African Journal of Politics and Administrative Studies (AJ
15(1) (June, 2022):37-48
Available online at https://www.ajpasebsu.org.ng/

p-ISSN: 2787-0367; e-ISSN: 2787-0359

An Assessment of the Theory of Self-Determination in the Resolution of Ogoni People's Struggle in Nigeria under International Law.

[1]Ayaka Simon Silas
[1]Department of Political Science
Umaru Musa Yaradua University Katsina
Katsina State, Nigeria

***Corresponding Author's E-mail*: ayakasilas1961@gmail.com**

Abstract
This paper examined the Ogoni people of Nigeria's self-determination claim for secession and independence through the lens of international law on self-determination and secession, using ex-post-facto research method of data collection. The study assessed whether this oppressed minority group can rely on international law-based rights, in order to achieve its separatist claim. Through the use of content analysis, it was discovered that there is neither extant international law nor a resolution of the United Nations General Assembly that expressly permitted secession and independence of a people for self-determination. The paper recommended dialogue as a way-out to resolve self-determination issues facing the peoples in Nigeria.

KEY WORDS: Assessment, Self-Determination, Ogoni people's struggle, International Law.

Citation of article: Ayaka, S. S. (2022). An Assessment of the Theory of Self-Determination in the Resolution of Ogoni People's Struggle in Nigeria under International Law. *African Journal of Politics and Administrative Studies (AJPAS)*, 15(1):37-48

Date Submitted: 04/03/2022 **Date Accepted**: 16/04/2022 **Date Published:** June, 2022

Introduction

There has been constant and vehement agitation, by the Ogoni people of Nigeria for self-determination and to secede away from their mother country. The central government of Nigeria has vehemently opposed and has rejected this claim for independence. This paper examined this claim for separation and independence through the lens of international law on self-determination and secession by inquiring whether this minority group can rely on international law-based "rights" in order to achieve its separatist claim or whether the Nigerian government will also rely on indivisibility of the nation as enshrined in its constitution to scuttle the agitation as interrogated below.

The theory of self-determination in respect of agitation by Ogoni People

The theoretical basis of the national question and the principle of national self-determination provide a basis for further understanding of the ideological basis of the Niger Delta struggle. This is because the issue of self-determination in Nigeria has arisen, first out of ethnic deprivation, exclusion, exploitation, discrimination and disadvantage, particularly in relation to resource contribution and distribution, political representation and developmental attention (Wimmer, 2009). It dates back to era of the regions within which minority groups were marginalized by the ethnic majorities necessitating calls for self-determination by these minority groups and the setting up of various commissions to look into the minority question in Nigeria. As we shall see later in detail, Saideman (2000) identified models of self-determination , as an example; regional self-determination, a demand that inhabitants of well-established regions, territories, or states be allowed to settle for themselves all questions of sovereignty over that territory, even if they should choose to be politically autonomous; democratic self-determination, is the idea of self-government by popular consent, requiring that the inhabitants of a territory ought to be democratically self-governing or that the social and political institutions, which regulate public life, be established through broadly "democratic" procedures. Taking it, would mandate a democratic form of government in order for self-determination to be realized.

Self-determination (contentious political) struggles in the Niger Delta has taken two forms. The first is what Osaghae (2001:18) has called "Accommodation Seeking Nationalism", that is demands for autonomy, for separate or "own" states and local governments within the

Nigerian state as solution to the problems of minorities or powerlessness, the process and condition of deprivation and exclusion from the benefits and rewards of society that has characterized their existence within the Nigerian state. Accommodation Seeking Nationalism is largely peaceful and non-violent in approach involving the use of negotiation and bargaining and constitutional mechanisms. The second (and current form) is "Self-Determination Nationalism or Resource Control Nationalism" **(Cederman, 2010:75**). Resource control nationalism is characterized by violence due to the widely varying conception of resource control held by the various actors in Niger-Delta and the difficulty in reconciling such conceptions. Resources to the communities and peoples of the Niger Delta are not just "oil and gas" but include land, forests and water. Control for Niger-Delta communities mean "ownership and control" of all resources which signify the freedom to willingly dispose of these resources, to negotiate its alienation or extraction without reference to a violent and or an undemocratic state (Osaghae, 2001).

Self- Determination as a political Principle

As a political principle, the idea of self-determination evolved at first as a by-product of the doctrine of nationalism, to which early expression was given by the French and American revolutions. The UN Charter clarifies two meanings of the term self-determination. First, a state is said to have the right of self-determination in the sense of having the right to choose freely its political, economic, social, and cultural systems. Second, the right to self-determination is defined as the right of a people to constitute itself in a state or otherwise freely determine the form of its association with an existing state. Both meanings have their basis in the charter (Article 1, paragraph 2; and Article 55, paragraph 1). With respect to dependent territories, the charter asserts that administering authorities should undertake to ensure political advancement and the development of self-government (Article 73, paragraphs a and b; and Article 76, paragraph b).President Woodrow Wilson felt its observance was a natural extension of democratic theory essential for both preventing future wars and "making the world safe for democracy" as he stated;

" no peace can last, or ought to last, which does not recognize and accept the principle that governments drive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property" (Hannum 2011, p. 27).

As Mishkova, (2012) noted President Woodrow Wilson first employed the term 'self-determination' on February 11, 1918 to argue that, "peoples may now be dominated and governed only by their own consent. Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril". The relevance of the principle as cited in Mishkova, 2012, pp.28-30) . He went further to state that:

> "The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery" (Mishkova, 2012:31).

Thus, the Wilsonian principle was primarily intended for use in settling questions concerning the status of territories unsettled by conflict, or which are, or previously had been, under foreign domination. It was as such that the principle was utilized in the Paris Peace Conference of 1919, though its application was contested precisely in certain "unsettled" regions, e.g., AIsace-Lorraine, Upper Silesia, and, as we shall see, Palestine. After World War II, it was in circumstances occasioned by international conflict and colonial breakup that the paradigmatic applications of the principle of self-determination occurred (Sterio, 2013; Ako, 2018).

Thus, the Wilsonian concept is also one of regional self-determination. Indeed, there is reason to think that the regional concept prevails in international law, not the national concept, and that its most obvious relevance is to decisions about the political status of unsettled regions which are not yet self-governing or are in dispute, e.g., regions established under mandates and trusts (Sterio, 2013). So understood, the principle of self-determination is to be invoked whenever there is a question about what political, economic, social, and cultural institutions are to prevail in a territory. Such a question is genuine when there is a potentially politically coherent community whose members are legitimate residents of a territory which either:

(i) under the domination of a foreign community in a way that threatens the well-being and human rights of its members,

(ii) was formerly dominated by another community but is currently free from that domination and not yet self-governing, and,

(iii) is currently under some form of internationally sanctioned trusteeship.

As earlier highlighted, Saideman (2000) identified three models of self-determination. First, is regional self-determination, a demand that inhabitants of well-established regions, territories, or states be allowed to settle for themselves all questions of sovereignty over that territory, even if they should choose to be politically autonomous. Typically, regional self-determination is demanded when a territory is under foreign domination or, for one reason or another, unsettled or disputed, but it is also conceived as a continuing right of peoples within established state boundaries. The second is democratic self-determination, the idea of self-government by popular consent, requiring that the inhabitants of a territory ought to be democratically self-governing or that the social and political institutions, which regulate public life, be established through broadly "democratic" procedures. Minimally, this requires that the institutions be both founded and sustained by democratic means, hence, by majority preference, though it is a further step to insist that these institutions themselves operate on democratic principles, thus, that a self-determining unit be a "democracy." Taking it, would mandate a democratic form of government in order for self-determination to be realized. Thirdly, is national self-determination, the conception that a nation or people has a right to constitute itself as an independent sovereign state, a view popularized under the 19th Century German socialists' call for the *Selbstbestimmungsrecht* (sovereign right) of peoples (Ako,2018). At its crux is the concept of a "nation" or a "people," viz., a group whose members self-consciously share a cultural identity that is vital in determining the self-identity of each (Saideman, 2000)).

As Osaghae further buttressed, Self-determination (contentious political) struggles in the Niger Delta has taken two forms which Osaghae (2001, p.18) has earlier called "Accommodation Seeking Nationalism", that is demands for autonomy, for separate or "own" states and local governments within the Nigerian state as solution to the problems of minorities or powerlessness, the process and condition of deprivation and exclusion from the benefits and rewards of society" that has characterized their existence within the Nigerian state. Accommodation Seeking Nationalism is largely peaceful and non-violent in approach involving the use of negotiation and bargaining and constitutional mechanisms. And the second (and current form) is "Resource Control Nationalism"**.** Resource control nationalism is characterized by violence due to the widely varying conception of resource control held by the various actors in Niger-Delta and the

difficulty in reconciling such conceptions. Resources to the communities and peoples of the Niger Delta are not just "oil and gas" but include land, forests and water. Control for Niger-Delta communities mean "ownership and control" of all resources which signify the freedom to willingly dispose of these resources, to negotiate its alienation or extraction without reference to a violent and or an undemocratic state. The Ogoni struggle was the first ethnic assertion or claim to self-determination of the second and more recent form of nationalism within the Niger Delta region (Abdulsalam, 2016). The Ogoni struggle is a struggle for physical existence, environmental justice, resources control, political participation, self-rule and political autonomy. The Ijaws followed suit by the mid-1990s, by seeking political restructuring that guarantees the Ijaws, self-rule, resource control, self-development and regional autonomy within a true federal framework. In the Kaiama Declaration, the Ijaw youths expressly sought self-determination, self-government and resource control and justice within Nigeria that should be restructured through a sovereign national conference of ethic nationalities.

The second ideological basis of the youth struggle is Resource control. Briefly put, the concept of resource control that is dominant in the Niger-Delta has three main components: a) the power and right of a community to raise funds by way of tax on persons, matters, services and materials within its territory b) the executive right to the ownership and control of resources, both natural and created within its territory, c) The right to customs duties on goods destined for its territory and excise duties on goods manufactured in its territories (Osaghae,2001; Absulsalman,2018). Thus for communities of the Niger-Delta, resource control signifies a change in the demands of Niger-Delta community from " fairer sharing to total control of the natural resources found in a state by the state for use in its development at its own pace". For its proponents, resource control as conceived above is about self-determination and group survival and so not negotiable because resource control is essential for the survival of the South-South peoples and is a sine qua non to the continued existence of the people of the area in the Nigerian federation.

The most articulate presentation of Niger-Deltans conception of "resource control" today can be found in the "Kaiama Declaration" of the Ijaw people proclaimed on the 11th of December 1998. The Kaiama Declaration, coined, sharpened and popularized the term "resource control"' and set the tone for the present debate on the matter. Article 1 of the declaration, asserted that ownership

of "all land and natural resources within the Ijaw territory as belonging to the Ijaw communities" because they are "the basis of our survival". Article 2 insisted on the "peoples' and communities' right to ownership and control of our lives and resources" while article 4 advised all oil companies and staff operating in the Ijaw area to withdraw from Ijaw land" pending the resolution of the issues of resource ownership and control in the Ijaw area of the Niger Delta".

Outcome

Evidently, what emerged from the above theoretical literature is that both existing states and sub-state groups are capable of holding a right of self-determination. While we agree in theory that the principle of self-determination, in practice, the right of self-determination in its most general sense means the power of a group to determine its own international status-whether to become, remain, or cease to be an independent state. As commonly understood, the Principle of Self-Determination gives certain national groups the power to decide whether or not to secede from the states they belong to (League of Nations 1921). Although the force of this abstract arguments favouring such a right, is appreciated, when these arguments is considered in concrete context (such as that of the Niger Delta, or even Biafra), they often seem too simple and schematic to cope with the complex web of reciprocal rights, commitments, and responsibilities that history and human interaction have conspired to weave. In other words, in concrete situations the attractive simplicity of the theory seems to dissolve into a sea of contradiction and paradox. It is this sense of paradox that Fearon, etal (2000) found these philosophical arguments for the theory one-dimensional and inadequate; they fail to take account of the full range of complex issues arising in actual cases of proposed secession. If the right of national self-determination is understood as involving a right of unilateral secession, it cannot be attributed to national groups across the board. It arises only in specific historical circumstances, usually involving oppression or other forms of grave injustice.

Thus, for the sake of clarity, we will distinguish here between the right of national self-determination proper and what might be described as a "right of national autonomy, viewed against a contrasting perspective (the right of *national* self-determination). When appraised from a vantage point at the close of the twentieth century, the credentials of authority may seem somewhat tarnished. They bring to mind the claims of the French government in Algeria, of the

British in India and Kenya, of Portugal in Mozambique, of the Soviet Union in Lithuania, of the Chinese in Tibet. Appeals to authority, in this context, have served all too often as screens for national or racial oppression. More attuned to the contemporary spirit, perhaps, is an approach that takes freedom as its central theme. As framed by Allen Sterio (2013) in a study of secession, this "liberal" argument runs as follows weight it carries in his overall scheme. According to this view, the fundamental value of liberty presumptively supports a group right of secession, subject to limits flowing from the harm principle. Sterio (2013) develops this point in the following passage:

> Different sorts of communities do coexist peacefully within the liberal framework. But what if there remain some forms of social life that if we begin with a general presumption in favour of liberty, it seems to carry with it a presumption in favor of a right to secede. Even the most fervent advocates of liberty admit, however, that it must respect limits. The case for secession based on the presumption of liberty can be elaborated and deepened; at least if a liberal point of view is granted. A liberal values the freedom of individuals and groups and seeks to safeguard it by according priority to certain basic legal rights of the sort found, in the U.S. Constitution's Bill of Rights or in Rawls' Principle of Greatest Equal Liberty (cited in Hannum, 2011). The Harm Principle has been proposed to specify the proper limits of liberty. According to the Harm Principle, it is impermissible to interfere with an individual liberty so long as her choice does not harm others. But if it is impermissible to interfere with the liberty of an individual so long as her choice does not harm others, then it seems impermissible also to interfere with a group of individuals' efforts to secede, if these efforts do not harm others (Sterio,2013, p.300).

While Sterio (2013) seems to favour the argument, he does not clearly indicate what ultimate cannot flourish there, or what if the members of some communities simply do not wish to remain within the liberal state? Should they not be allowed to free themselves of the political authority of the liberal state if they wish to do so (at least so long as their doing so harms no one else in the relevant sense)? Seen in this way, the right to secede is the logical extension of a principle of toleration thought to be central to the liberal point of view (Sterio, 2013, pp.299-300).

When we compare the contrasting approaches of these two authors, we might be led to believe that the basic issue separating them is the relative weight to be assigned to authority and liberty, with James(2018) favouring the former and Sterio (2013)

favouring the latter. However, this contrast does not survive closer examination. For instance, in the context of national self-determination, what appears at first to be a simple claim of liberty turns out to harbour a claim of authority in disguise? The reason is simple: to assert the presumptive liberty of a group to secede from a state is to assert the group's authority to determine the basic political status of its members and to govern them, even against the wishes of some of them. The claim of a secessionist group against the state is in fact a competing claim to ultimate governmental authority.

Self-Determination under international law

Under international law, minority groups that qualify as "peoples" have the right to self-determination: the ability to freely determine their political fate and form a representative government (Scharf:2003). As can be seen, the principle of self-determination can be traced back to the end of World War I, when the losing powers, Germany, Austria-Hungary, and the Ottoman Empire, were stripped of their colonies and when several new states were created out of the territory of these former empires(Melina:2013). Using this newly-articulated principle, in 1920, the Swedish-speaking people of the Aaland Islands, an archipelago of about 300 small islands that had been incorporated into the recently-created state of Finland, insisted on holding a plebiscite in order to express their will as to whether they wished to separate from Finland in order to unite with Sweden. The Aalanders' claim was ultimately resolved by a committee of jurists within the League of Nations, which determined that the Aalanders did not have a right to separate from Finland because "the separation of a minority from the State of which it forms a part . . . can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees."(UNGA1974)

The theory of self-determination, as justifying the secession of a people from its existing mother state as a matter of last resort only, in situations where the people is oppressed or where the mother state's government does not legitimately represent the people's interests, has remained constant throughout the 20th century development of international law. Two United Nations' declarations, in addition to the United Nations Charter itself, have addressed the issue of self-determination—the 1960 Declaration on the Granting of Independence to Colonial Countries and the 1970 Friendly Relations Declaration (UNGA1974). Both declarations, however, envisioned

self-determination leading to secession as a matter of last resort only within the decolonization paradigm: here, both conditions for a right to self-determination were met insofar as colonized peoples were oppressed and their colonial governments did not adequately represent their interests. Both declarations also confirmed the importance of the principle of territorial integrity of existing states (UNGA1974), and thus embraced the idea that self-determination could lead to the territorial disruption of existing states only in extreme instances of oppression or colonization.

It may be argued that international law subsequently developed to embrace the principle of self-determination in a binary form, as entailing rights to internal or external self-determination depending on the circumstances. Peoples who do not fall into the category of colonized or oppressed groups may exercise their right to self-determination through internal means, such as free association and autonomy. Peoples who are oppressed or colonized, however, have the right to external self-determination, which they may exercise through secession from their mother state (Cassesse:1995). This view of self-determination was confirmed in 1998, in the Canadian Supreme Court opinion regarding the proposed secession of Quebec from Canada, where the Court held that all peoples are entitled to various modes of internal self-determination, but that only some peoples, such as those subjected to conquest, colonization, and perhaps oppression, may acquire the right to external self-determination through remedial secession (UNGA, 1974). Today, it may be concluded that international law bestows on all peoples the right to self-determination, but that the right to external self-determination, exercised through remedial secession, only applies in extreme circumstances, to colonized and severely persecuted peoples.

Secession

While international law embraces the principle of self-determination, it does not contain a right of secession (UNGA, 1974). It may be argued that international law merely tolerates secession in instances of external self-determination, where a people is colonized or oppressed (like in the case of Kosovo). In addition, secession is prohibited under international law if the secessionist entity is attempting to separate by violating another fundamental norm of international law, such as the prohibition on the use of force (Antonello, 2014). In other instances of attempted secession, where the relevant people is not oppressed, as in Quebec or Scotland, international

law is neutral on secession—it does not support a right to secession nor does it prohibit secession. Instead, the secessionist dispute is left to the realm of domestic law and to political negotiations between the mother state and the secessionist entity (Milanovic, 2017).

Conclusion

If the government of Nigeria continues to respect Ogoni autonomy rights, in a manner sufficient toward these peoples' meaningful fulfillment of their internal self-determination, then the people are not entitled to claim international-law based "rights" to external self-determination through secession. Furthermore, self-determination is a political principle, and even if it is given a legal garb by being incorporated into legal instruments, it would be difficult to enforce it as a legal right; and it is doubtful whether a judicial body would agree to adjudicate an issue purely on the basis of this right. Without an international law "right" to secession (Wimmer etal,2009), this independence claims will likely remain governed by domestic law and hopefully resolved through political negotiations, as it has been discovered that there is no international law nor any resolution of the United Nations General Assembly that expressly permit external self-determination.

REFERENCES

Abdulsalam, O. A. S. (2016**).** *Political mobilization using indigenous peoples' platforms: The challenges and paradox of Ogoni mobilization for Self-Determination in Nigeria (Master's thesis, UiT Norges arktiske universitet*

Ako, L. C. (2018). *The right to Self-Determination and Secession: Analysing the Catalonian case. Independent Student Journal, 1, 10-18.Europe, 39, 1-38*

Antonello T (in Walter C, Ungern-Sternberg A, & Kavus A (2014)(eds)., *(international law, Independent Student Journal*, *1*, 10-18.*Europe*, *39*, 1-38

Cassesse A(1995*), Self-Determination of peoples - A Legal reappraisal 18–22 (describing the distinction between internal versus external self-determination).*

Cederman, L. E & Wimmer A B. (2010). *Why do ethnic groups rebel? New data and analysis. World Politics, 62(1), 87-119.*

Fearon, J. D., & Laitin, D. D. (2000). *Violence and the social construction of ethnic identity. International organization, 54(4), 845-877*

Hannum, H. (2011*). Autonomy, sovereignty, and self-determination: The accommodation of conflicting rights. Philadelphia: University of Pennsylvania Press*

James, S. (2018) (*in Walter N., supra note 11 (in the Kosovo Advisory Opinion case that international law supported a possible exercise of remedial secession as a last resort in instances of gross human rights violations and denial of participation in government).*

League of Nations(1921) *The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs, League of Nations Doc. B7/21/68/106 (1921).*

Scharf M. P (2003*), Earned sovereignty: Judicial underpinnings, 31 DENV. J. INT'L L. & POL'Y 373, 373–79.*

Sterio F (2013), *The Right to self-determination under International Law 10, 27 Philadelphia: University of Pennsylvania Press.*

Saideman, S. M. (inMargret M(ed.)(2000). *National self-determination and secession. New York: Oxford University Press, 1998. 285p. $65.00. American Political Science Review, 94(2), 515-515*

.Mishkova, D. (2012). *Politics of regionalist science: Southeastern Europe as a supranational space in late Nineteenth–Mid-Twentieth Century Academic Projects.*

Sterio, M. (2018). *Self-determination and secession under international law: The cases of Kurdistan and Catalonia. American Society of International Law, 22(1).*

Milanovic M *(2017) A Footnote on secession, EJIL: Talk! (Oct. 26), https://www.ejiltalk.org/a-footnote-on-secession/.*

Osaghae, E. *(2001). Federalism and political accommodation: The Nigerian experience in comparative perspective. NISER Distinguished Lecture Series, 1.*

UNGA (1960) Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (Dec. 14, 1960); Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (Oct. 24, 1970).

Wimmer, A., Cederman, L. E., & Min, B. *(2009). Ethnic politics and armed conflict: A configurational analysis of a new global data set. American Sociological Review, 74(2), 316-337.*