conflicts in Africa. *Journal of African Conflicts and Peace Studies*, 4(2)

El-Wathig Kameir and Ibrahim Kursany, *Corruption as the 'Fifth' Factor of Production in Sudan* (Nordiska Afrikainstitutet, 1995),

Emerson R., 1962. Pan-Africanism. *International Organization*, 16

Eremie V. T., 2014. How True is Nigeria's Federalism: A Theoretical Perspective. *Public Policy and Administration Research*, 3(4) John Ademola Yakubu, 2010. Trends in Constitution-Making in Nigeria. *Transnational and Contemporary Problems*, 10

Eresia-Eke, Agha, 2012, The Contradictions of Constitution-Making in Nigeria. *African Research Review*, 6(4)

Hurst Hannum, 1995. The Status of the Universal Declaration of Human Rights in National and International Law. *GA. Journal of International and Comparative Law*, 25

Imasuen E, 2014. Insurgency and Humanitarian Crises in Northern Nigeria: The Case of Boko Haram. *African Journal of Political Science and International Relations*, 9(7)

Isa Ishaq Ojibara, 2016. Biafra: Why Igbo Want to Secede. *Arabian Journal of Business and Management Review*, 4(1)

James Summers, 2019. The Right of Peoples to Self-Determination in Article 1 of the Human Rights Covenants as a Claimable Right. *New England Journal of Public Policy*, 31(2), 1

Jana Maftai and Coman Varvara, 2012. Interpretation of Treaties. *Acta Unversitatis Danubius*, 8(2)

Johan D. van der Vver, 2004. The Right to Self-Determination and its Enforcement. *Journal of International & Comparative Law*, 10

Johan D. van der Vyver, 1991. Sovereignty and Human Rights in Constitutional and International Law. *Emory International Law Review*, 5

Joseph U. Garang, 2010. The Dilemma of the Southern Intellectual: Is it Justified?. *South Atlantic Quarterly*, 109 (1)

Julius O. Ihonvbere, 2000. How to Make an Undemocratic Constitution: The Nigerian Example. *Third World Quarterly*, 21(2)

Justin S. Gruenberg, 2019. An Analysis of United Nations Security Council Resolutions: Are All Countries Treated Equally?. *Case Western Reserve Journal of International Law*, 41(2), pp 467-475.

Ken Nwogu¹ and Amucheazi Chibike Oraeto, 2021. Contextual Expansion of the Right of Self-Determination. *International Journal of Business and Law Research* 9(3)

Lauri Mälksoo, 2017. The Soviet Approach to the Right of Peoples to Self-determination: Russia's Farewell to Jus Publicum Europaeum. *Journal of the history of International Law*, 19

Lynn Berat, 1990. The Evolution of Self-Determination in International Law: South Africa and Namibia, and the Case of Walvis Bay. *Emory International Law Review*, 4

Madhav Joshi, and Michael J Quinn, 2015. 'Is the Sum Greater than the Parts? The Terms of Civil War Peace Agreements and the Commitment Problem Revisited. *Negotiation Journal*, 31(1)

Makau Mutua, 1999. The African Human Rights Court: A Two-legged Stool? *Human Rights Quarterly*, 29

Makau wa Mutua, 1993. The African Human Rights System in a Comparative Perspective. *Review of African Committee on Human and Peoples' Rights*, 3(5)

Mats Berdal, 2003. The UN Security Council: Ineffective but Indispensable. *Survival*, 45(2)

Matthew Saul, 2011. The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?. *Human Rights Law Review*, 11(4)

Melike M. Fourie, Melanie Deist and Samantha L Moore-Berg, 2022. Hierarchies of Being Human: Intergroup Dehumanization and its Implication in Present-day South Africa. *Peace and Conflict Journal of Peace Psychology*, 1(1)

Nathaniel Berman, 1998. Sovereignty in Abeyance: Self-Determination and International Law. *Wisconsin International Law Journal*, 7

Nnamdi Ogbu, 2005. 'The African Charter on Human and Peoples Right as Compatible with Despotism: The Nigerian Experience. *University of Benin Law Journal*, 8(1)

Nwaeze N. C., 2017. True Federalism in a Well-structured Nigeria: The Panacea to her Economic Development Challenges. *Greener Journal of Economics and Accountancy*; 6(2),

Odinakachukwu E. Okeke, 2020. The Indivisibility and Indissolubility of Nigeria Vis-À-Vis the Right of Self-Determination. *IJOCLLEP*, 2(2)

Ogundiya S I, 2010. Democracy and Good Governance: Nigeria's Dilemma. *African Journal of Political Science and International Relations*, 4(6)

Okene O. V. C. and Nnamdi K. Akani, 2019. Human Dignity and Human Rights: The Nigerian Question. *Maiduguri Law Journal*, 17

Patricia M Muhammad, 2003. The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity. *American University International Law Review*, 19(4)

Petr Kilian, 2019. Self-Determination of Peoples in the Charter of the United Nations. *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito*, 11(3)

Prithivi Raj, 2020. Right to Self Determination as Human Right. *ACCLAIMS*, 9

Resnick J. and J. C. Suk. 2003. Adding Insult to Injury: Questioning the Role of Dignity in Conceptions of Sovereignty. *Stanford Law Review*, 55

Ria Tri Vinata, Masitha Tismananda Kumala and Peni jati Setyowati, 2021. Implementation of the *Uti Possidetis* Principal as a Basic Claim for Determining Territorial Integrity of the Unitary State of Republic Indonesia. *International Journal of Business, Economics and Law*, 24(2)

Robert Friedlander, 1975. Self-Determination: A Legal-Political Inquiry. *Michigan State DCL Law Review*, 1

Rubio Medina E, 2019. Three Theories about the Right to Self-Determination. *Diálogos de Saberes*, 50

Salman M. A. Salman, 2013. South Sudan Road to Independence: Broken Promises and Lost Opportunities. *Global Business & Development Law Journal*, 26(2)

Schrijver N. J., 'The Future of the Charter of the United Nations' (2006) 10 *Max Planck UNYB* 1.

Simpson B., 2012. The United States and the Curious History of Self-Determination. *Diplomatic History*, 36

Singer J. W., 2016. Anti-Paternalism. *New England Law Review*, 50

Steven R. Ratner, 1996. Drawing a Better Line: *Uti Possidetis* and the Borders of New States. *American Journal of International Law*, 90, pp 590, 590.

Stuart J. Kaufman, 2006. Symbolic Politics or Rational Choice? Testing Theories of Extreme Ethnic Violence. *International Security*, 30(4)

Stuart J. Kaufman, 2006. Symbolic Politics or Rational Choice? Testing Theories of Extreme Ethnic Violence. *International Security*, 30(4)

Ved P. Nanda, 2001. Self-Determination and Succession under International Law. *Denver Journal of International Law & Policy*, 29(3)

Vincent Nmeihelle, 2000. Toward an African Court of Human Rights: Structuring and the Court. *African Society of International and Comparative Law*, 6

Weiss T. G., 'The Illusion of UN Security Council Reform' (2003) 26(4) *The Washington Quarterly*, 147

Weitz, E, 2015. Self-Determination: How a German Enlightenment Idea Became the Slogan of National Liberation and a Human Right. *The American Historical Review*, 120(2), pp 462-469.

Yoram Dinstein. Collective Human Rights of Peoples and Minorities. *International Law Quarterly*, 25

Young R. 1994. How Do Peaceful Secessions Happen?. *Canada Journal of Political Science*, 27(4)

Zhang Naigen, 2016. The Principle of Non-Interference and its Application in Practices of Contemporary International Law. *Fudan journal of the Humanities and Social Sciences*, 9(3)