



The Right To Self Determination Under Contemporary International Law: The Case Of Minority Groups In Nigeria

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ABSTRACT

The right to self-determination is contained in international legal instruments like the United Nations Charter and the African Charter on Human and Peoples' Rights. The ICJ has affirmed its *erga omnes* nature. The agitation for self-determination in Nigeria has become a topical issue. Historically, several independent tribes were amalgamated by Britain without first seeking and obtaining their consent. Coercion was largely employed to conquer these tribes. Britain succeeded in amalgamating Nigeria without first uniting the spirit of the people as a nation. The 1999 Constitution of Nigeria (as amended) provides that Nigeria is one indivisible and indissoluble sovereign nation. However, this one indivisible and indissoluble phenomenon has been trounced with threats of collapse since the Civil War in 1966 when secessionists declared Republic of Biafra. IPOB and MASSOB have continued to push for Biafra. The underpinning of their agitation is alleged marginalization and injustice. The Niger Delta struggle is that for internal self-determination over perceived marginalization. The Kaiama Declaration, the Ogoni Bill of Rights and militant activities from groups like MEND and Niger Delta Avengers are all pointers to this struggle. Their anger is that of injustice associated with exploration and exploitation of oil found in their land. This article examined the agitations of Biafra and Niger Delta for self-determination through the prism of municipal and contemporary international law. The objective is to examine the notion of self-determination and its applicability in Nigeria. Doctrinal research methodology employing both primary and secondary sources was adopted. The article found that the ethnic groups which occupied Nigeria prior to colonization and amalgamation were independent and autonomous. It also found out that these groups were never consulted if they desire to be part of Nigeria or not. Finally, while the minority groups may have a claim under international law, municipal laws do not favour their course. It was recommended that the extant legal framework in Nigeria should be amended to allow an unwilling component to secede if it so desires. Further, the government should make the necessary policy changes to enable fiscal federalism.

Keywords: self-determination, right, political independence, Niger Delta

1.0 INTRODUCTION

The right to self-determination is contained in the Charter of the United Nations 1945¹ and similar international instruments.² Fundamentally, the right to self-determination is the right of a people to determine their own destiny. It is a group right³ and implies the right of a group to freely determine their

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¹ Hereafter referred to as UN Charter. Article 1(2)

² For instance African Charter on Human and Peoples' Rights (1981), Articles 20 – 22.

³ As distinguishable from a personal or individual right, Group Rights are held collectively by a people. It inures to a group collectively rather than by its members individually. Some proponents of group rights conceive right-holding groups as moral entities in their own right, so that, as a right holder, a group has a being and status analogous to those of an individual person. Others give groups no such standing, but conceive group rights as

political status and freely pursue their economic, social and cultural aspirations and development and preserving their environments.⁴ Usually, it is the minority groups within a larger political arrangement that clamour for the right to self-determination. Contiguous to the right to self-determination is the clamour for autonomy.

The clamour for autonomy (resource control) stems from the desire by some minority groups to have a total or some form of control over the natural resources found within their environment.⁵ The catch here is not a desire for a separate and independent political entity.

Nigeria has had its fair share of agitations for self-determination or autonomy. The Nigerian situation is even more complex as Nigeria is made up of about 371 tribes.⁶ These tribal groups have deep seated ethnic loyalties and sentiments. Thus, one can conjecture that agitations will be a normal occurrence. This article shall review agitations of Biafra⁷ for secession and the Niger Delta⁸ for autonomy, within the context of both municipal and international legal instruments.

2.0 The Notion of Self-Determination

The term self-determination refers to the free will of a people in a particular territory to decide their affairs without external influences or to freely decide their political status.⁹ It also refers to the legal right of a particular ethnic or indigenous people to choose their purpose under the international order.¹⁰ Under extant international legal instruments, the right to Self Determination does not inure to an individual but to a group of people with distinctive and unique culture, a common heritage and existing within a specific geographic location.¹¹

Early writers include Vladimir Lenin, a Russian Communist revolutionary, politician and political theorist, and Woodrow Wilson, the 28th President of the United State. They postulated that it could be as a result of “violent secession to liberate people from bourgeois government” or “based on free will of the people through democratic processes”.¹² President Wilson, in his paper “War and Peace” posited that

rights that are shared in and held jointly by the group members. ‘*Stanford Encyclopedia of Philosophy*’, ‘*Group Rights*’, < <https://plato.stanford.edu/entries/rights-group/> > accessed 29 July, 2019.

⁴ Group rights are usually championed by members of Unrepresented Nations & Peoples Organization (UNPO). UNPO members are indigenous States and occupied territories that have joined together to promote their right to self-determination, while also defending their political, social and cultural rights and preserving their environment. See generally ‘*Self Determination*’ <www.unpo.org/articles/4957> accessed on 15 January 2018.

⁵ D. Dafinone, ‘*Resource Control: The Economic and Political Dimensions*’ (2001) <www.waado.org/nigerdelta/essays/resourcecontrol/Dafinono.html> accessed on 21 March 2018.

⁶ O. Tony, ‘*Full list of all 371 tribes in Nigeria, states where they originate*’, *Vanguard Newspaper* (10 May, 2017) <www.vanguardngr.com> accessed on 19 March 2018.

⁷ Biafra is comprised of the old Eastern Region of Nigeria under the Parliamentary System of Government adopted under the 1960 Independence Constitution. The Major tribe is Igbo. However, smaller tribes like the Ijaws, the Ogonis etc were part of the old Eastern Region. But these smaller tribes have often disassociated themselves from the Biafra struggle.

⁸ The Niger Delta is the south of the Niger River by the Gulf of Guinea. It is made up of 9 States namely Abia, Akwa-Ibom, Bayelsa, Cross-Rivers, Delta, Edo, Imo, Ondo and Rivers.

⁹ Merriam Webster Dictionary, <www.merriam_webster.com/dictionary/self-determination> accessed on 23 March 2018.

¹⁰ Y. Olamojobi, ‘*The Existing Cause of Biafrefixit and its Right to Self Determination*’, (24 October 24 2016), 1. available at <www.ssrn.com> accessed on 23 March 2018.

¹¹ UN Charter, Article 1(2); Articles 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); African Charter of Human and Peoples Rights (1981), Articles 20-22.

¹² M. Sterio, ‘*On the Right to External Self-Determination: “Selfish,” Secession and Great Powers’ Rule*’, [2009], *Minnesota Journal of International Law* 16-18 <www.ssrn.com/abstract=1337172> accessed on 20 March, 2018 1 – 4.

“Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril”¹³

There are two categories of self-determination: Internal and external. Internal Self-determination refers to the agitation of a minority group within a nation to be recognized and given its due rights in the conduct of the affairs of that state. Minority groups here strive that their cultural, religious, political and linguistic rights should be respected and guaranteed by the government of the mother state.¹⁴ They do not intend to opt out of the nation but rather that they should be allowed to determine their fate within the mother state and have their opinion heard.¹⁵

On the other hand, external self-determination is an agitation for political independence from the mother state. Here, an oppressed minority seeks their own country and sovereignty under international legal instruments because their basic rights to freely determine their political status and freely pursue their economic, social and cultural aspirations and development and preserving their environments are being deprived them.¹⁶ The oppressed minority group is usually made up of people who share a common ethnic, culture, language and religious background.

The right to self-determination has also enjoyed judicial pronouncement by the International Court of Justice (ICJ). In the cases of Namibia¹⁷, the Western Sahara¹⁸, and the East Timor¹⁹, the ICJ affirmed the *erga omnes*²⁰ character of the right to self-determination.

The East Timor’s struggle for self-determination reveals the complex nature of the quest for self-determination. It reveals two kinds of struggle for self-determination: aided and unaided²¹. In the aided quest for self-determination, world powers support the particular group in their quest for self-determination. Whereas in the unaided quest, little or no such supports are offered. The implication is that while the aided group would actualize its quest, as did East Timor, the latter group’s quest would fail.

It should be noted that the territories now known as Nigeria has been inhabited since from between 500,000 to 9000 BC.²² The inhabitants were distinct and independent ethnic/tribal groups. There existed independent and autonomous ethnic groups like Igbos Nupe, Urhobos, Ijaws, Yorubas, Fulanis, Hausas, Itsekiris, Ogonis, Ogojas, Tivs etc. Kingdoms like Sokoto Caliphate, Benin, Calabar and Lagos etc, also existed.²³ These groups were autonomous kingdoms occupying different territories.

¹³ V. Epps, ‘Evolving Concepts of Self-Determination and Autonomy in International Law: The Legal Status of Tibet’, *Legal Studies Research Series*, Research Paper 08-33, (21 October 2008), 4 <www.ssrn.com/abstract=1287825>, accessed on 24 March 2018.

¹⁴ M. Sterio, (n. 30), 2

¹⁵ Y. Olamojobi, (n 69), 7.

¹⁶ Information available at UNPO website, ‘*Self Determination*’, <www.unpo.org/articles/4957> accessed on 15 January, 2018. UNPO stands for UNREPRESENTED NATIONS & PEOPLES ORGANIZATION. UNPO members are indigenous States and occupied territories that share a common trait of unrecognition in both municipal and international government circles, and so have joined together to promote their right to self-determination, while also defending their political, social and cultural rights and preserving their environment.

¹⁷ See generally, International Court of Justice Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276, [1971] ICJ Case 53.

¹⁸ See generally, International Court of Justice Advisory Opinion on West Sahara [1975] ICJ 12.

¹⁹ *Timor-Leste v Australia* [1995] ICJ 91.

²⁰ The phrase is Latin, and means ‘available to all’.

²¹ M. Sterio, ‘*On the Right to External Self-Determination: “Selfish,” Secession and Great Powers’ Rule*’, [2009] *Minnesota Journal of International Law*, 16-18 <www.ssrn.com/abstract=1337172> accessed on 20 March 2018.

²² R. K. Udo, ‘*Environment and Peoples of Nigeria: A Geographical Introduction to the History of Nigeria*’, (Ibadan: Heinemann Education Books, 2001), Reprint, Chapter 1, 14.

²³ I. Sagay, ‘*Nigeria: Federalism, the Constitution, and Resource Control*’, 1 available at <www.unpub.wpd.tam.us.siteprotect.com/var/m_f/fa/fa2/22697/235469-nigeria_federalism_pdf> accessed on 16 April 2018.

Between 1885 and 1914, the autonomous ethnic groups occupying present day Nigeria were largely conquered by the British Authority and made colonial territories²⁴ in furtherance of British desire to maintain a colonial state in Nigeria²⁵ and exploit her natural resources.²⁶

The colonization of Nigeria met resistance from the autonomous ethnic groups who opposed their being subjugated by the British. They saw the British as foreign invaders and were not willing to forego their independent and autonomous status. Several wars and uprisings sprang up. As expected, these resistances were quelled by brute force by the British or threat of force. For instance, when Oba Dosumu refused to cede Lagos to the British, the British threatened to destroy Lagos Island. A “sign-or-we-destroy” position was adopted by the British. This compelled Oba Dosumu to back down from his seven-day standoff with the British and signed the Treaty of Cession.²⁷ The signing of this treaty and similar others is a pointer and a recognition of the independence of these autonomous ethnic groups prior to colonization.²⁸

Little wonder Chief Obafemi Awolowo in 1947 described Nigeria as an artificial creation.²⁹ Britain, the architect of Nigeria’s union as a single nation, did not seek the consent of the minority groups before amalgamating them. Although the forceful amalgamation succeeded, the British failed to first unite the people in the spirit of a nation.

3.0 The Case of Biafra

The beginning of the agitation for Self Determination by the people of Eastern Nigeria can be traced to the declaration of the Republic of Biafra.³⁰ The Eastern Region Consultative Assembly had prior to the declaration, and on 26th May, 1967, mandated the Governor of the Eastern Region, Colonel Odumegwu Ojukwu, to declare the Republic of Biafra. This declaration led to the Nigerian Civil War, as the federal government of Nigeria then led by General Gowon reacted to the attempt at secession by declaring war on Biafra on the 5th of July, 1967.³¹ The Declaration of³² the Republic of Biafra was an attempt made by the Easterners or Ibos to exercise the right to Self Determination by means of Secession because they felt threatened by what was perceived as an attempt of the then Northern led Federal Government to eliminate them.

²⁴ I. Sagay, (n. 21), 1.

²⁵ T.N. Tamuno, *The Evolution of the Nigeria State: The Southern Phase, 1898-1914*, London, (1972).

²⁶ Information on the reason behind the colonization of Nigeria is available at www.prezi.com/byexedq6_gg/british-colonialism-in-nigeria/ accessed on 17 April 2018.

²⁷ See generally *This Day Online*, (n. 38)

²⁸ B. Akinyemi, ‘Devolution of Power: A Prerequisite for National Unity - The Need for Dialogue’, *Essays on International Politics: Foreign and Domestic Affairs*, (Lagos: Macmillan Nigeria Publishers Ltd., 2002), Chapter 22, 356.

²⁹ B. Akinyemi, (n. 42) *Ibid*, 337-339.

³⁰ Secession of the Eastern region from Nigeria and the declaration of the Republic of Biafra was made on the 30th of May, 1967. This followed intractable conflict and ethnic clashes between the Igbos and the Hausa/Fulani, which had led to the massacre of Igbos in the Northern parts of the Country. The crises were the aftermath of the coup of January 15, 1966, which saw General Aguiyi Ironsi take over as head of state. A number of top Northern officials were assassinated in this coup, and this inflamed the people of the North against the Ibos, as the January 15 coup was viewed as an Ibo affair. After this coup, Ibos were massacred in the north on the 29th of May, 1966. Also, on July 29th 1966, the administration of General Ironsi was overthrown by officers of Northern extraction, and several Ibo military officers were again killed. This further aggravated the situation and created full hostilities between the Igbos and the Northerners. See generally: P. Okoronkwo, “Self-Determination and the Legality of Biafra’s Secession under International Law” (Vol. 25) *Loyola of Los Angeles International and Comparative Law Review*, 63.

³¹ P. Okoronkwo, ‘Self-Determination and the Legality of Biafra’s Secession under International Law’ (Vol. 25) *Loyola of Los Angeles International and Comparative Law Review*, 72.

³² *Ibid*, 70.

The Biafra secession was one which the protagonists saw as a fight in the defense of human rights and the very existence of the Igbos and to stop oppression. Biafra was a state meant to correct the anomalies suffered by the people of Biafra under the Nigerian state, and in that sense was viewed as a liberation movement. According to Ojukwu,

When Nigerians violated our basic human rights and liberties, we decided reluctantly but bravely to found our own state, to exercise our inalienable right to self-determination as our only remaining hope for survival as a people. Yet because we are black, we are denied by the white powers the exercise of this right which they themselves have proclaimed inalienable. In our struggle we have learned that the right of self-determination is inalienable, but only to the white man.³³

While it has been expressed that the attempt of secession was one for survival, especially in the face of gross human right abuses alleged by Biafra, Ojukwu insinuated that the struggle was unaided by the international community which turned a deaf ear to Biafra agitation for independence from Nigeria, according to him due to a confluence of ethnic factors, imperialism and Arab expansionism.³⁴ Even though the civil war never ended in favour of Biafra, the ideals on which it was prosecuted are still very alive and valid today.

Hence, the agitation for secession in Nigeria has continued unabated even with the return of democracy in Nigeria in 1999. It is presently being championed by Movement for the Actualization of the Sovereign State of Biafra (MASSOB)³⁵ and the Indigenous People of Biafra (IPOB)³⁶. The agitation had reached an alarming rate leading to the proscription of IPOB as a terrorist organization.³⁷ Their major grouse is that they have suffered marginalization, injustice and have not benefited optimally from the distribution of socio-political projects.³⁸ Their grouse is also centered around the claim of intimidation by the Hausa-Yoruba tribes which has led to deprivation of representation in the high echelon of the federal government, victimization as a result of their race, discriminatory access to justice, and degradation of cultural and language rights.³⁹

³³ A. Heraclides, *The Self-Determination of Minorities in International Politics*, (London, Routledge, 1991) 4.

³⁴ *Ibid*, 4.

³⁵ Its leader is Chief Ralph Uwazurike. His leadership appears to enjoy the backing of majority of Igbo leaders basically because of his consultative style of leadership.

³⁶ Its self acclaimed leader is Nnamdi Kanu. He is seen as the messiah and is so adored until IPOB was declared a terrorist group by the Nigerian Military. See generally T. Adibe and others, *'Military declared ipob terrorist organization'* *Daily Trust Newspaper* (16 September 2017) available at <www.dailytrust.com.ng>, accessed on 21 March 2018. Upon an ex parte motion filed by the Attorney General of the Federation and Minister of Justice, Abubakar Malami, SAN, the Federal High Court, Abuja, presided over by the Acting Chief Judge, Hon. Justice Abdu Kafarati, on Sept. 20, 2017 made an order proscribing IPOB and designated it as a terrorist group. See **A. Adesomoju** *'Court affirms IPOB's proscription, designation as terrorist group'* *The Punch Newspaper* (19 January 2018) available at <www.punchng.com>, accessed on 21 March 2018.

³⁷ **A. Adesomoju**, *'Court affirms IPOB's proscription, designation as terrorist group'*, *The Punch Newspaper* (19 January 2018)<www.punchnh.com>, , accessed on 21 March 2018.

³⁸ This was the view of a coalition of several pro-Biafra human rights groups in their joint communiqué titled *"Understanding social realities of Biafran Self Determination Agitation"* available at <www.ekwenche.org/social-realities-of-biafran-self-determination-agitation.htm> accessed on 24 March 2018.

³⁹ T. Okonkwo and K. G. Kingston, *'An Assessment of the Rights of Indigenous Peoples of Biafra To Self-Determination Under International Law,'* [2016] (Vol. 6) (1), *Sacha Journal of Human Rights*, 106 www.papers.ssrn.com accessed on 16/02/2018.

The CFRN 1999 (as Amended) provides that Nigeria is one indivisible and indissoluble Sovereign Nation.⁴⁰ It further provided that nobody or group of person can take over government or any part of Nigeria, except as provided for in the Constitution.⁴¹ The framers of the CFRN 1999 (as Amended) did not envisage a time when one minority group, or any other group for that matter, would clamour to opt out of the federal structure via pushing for self-determination or autonomy as no provision for such was made therein. In the wording of the Constitution, the union of Nigeria appears to be iron-cast and non-negotiable, considering the fact that the CFRN 1999 (as Amended) is supreme and its provisions are binding on all authorities and persons throughout the Nation.⁴² These provisions by virtue of being contained in the CFRN 1999 (as Amended) are deemed sacrosanct.

Therefore, it can safely be posited that in view of the current state of the law in Nigeria, the Biafran agitation for secession is extra-legal, and not contemplated by the Nigerian Legal system as currently constituted. Similarly, all the calls for referendum by IPOB and the preparations⁴³ for same suffer the same fate and therefore are of no legal consequence within our municipal law. This does not augur well for the secession bid, as international law usually leaves the issue of secession to the individual state.

Although there seems to be no light at the end of the tunnel when the matter of self-determination by Biafra is viewed through the prism of Nigerian municipal law, international law may offer a way out. By the literature and the international instruments examined in this work, it has been seen that external Self Determination is permissible in international law in cases of Colonialism, Oppression, violation of fundamental rights and near extinction, and by mutual consent of the parent and seceding state. A brief examination of the Biafra case within the framework of these permissible exceptions under international law is therefore necessary.

The first exception to the rule against Secession is colonialism. International instruments permit secession as an expression of the right to Self Determination in a colonial situation, to such an extent that states are under a duty to take steps “To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned.”⁴⁴ Similarly, the African Charter states that 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 community⁴⁵ and all peoples have the right to assistance from state parties in their liberation struggles.⁴⁶

“Colonization” has been used to refer to the period of history from 15th to 20th centuries, when people from Europe built colonies on other continents.⁴⁷ On the face of it, Nigerian Minorities, particularly Biafra does not fall within this category, as colonization of Nigeria ended with Independence. But this article proposes a close examination of the issue along the following lines. It has been stated that there are four (4) main characteristics of colonialism, vis:

1. Political and Legal Domination over an alien society;
2. Relations of economic and political dependence;
3. Exploitation between imperial powers and the colony;
4. Racial and cultural inequality.⁴⁸

⁴⁰ The CFRN 1999 (as Amended), S 2 (1). This desire to live as an indivisible and indissoluble entity was even captured from the onset in the Preamble to the CFRN 1999 (as Amended).

⁴¹ *Ibid*, S 1(2).

⁴² *Ibid*, S 1 (1).

⁴³ E. Mamah, “IPOB prints 40m Ballot Papers for Referendum on Biafra” *Vanguard Newspaper* (20 June, 2019), available at <<https://www.google.com/amp/s/www.vanguardngr.com/2018/06/ipob-prints-40m-ballot-papers-referendum-biafra/amp/>> accessed 25 July, 2019.

⁴⁴ Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of The United Nations.

⁴⁵ Article 20(2) of the African Charter on Human and Peoples Rights.

⁴⁶ *Ibid*, Article 20(3).

⁴⁷ For example, the British Colonization of Nigeria from 1884 up till Independence and return to self-rule in 1960.

⁴⁸ Citizendum, ‘Colonialism’ available at en.citizendum.org/wiki/Colonialism, accessed 27th July, 2019.

One of the features of colonialism is the legal and political domination of the seceding party by the dominant alien party. Although Nigeria is currently governed by Nigerians per se, it must be noted, as observed elsewhere in this work⁴⁹ that the peoples of present-day Nigeria were fully independent of one another before the British lumped them together under the colonial contraption called Nigeria. In that sense, the people of Biafra can be said to consider the federal government, which is mostly dominated by a particular ethnic group, as an alien government, being alien to them, which dominates them politically and legally.

This is true of the ethnic makeup of Nigeria, as the dominant group controls the resources, politics at the center, and federal law making. There are certain laws that do not sit well with other regions of the country, and which were made by northern controlled military governments during the era of military rule, that continue to be imposed on the entire nation despite their unpopularity. An instance of unpopular legislation foisted on the minorities is the Land Use Act.⁵⁰

Even the CFRN 1999 (as Amended) is viewed widely as undemocratic in the process of its promulgation, not reflecting the will of the people⁵¹ and an imposition by the Military.⁵² If the above is viewed against the backdrop that the federal government is almost always controlled by a particular ethnic nationality, it is not hard to see domination, both legal and political, and it can be argued that control from outside one's ethnic group is alien, especially considering the pre-colonization independent positions of the peoples of Nigeria.

Exploitation and Racial and Cultural inequality is also visible in the dynamics of the relationship between the dominant and minority groups in Nigeria. It has been shown that natural resources are expropriated by the Federal Government, and the application of the derivation principle is at an all-time low⁵³, meaning that a lot is taken from producing regions and very little is given back. Ethnic inequality can be seen in the different treatments given to private persons who exploit petroleum in the south on one hand, and private persons who exploit solid minerals in the North on the other hand, even though both petroleum and solid minerals all belong to the Federal Government.⁵⁴

Considering the military invasion of Eastern Nigeria under the guise of *Operation Python Dance*⁵⁵ with view to using brute military force to quell the demand of minority people for self-determination, as opposed and in contradistinction to the dialoguing and negotiation stance of the Canadian Government in dealing with the Quebec Secession demand,⁵⁶ one can consider the Federal Government's handling of the Biafra question as oppressive, and Igbo leaders have not minced words in expressing their rejection of the operation and militarization of their home land by the federal government.

The reports of oppression are of such nature that, if they had happened to Quebec in Canada, would have prompted the Canadian Supreme Court to declare Quebec as oppressed and thus qualified to invoke

⁴⁹ Chapter 2, section on pre-colonial Nigeria.

⁵⁰ Although, the Land Use Act was passed as the Land Use Decree by Gen. Olusegun Obasanjo in 1978.

⁵¹ J. Ihonvbere, "How to make an Undemocratic Constitution: the Nigerian Example", [2000] (Vol.21) *Third World Quarterly*, 343.

⁵² The CFRN 1999 (as Amended) as promulgated by the Provisional Ruling Council (the highest military body in Nigeria before May 29th, 1999) headed by the then Military Head of State, Gen. Abdulsalam Abubakar. It is thus not home grown, and does not reflect the will of the peoples of Nigeria whom it is meant to govern. It was a reenactment of the 1979 Constitution which was also promulgated by a Military Decree.

⁵³ Currently 13% as observed in Chapter 3. It used to be 50% under the 1960 and 1963 Constitutions.

⁵⁴ This asymmetric system is considered in the Case of the Niger Delta under the next subheading in this Chapter.

⁵⁵ Operation Python Dance is the code name for a Nigerian Army operation targeted mainly at the South East. Fears have been expressed of its suppressive intent, especially in the face of the Army's crackdown on IPOB, leading up to the arrest and subsequent disappearance of Nnamdi Kanu, IPOB leader. Ohanaeze Ndigbo and MASSOB slammed the Army for the operations: Sahara Reporters, "Operation Python Dance 3: Ohanaeze, MASSOB Slam Army" 30th December, 2019, available at <saharareporters.com/2018/12/30/operation-python-dance-3-ohanaeze-massob-slam-army> accessed 27th July, 2019.

⁵⁶ See generally: Reference Re Secession of Quebec [1998] 2 SCR 217.

secession under international law.⁵⁷ Looking at the above, one could infer justification for Biafran secession on colonial grounds⁵⁸ and oppression. On this base, it is our view that with strong evidence of the issues highlighted above, Biafra could succeed in its bid for secession, if their case were properly articulated before the United Nations and the international community.

The last issue for consideration under the Biafra case is the possibility of secession by mutual consent. It must be stated upfront that considering the military stance of successive Nigerian governments, the possibility of this is very slim. The declaration of the civil war following the secession of Biafra in 1966 is testament to the fact that attempts for self determination will always be met by suppression in Nigeria. This position is corroborated by the Operation Python Dance scenario examined above. Therefore, it is safe to suppose that Biafra will not be granted consensual secession by the Nigerian state.

It is also contended that under a Federal structure, these agitations are supposed not to be as the system should be structured in such a way as to allow the minority groups have some form of independence and control of natural resources found in their lands. This, unfortunately, is not the case in Nigeria. Thus, it has been opined that Nigeria is practicing an aberration of true federalism hinged on the CFRN 1999 (as Amended). It was contended that the provisions of the CFRN 1999 (as Amended) are not in favour of equitable sharing formula, resource control and autonomy which are the crux of a true federalism.⁵⁹ In a true federal structure, the federating units should control the revenue from the natural resources found within their territory.⁶⁰

4.0 The Case of the Niger Delta

The Niger Delta agitation for autonomy and resource control being championed by the various militant groups is also on the front burner of agitations currently plaguing Nigeria. Although the agitation does not appear to enjoy the support of majority of the indigenes of the Niger Delta, militant groups like Movement for the Emancipation of Niger Delta (MEND),⁶¹ Niger Delta Avengers,⁶² Niger Delta Creek Warriors,⁶³ etc have continued to attack oil installations and terrorize the creeks within the region to push home their point and demand for resource autonomy.

These militant groups agitate that the Niger Delta should have control of the oil resources found in the region.⁶⁴ Their reason is because communities within the Niger Delta where these oil resources are exploited from live in abject poverty with the near absence of basic social amenities like good drinking water, electricity, schools etc. Whereas, the opposite is the case in some areas of the country where

⁵⁷ Re Secession of Quebec [1998] 2 SCR 217. The Canadian Supreme Court was called upon to determine the legality of Quebec's attempt at secession under Canadian municipal law and international law. The Court decided inter alia, that although Secession is permissible in some circumstances under international law, the Quebec situation did not fall under any of such circumstances.

⁵⁸ Even though we concede that it is a stretch of interpretation and argument as expressed in this heading.

⁵⁹ G. Deinduomo, 'An appraisal of Nigerian federalism and the Niger Delta crisis, Law, Oil and Contemporary Development Issues in Nigeria', in Festus Emiri and Gowon Deinduomo (eds.) *Essays in honour of Late Honourable Justice Emmanuel Joel Igoniwari*, (Lagos, Malthouse Press Limited, 2008) 194-195.

⁶⁰ B. Akinyemi, 'Nigeria: A mere Geographic Expression?', *Essays on International Politics: Foreign and Domestic Affairs*, (Lagos: Macmillan Nigeria Publishers Ltd, 2002) 355.

⁶¹ It is one of the largest militia groups in Niger Delta <www.en.m.wikipedia.org> accessed on 21 March 2018

⁶² <www.nigerdeltaavengers.org/?m> accessed on 21 March 2018.

⁶³ B. Madukwe 'Militant groups asks MEND to steer clear of the Niger Delta matters' *The Vanguard Newspaper* (17 August, 2017) <www.vanguardngr.com>, accessed on 21/03/2018.

⁶⁴ G. Deinduomo, (n. 35), 197.

proceeds from oil have been used to develop mega cities, for example, Abuja.⁶⁵ More particularly, the environment of the region has been contaminated as a result of oil exploration and exploitation.⁶⁶

Unlike the struggle of MASSOB or IPOB, these Niger Delta militant groups have continued to fight for internal self-determination by way of autonomy in the control of the natural resources found in their land, albeit without the general support of the majority of indigenes of the region. However, some of these groups have even threatened to declare Niger Delta Republic.⁶⁷ Interestingly, it must be observed that the issue of the declaration of the Niger Delta Republic is not new, but has historical backing. In fact, the first people in Nigeria to actually attempt to secede by declaring an independent republic were the Ijaws of the Niger Delta, led by Isaac Jasper Adaka Boro.

Angered by the deprivation of the minorities from whose areas petroleum was produced, and in the wake of the lack of resource justice of the time, Boro and his compatriots under the auspices of the Niger Delta Volunteer Force, declared the Niger Delta Republic on the 23rd of February, 1966⁶⁸, starting a twelve (12) day standoff⁶⁹ with the Nigerian troops as commanded by the then Head of State, General Aguiyi Ironsi.⁷⁰ This ended when Boro and his men were arrested, and later tried for treason.⁷¹ Although the attempt at secession by the Niger Delta minorities came first before the Biafran secession attempt, the people of Niger Delta today seem to tow the line of internal, rather than external self-determination, as shown in the articulation of their quest for autonomy.⁷²

Two instruments that ably illustrate the position of the Niger Delta region on the issue of Self Determination are the Ogoni Bill of Rights and the Kaiama Declaration. The Ogoni Bill of Rights⁷³ is

⁶⁵ I. Baba and C. Aeyssinghe: *Re-Positioning Nigeria towards Sustainable National Unity*, [2017] (Vol. 17) (Issue 4) Global Journal of HUMAN-SOCIAL SCIENCE: H Interdisciplinary, Global Journals Inc. (USA), ISSN: 2249-460x & ISSN: 0975-587X, pg. 43 <www.globaljournal.org/GJHSS_Volume17/3-Re-Positioning-Nigeria.pdf> accessed on 10 January 2018.

⁶⁶ *Ibid*, p 43.

⁶⁷ S. Opejobi, 'We will Declare Niger Delta Republic on October 1 – Adaka Boro Avengers', *Dailypost Newspaper*, (1 August 2017) <www.dailypost.ng/2017/08/08/will-declare-niger-delta-republic-october-1-adaka-boro-avengers/> accessed on 24 March 2018.

⁶⁸ This was about a month after the January 15, 1966 Coup, which was believed to be one of the precipitating factors leading to the declaration of the Niger Delta Republic.

⁶⁹ Also known as the 12 Day Revolution, starting from 23rd February, 1966 to 6th March, 1966.

⁷⁰ G. Igali, 'Salute to a National Hero: Major Isaac Adaka Boro, 51years after', *Leadership Newspaper* (18 May, 2019) available at <<https://leadership.ng/2019/05/18/salute-to-a-national-hero-major-isaac-adaka-boro-51-years-after/>> accessed 25 July, 2019.

⁷¹ Ironically, Boro and his men were conscripted into the Nigerian Army by the Gowon led administration and used to fight the Biafran secessionist during the Nigerian Civil War. Unfortunately, Boro was killed by friendly fire in Ogu, Okrika in present day Rivers State towards the end of the civil war; G. Igali, *Ibid*.

⁷² It must also be noted that the Declaration of the Niger Delta Republic was not the very first attempt of the Niger Delta people at Self Determination. The agitation for better treatment by the minorities in the Niger Delta led to the setting up of the Willinks Commission by the British Colonial Secretary to investigate into the fears of the Minorities in Nigeria, and this produced the Willinks Commission Report of 1958. In the hearing, the minorities requested for autonomy and the creation of more states, which is an internal Self Determination claim. Rather than recommend autonomy, the Commission ignored the representation of the minorities, and instead made recommendations for the creation of Development Boards to address the needs of the minorities, and it is on the base of this recommendation that the Oil Minerals Producing Area Development Commission (OMPADEC) and later the Niger Delta Development Commission (NDDC) were created subsequently. A digital copy of the Willinks Commission Report is available at <<https://www.google.com/url?sa=t&source=web&rct=j&url=http://eie.ng/wp-content/uploads/2014/03>> accessed 25 July, 2019.

⁷³ Available at <<https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.bebor.org/wp-content/uploads/2012>> accessed 25 July, 2019.

particularly expressive in this regard.⁷⁴ It stated as a historical fact that the Ogonis were an independent people before British Colonization.⁷⁵ It also noted the substantial economic contribution of petroleum won from Ogoni land to the Nation,⁷⁶ and decried the neglect and lack of amenities or benefits from the exploration; repression of Ogoni culture and language; slavery and possible extinction. They also raised the issue of abject poverty of the people in the midst of many, referring to the abundant petroleum resources.⁷⁷ Their main demand was for autonomy within the Nigerian State, protection of the environment, and the right to a “fair proportion of Ogoni economic resources for Ogoni development”.⁷⁸ In a similar vein, the Kaiama Declaration⁷⁹ restates the position that the Ijaw people were brought under the Nigerian State by the British. It also restated all the issues of environmental degradation, quality of life, neglect and suppression suffered by the Niger Delta people in spite of the enormous oil wealth exploited from the region. In its demands, the Kaiama Declaration was more forceful than the Ogoni Bill of Rights, as it proclaimed Ijaw ownership of all its territory, including mineral resources found within, and stated the decision not to recognize any undemocratic decrees or laws that rob the Ijaw people of ownership of their land or resources.⁸⁰ It demanded for Self-Government and Resource control for the Ijaw people, while agreeing to remain within the Nigerian state.⁸¹ The Niger Delta position and demand, as can be gleaned from both Declarations, are autonomy, especially financial autonomy and resource control for the peoples of oil-bearing areas. These demands are attempts at internal self-determination. Apart from the 12 Day Revolution⁸² and pockets of instances where Niger Delta Agitators threaten to declare the Niger Delta Republic,⁸³ Niger Delta agitation demands are mainly for internal self-determination, by way of restructuring and for the grant of autonomy.

Rather unfortunately, the Nigerian legal system also makes no room for the demands made by such agitations, and the existing statutory framework as described in the first part of Chapter 3 of this work is a barrier to the realization or attainment of the goal of internal self-determination by the people of the Niger Delta. From the Nigeria Constitution to the laws that have been considered in Chapter 3, none provides for the possibility of autonomy (fiscal or otherwise). For instance, the demand for resource control by the people beneath whose land petroleum is found, which is an expression of internal self-determination is not in tandem with provisions of the CFRN 1999 (as Amended).

It was noted earlier⁸⁴ that Section 44(3)⁸⁵ vests ownership of all petroleum found in Nigeria, in the Federal Government. This is to the exclusion of any other person or body. This certainly and clearly excludes the people of the oil-bearing region of the Niger Delta, and therefore is in contradistinction to the position of or request for resource control.

⁷⁴ The Ogoni Bill of Rights was signed by the Chiefs and People of Ogoni, in Rivers State of Nigeria, in August, 1990. It stated the position of the Ogoni People and their claim to internal self-determination, in the midst of exploitation by the Nigerian state and its multinational collaborators and the environmental degradation and neglect suffered by the people of Ogoni land.

⁷⁵ Ogoni Bill of Rights, Paras 1 and 2.

⁷⁶ *Ibid*, Paras 7, 8 and 9.

⁷⁷ *Ibid*, Paras 11-14.

⁷⁸ Ogoni Bill of Rights, (n. 49) Para 20, which contains the demands made by the Ogoni people.

⁷⁹ The Kaiama Declaration is a Communique issued by Ijaw Youth of the Niger Delta at a youth conference held in Kaiama, on the 11th of December, 1998. It is available at <www.unitedijaw.com/kaiama.htm> accessed 25 July, 2019.

⁸⁰ Reference here is obviously to the content of the Land Use Act, the Petroleum Act, and other expropriation laws.

⁸¹ Paragraph 10 of the Kaiama Declaration.

⁸² See (n. 45).

⁸³ J. Nwachukwu, “Niger Delta Group Warns Militants over threat to break away from Nigeria June 1”, *Daily Post*, (22 May, 2019), available at <<https://www.google.com/amp/s/dailypost.ng/2019/05/22/niger-delta-group-warns-militants-threat-break-away-nigeria-june-1/amp/>> accessed 25 July, 2019.

⁸⁴ In Chapter 3 of this work.

⁸⁵ CFRN 1999 (as amended).

This position of absolute ownership of all petroleum is reinforced by the provisions of other extant legislations.⁸⁶ The only attempts to assuage the injured feelings of the deprived Niger Delta people are the Niger Delta Development Commission (NDDC) and the Federal Government Amnesty programme.⁸⁷ Pertaining to the NDDC, it is no news that it has not delivered on its mandate, and has failed to perform the purpose of its establishment, which is the development of the Niger Delta.⁸⁸

Much more than interventions like NDDC and PAP, considering the autonomy sought by the Niger Delta, the design of the Nigerian state greatly diminishes the possibility of the grant of this demand. This is because although Nigeria is a federation by the provisions of the Constitution,⁸⁹ it can in practice best be described as a quasi-federalism,⁹⁰ and this is particularly true with regards to fiscal federalism⁹¹. Section 162⁹² provides that all revenue accruing to the federation shall be paid into the federation account.

The president, on the advice of the Revenue Mobilization Allocation and Fiscal Commission, shall table proposals for allocation of revenue in the federation account, provided that in any approved formula, states shall be entitled to not less than 13% of revenue derived from natural resources within the state's boundaries. This is far from the position under the 1960 independence and 1963 Republican Constitutions. Chapter IX of the 1960 independence Constitution⁹³ contains its financial provisions, and Section 134 provides for Mining Royalties and Rents, as follows:

- (1) There shall be paid by the Federation to each Region a sum equal to fifty per cent. 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 during that year from within that Region.

The above provisions were replicated in a similarly worded Section 140 of the Constitution of the Federal Republic of Nigeria, 1963, and so the above postulations in the Independent Constitution apply with equal force to the 1963 Constitution. This Derivation formula has been abandoned and now forms part of the relic of the old constitutions, only relevant today for research and reference purposes. The current situation is a far cry from the demand and agitation for financial and resource autonomy and internal self-

⁸⁶ The provisions of Section 1 Petroleum Act, Section 2 of the Exclusive Economic Zone Act as examined in Chapter 3.

⁸⁷ Hereafter referred to as PAP.

⁸⁸ The Governor of Rivers State, Nyesom E. Wike recently berated the NDDC for failing to deliver on its mandate, especially in Rivers State, available at <<https://www.google.com/url?sa=t&source=web&rct=j&url=https://scannewsnigeri.com/featured-post/governor-wike>> accessed 25 July, 2019.

⁸⁹ CFRN 1999 (as Amended), S 2(2) provides that Nigeria shall be a federation consisting of states and a federal capital territory.

⁹⁰ B. Thom-Otuya, "Strengthening Nigeria's Federalism for National Development" (Vol. 4), (No. 5), *Mediterranean Journal of Social Sciences*, July, 2013.

⁹¹ It has been demonstrated in the course of this research that the Federal Government has by law, expropriated the petroleum resources found in states. This is violation of the principles of fiscal federalism, which dictate that components of a federation should have financial autonomy and therefore control over their own resources. See generally, O. Ewetan, 'Fiscal Federalism in Nigeria: Theory and Practice', [2012] (Vol. 1), (No. 3), *International Journal of Development and Sustainability*, 1075.

⁹² CFRN 1999 (as Amended).

⁹³ Constitution of the Federal Republic of Nigeria, 1960 (hereinafter referred to as the Independence Constitution or Nigerian Constitution 1960).

determination, and despite persistent cries for restricting by the peoples of the Niger Delta,⁹⁴ the Nigerian state seems to have turned deaf ears to these demands, which sadly are treated with levity.

To further aggravate the injured feelings of the Niger Delta and the repression which is a strong point for their agitation, a process of selective application of laws, and lack of distributive justice, as suffered by oil producing areas is observed in the Federal Government's response to illegal oil bunkering in the south, *vis a vis* its asymmetrical response to the private mining of solid minerals in the North.

Although solid minerals,⁹⁵ belong to the federal government by law⁹⁶ private exploration of these minerals which are mainly found in the North, is permissible by law⁹⁷ and is vigorously undertaken without federal government censure.⁹⁸ When viewed against the backdrop of federal government clampdown on persons who undertake private exploration of petroleum in the south, it is possible to infer preferential treatment of one ethnic group and oppression of another. These are the issues which fuel the dissatisfaction in the region, agitation and the Niger Delta's claim for internal self-determination and autonomy.

On the whole, it is clear that the Niger Delta agitation and demand for self-determination is borne out of repression, exploitation and suppression suffered by the region in the hands of a federal government controlled by the major ethnic groups, and this legitimizes their claim for Self Determination. This is exacerbated by the lack of development suffered by the region in spite of the huge resources extracted from it.

Most international instruments providing for the right to Self Determination⁹⁹ state that "all peoples have the right to dispose of their natural resources for their benefit, and that no people shall be deprived of said right." This is the right of a people to utilize their resources for their development, a right which is currently being deprived the people of Niger Delta. Under these circumstances, it can be said that the people of the region are deprived their right to self-determination, and the opportunity to exercise same.

In the Quebec Reference Case,¹⁰⁰ the Supreme Court of Canada opined that where a people are deprived of the opportunity to exercise their internal self-determination, then external self-determination becomes an option and can be legitimately pursued by such repressed people.¹⁰¹ The point being made here is that if the federal government does not handle or attend to the demand for restructuring, autonomy and internal self-determination currently made by the Niger Delta region, but instead continues to deny and repress them, it just might snowball or metamorphose into an agitation for external self-determination or secession. After all, it has been done before¹⁰² and is definitely not farfetched, considering that the reasons for that declaration, which is the exclusion and suppression of the oil producing areas of the Niger Delta, is sadly the current and prevailing situation. A stitch in time saves nine. Recommendations shall be made in the next chapter.

In the light of the all of the above, the present-day Nigeria can be described to be one that has witnessed an immense increase in agitation across the Minority tribes in the Country. These agitations are centered on their general desire to be involved in the scheme of things in the country. These agitators from

⁹⁴ J. Urowayino, 'Niger Delta Group calls for Restructuring, Fiscal Federalism', Vanguard, October 2018, available at <<https://www.google.com/amp/s/www.vanguardngr.com/2018/10/niger-delta-group-calls-for-restructuring-fiscal-federalism/amp/>> accessed 27 July, 2019.

⁹⁵ Like their petroleum counterparts.

⁹⁶ Mineral and Mining Act of 2007, S 1.

⁹⁷ *Ibid*, S 1(3). It provides that on exploitation, property in the resources passes from the government to the person who legally exploits them.

⁹⁸ E. Okogba, 'Illegal Mining: Time for FG to consider calls for Restructuring' Vanguard Newspaper (19 April 2019), available at <<https://www.vanguardngr.com/2019/04/illegal-mining-time-for-fg-to-consider-calls-for-restructuring-onuesoke-2/>> accessed 27 July, 2019.

⁹⁹ For instance, Article 21 of the African Charter on Human and Peoples' Rights.

¹⁰⁰ Reference Re Secession of Quebec [1998] 2 SCR 217.

¹⁰¹ The Court held that this in any case did not apply to Quebec, as they had the full right and opportunity to exercise internal self-determination.

¹⁰² Reference here is to the declaration of the Niger Delta Republic by Isaac Boro on the 23rd of February, 1966.

minority groups believe that they are well poised to achieve success. But the realization of same is doubtful owing to extant laws in Nigeria.

5.0 Intervention

Intervention is a key component in the success or failure of attempts at external self-determination. It has been described as the “direct or indirect projection of influence, whether by military, economic or political means, across the frontiers of recognized states. Those means can vary from dramatic action, in the extreme case large-scale military intrusion, calculated omission such as the refusal to extradite, or at least neutralize political activists and entrepreneurs of violence, instead allowing them to organize and direct political or even military operations from the sanctuary of a foreign state.”¹⁰³ Decipherable from the above description is that intervention may be action or inaction, military or otherwise, perpetrated by a state, and directed to impact self-determination struggles in another state. It is thus a situation where one state interferes in the internal affairs of another state.

Legally speaking, and within the framework of the United Nations Security system as enunciated in the United Nations Charter, such intervention in the internal affairs of another state *per se* is unlawful. Article 2(4) of the UN Charter provides that “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”. By this means state members are under no obligation to intervene, interference in the internal affairs of another state, even if to aid self-determination movements, will amount to a breach of this rule, where such intrusion is inconsistent with the purposes of the Charter.

Basically, the purpose of the United Nations Charter is the creation of a collective security system¹⁰⁴ and the charter, in a bid to attain the purpose proscribes the use of force by nations in the pursuit of international relations, except in cases of self-defense.¹⁰⁵ Therefore, the state of the law is that apart from the use of force in self defense by a state or collection of states, the use of force is outlawed, and only the United Nations, via its collective security system as headed and enforced by the Security Council can legitimately apply force. This was the position of the International Court of Justice in the *Nicaragua Case*¹⁰⁶ where it held that the United States had breached international law by aiding the Contras in their rebellion against the Nicaraguan Government, and awarded compensation against the United States.¹⁰⁷

Notwithstanding the position of the law, intervention is mostly a matter of international politics, and states have utilized the doctrine of Humanitarian intervention as a base or justification to interfere in self-determination movements at different times, to advance state interest in a hypocritical manner.¹⁰⁸ It is

¹⁰³ T. Farer, ‘*The Ethics of Intervention in Self Determination Struggles*’, [2003] (Vol. 25) *Human Rights Quarterly*, 382.

¹⁰⁴ Article 1(1) of the UN Charter states that the purposes of the United Nations are ‘To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace’.

¹⁰⁵ Article 51, *ibid* provides that ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.’

¹⁰⁶ *The Republic of Nicaragua v. United States of America* (1986) ICJ 14.

¹⁰⁷ Unfortunately, the United States utilized its veto to block the enforcement of the judgment by the Security Council of which it is a permanent and veto wielding member under Article 23 of the UN Charter.

¹⁰⁸ T. Farer, ‘*The Ethics of Intervention in Self Determination Struggles*’, [2003] (Vol. 25) *Human Rights Quarterly*, 382. According to the author, this justification for intervention is offered to three audiences: (i) the other great

essentially interference based on humanitarian grounds, advanced as being for the protection of the population or nationals of the state interfered with. Where the circumstances justify the intrusion, there is international restraint on punishing it, even though it is *ipso facto* illegal.

For instance, India responded to a massive campaign of rape and killings by the military sponsored by ethnic elites in the west of Pakistan in 1971. This intervention by India with the territorial integrity of Pakistan, although illegal under international law, was not condemned because of the circumstances.¹⁰⁹

International consensus on the issue seems to be that certain situations justify Humanitarian interventions, which are mass killing or gross human rights violation, but not the denial of secessionist claims.¹¹⁰

Apply the above to the Self-Determination cases of minorities in Nigeria, it can be stated that foreign help is very unlikely, due to the prohibition of interference and the seeming inviolability of the territorial integrity of established states. Therefore, a self-determination agitation will not justify intrusion to aid the seceding peoples. Nevertheless, if the peoples become the victims of mass killings or massive human rights abuses, it might justify intervention, although most times it is fueled by interests of the intervening state. Also, where the internal conflict is declared by the collective security system, that is the Security Council, to be a threat to international peace and security, then intervention would be authorized.

6.0 Findings

- (i) The various ethnic groups in Nigeria were independent of external control before their colonization by the British. It was the British as colonial master that forced these hitherto independent minority groups into a non-consensual union under the entity currently known as Nigeria.
- (ii) Biafra is pursuing the foremost claim for self-determination in Nigeria. Their goal is the attainment of external self-determination which entails secession from the Nigerian State.
- (iii) The people of the Niger Delta also pursue self-determination, but their demands and goals differ from those of the Biafra agitation. The Niger Delta people seek to achieve internal self-determination or fiscal autonomy, via the control of their resources.
- (iv) While the CFRN 1999 (as Amended) is supreme under Nigerian municipal law, its provisions on the indivisibility and indissolubility of Nigeria as provided in Section 2(1) is not sacrosanct. This is because secession is largely governed by rules of international law which allows for secession.
- (v) It has also been observed that the Nigerian state does not possess a negotiation posture. It is prone to responding to any attempt or agitation for self-determination with force and the deployment of military might in almost all circumstances.
- (vi) The Constitution and relevant statutes examined above contain provisions that expropriate resources and vest them exclusively in the federal government, to the exclusion of the minority peoples under whose land these resources lie.

7.0 Recommendations

In the light of the above discuss of both agitations, the following is recommended is hereby made:

- (i) Changes in the legal framework examined. The Constitution, Land Use Act, Petroleum Act, and Exclusive Economic Zone Act should be amended to provide for true federalism, and guarantee autonomy for the peoples of Nigeria. It is proposed that states, which normally compose of, and represent the minority peoples, should be given control over their resources and made to pay taxes and royalty to the federal government.
- (ii) The rights of minority peoples to secession should be recognized and entrenched in the Constitution. Peoples should have the right to determine their fate and the opportunity to voluntary

powers on the international scene; (ii) the state whose territorial integrity is interfered with; and (iii) the electorate where the interfering state is a practical democratic one, where the government answers to the electorate.

¹⁰⁹ T. Farer, 'The Ethics of Intervention in Self Determination Struggles', [2003] (Vol. 25) *Human Rights Quarterly*, 38. The author likened it to euthanasia, which although unlawful in itself, can be a very compassionate act depending on the circumstances, and stated that this caused either prosecutorial restraint, or jury's refusal to convict, in the case of the infraction.

¹¹⁰ *Ibid*, 383.

decide to be part of the Nigerian state. This will require expunging the provisions stating that Nigeria is indivisible and indissoluble.

- (iii) As a follow up to the above, where the conditions for secession under international law have been met by a people, and they insist on exiting the Union, they should be permitted to do so. This is essentially because anything contrary to the above would amount to a forced marriage, which is obnoxious, and will never inure in favour of national unity and nation building. Therefore, if Biafra has met these conditions for secession under international law and insists on exiting, it should be allowed to do so.
- (iv) The policy of the use of force or military might to suppress demands for self-determination should be jettisoned. Flowing from the earlier recommendation of a constitutional change, negotiation and dialogue, or even adjudication should be adopted.
- (v) Considering that most demands for self-determination are fuelled by a feeling of injustice by a people, the Nigerian state can assuage these feelings by a deliberate policy of enthroning justice and fairness in its dealings with the minority peoples. For instance, the asymmetrical system and treatment of solid minerals and petroleum needs to be reviewed, as it is unjust for private exploration of natural resources to be allowed in one region and criminalized/penalized in another within the same country.

8.0 CONCLUSION

In conclusion, it must be stated that the right to self-determination, by its very nature grants all peoples of the world the right to determine their destiny. This right should be recognized and respected by the Nigerian State in particular. The recognition of this right will enable the state deal amicably and more effectively with agitations for self-determination, and may lead to the resolution of the issues which provoked the demand for secession in the first place. Also, and in line with this right, where a people seek to leave the parent state by all means, said parent state should be amenable to the idea of secession, as restricting it at that point would require suppression and the use of force, which is most likely to lead to human right violations.