

EVALUATING THE LEGAL BASIS FOR ETHNIC NATIONALITIES DEMAND FOR SELF DETERMINATION WITHIN SOME AFRICAN NATION STATES*

Abstract

Several ethnic nationalities were lumped together in Africa by colonialists and were granted independence as a country within these African Nation States. Soon after independence violence erupted in many African Nation States. Most of the root causes of the violence and eventual wars have not been resolved till date. The trend has changed. There is now open demand and confrontation for self determination by some ethnic nationalities within African Nation States. Nigeria is not left out. The work aims at evaluating, if any, the legal basis for ethnic self determination in African especially within the ambit of existing laws. Does the continued agitation and demand for self determination by an ethnic nationality within any African Nation State pose any danger for other Nations and the international community? Will the sitting government within these African Nation States where agitations are on-going keep on resisting the pressures for negotiations towards peaceful separation? Doctrinal approach is adopted in the course of this work. The findings reveal that there are indeed ample legal basis upon which demands for self determination is anchored. Solutions are proffered and if applied will bring a lasting peace in the African continent.

Keywords: Ethnic Nationalities, Self Determination, Legal Basis, African Nation States

1. Introduction

The self determination discussed in this paper is not radically different from the self determination and or independence pursued by Africans in the face of European colonization. They are in fact similar in nature, if not practically the same in principle and pursuit. The major differences between self determination pursued by ethnic nationalities now and that pursued by African Nation States before independence are basically twofold:

- a) The agitation for self determination and independence was pursued against the European colonialist by several ethnic nationalities lumped together as a country for ease of administration and maximum economic benefits of the colonizers. All colonized African States were agitating for independence almost at the same time.
- b) The self determination pursued today is by some ethnic nationalities within some African Nation States like Nigeria. The pursuit is against co-Africans with whom independence and self determination was achieved together but the agitators now found themselves in another form of colonization or neo-colonialism by one or more of the ethnic groups within the Nation State with whom independence was achieved.

2. Self Determination

Self determination appears to be used interchangeably with independence. Independence however most often connotes political independence. Self determination is all encompassing. It is an ethnic nationality's desire to be independent; politically, economically, culturally and determine her own affairs. It is the quest to be totally free from oppression, suppression and continued colonization by another ethnic group or group of ethnic groups. Before African Nation States achieved independence the agitation was to determine their own affairs and deal with issues affecting Africans by Africans. The agitation today is for an ethnic nationality to determine her own affairs other than her affairs being determined by another or other ethnic group or groups. This is self determination from a Nation State by an ethnic nationality within the same Nation State. The right to self-determination, a fundamental principle of human rights law is an individual and collective right to freely determine political status and freely pursue economic, social and cultural development.¹ For a people to possess the right to self determination two factors must be prominent; there must be a history of independence or self rule in an

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¹Karen Parker; Understanding Self Determination; The Basics: A Paper Presented at the 1st International Conference on the Right to Self Determination UN Geneva 2000.

identifiable territory, a distinct culture, and a will and capability to regain self government.² Some ethnic nationalities in Africa duly come within the ambit of these criteria like the Igbo race that inhabits the Eastern part of Nigeria. The people have a distinct unique culture and language, identifiable territory of about 41000 square kilometers, formerly independent (until the advent of European colonizers), have a history of avowed desire for self determination and to determine their own affairs and government. The Igbo people are still making impact and demanding self determination through Biafra and or Indigenous People of Biafra (IPOB).³

The right to self determination is not a right inherent in government.⁴ It is a right held by the people. The sitting government for obvious reasons will not want any part of its territory to be carved out as another independent state. It has been said that self determination can be exercised through confederation, unitarism, self government, association or other forms of political relation acceptable to the people.⁵ This pontification is correct but may not properly fit into the discussion in this work as correct because of the nature of self determination that is discussed herein and such pursued by African ethnic nationalities today. It is obvious that an ethnic nationality seeking self determination will not be asking for confederation⁶ from the sitting government. To do so may be considered as treason in Africa. The UN has affirmed that the establishment of a sovereign and independent State, the free association and integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self determination by that people.⁷

Self determination can also be achieved through other ways like secession. Where the ethnic nationality secedes it will become an independent State. Experience has shown that it has not always been an easy task to secede. The first attempt to break away from Nigeria was in 1966 when Isaac Adaka Boro declared the Republic of Niger Delta. The declaration was suppressed within 6 days. Biafras attempt to secede was terribly resisted.⁸ Millions were killed during the civil war. Eritrean - Ethiopia war lasted for several years. The case of Eritrea was not really a matter of secession. Britain started administration of Eritrea as a UN trust territory in 1949. In 1952 UN General Assembly voted to make Eritrea a Federal component of Ethiopia.⁹ We do not think that the consent of Eritreans were sought either in a referendum or otherwise. The guerrilla war started in 1967 but full scale war ensued in May 1988 and ended in June 2000.¹⁰ Eritrea was eventually created on 27th April, 1993.¹¹ The several violence and wars that have been fought in Africa were not unconnected with self determination and or control of wealth source. If as it were that most of the violence and wars have some nexus with self determination, are there really laws upon which demands for self determination can be anchored?

3. The Right to Self Determination under Nigeria Law

The 1999 Constitution of Federal Republic of Nigeria as Amended is very emphatic in these following expressions: ‘We the people of the Federal Republic of Nigeria: Having firmly and solemnly resolved:

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

² Gross Espiell; The Right to Self Determination: Un Doc. C/CN4/Sub-2/405 REV/NN (1980). See also Ikenga K.E. Oraegbunam (with Emmanuel Okonkwo), ‘Jurisprudence of the Right to Cultural Identity in Nigeria’, *International Journal of Research (IJR)* Vol-1, Issue-10 November 2014, pp.1812-1821 (India). Available at <http://internationaljournalofresearch.org/index.php/ijr/article/view/1044/989>.

³ The Nigeria Biafra Civil War started in 1967 and lasted for 30 months. The root causes of the war have not been resolved more than 50 years after the war.

⁴ ICJ in Western Sahara Case. Dec. 1974.

⁵ U.O Umozurike; Introduction to International Law. Spectrum Books Ltd, 1999 P.55

⁶ Though restructuring has gained somewhat acceptance in Nigeria but that is not what the IPOB and other major groups in Nigeria are now asking for.

⁷ United Nations Res.2652 (xxv) 24 October 1970

⁸ Nigeria Biafra war lasted for 30 months from 1967 to 1970.

⁹ www.bbc.com Accessed on 28/1/2021

¹⁰ Ibid. it is only necessary to consider these few conflicts herein. The Sudan war is still very fresh. The horrors of Somali war have not vanished. These wars could have been avoided.

¹¹ Historyworld.net. accessed 28/1/2021

And TO PROVIDE for a Constitution for the purpose of promoting the good governance and welfare of all persons in our country on the principles of Freedom, Equity and Justice, and for the purpose of consolidating the Unity of our people:

DO HEREBY MAKE, ENACT AND GIVE TO OURSELVES the following Constitution:¹²

From the foregoing it is clear that Nigeria do not want division or anything that may have the appearance of division. However, so much that we are not here to verify the autochthony of that Constitution it has to be called into question as to whether the persons that came together to formulate the Constitution have the mandate of the people to do so. The 1999 Constitution of the Federal Republic of Nigeria is a product of the military junta. The military junta selected a handful of persons and ditched out instructions on what it expected of them in the draft Constitution. It is immaterial that the military junta succeeded in usurping power from the sitting government and changed the order of events albeit politically. The Constitution having not been made by the people cannot really be described as an act or product of the people. It is a Constitution Decree of the Military junta.¹³

If the Constitution is really the Will of the people it cannot be suspended. Where the usurper appears to succeed in changing the order of events albeit politically, it does not matter how long it may last, the will of the people will be re-established. In *Re Manitoba Language Rights case*¹⁴, the Canadian Supreme Court stated that the Constitution of a country is a statement of the will of the people to be governed in accordance with certain principles held as fundamental and certain prescription restrictive of the power of the legislature and government. The Military Government then knew that their seizure of powers of the Federal Government of Nigeria was illegal and quickly inserted a clause in the Constitution to protect them. It is provided in the said Constitution that the judicial powers vested in accordance with the foregoing provisions of this section shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.¹⁵ The will of Nigerians did not disappear at all and cannot disappear by mere clause inserted in the Constitution supposedly to ensure that usurpers' activities are not challenged. What happened was that the expression and enforcement of the will of the people is impaired through a superior force.¹⁶ The fact that it is inserted in the Constitution by the military usurpers to protect them has not really changed anything. It is not expected that something will be placed on nothing and it will stand.¹⁷ The way and manner the usurpers of the Constitution of Nigeria are treated and revered certainly will make a civilized person to have a rethink of the entity called Nigeria. There is certainly no justification for overthrowing a government.

That right to seek self determination under the Nigeria does not appear to exist at all, having the preamble in view. It is further provided that Nigeria is one indivisible and indissoluble Sovereign State to be known by the name the Federal Republic of Nigeria.¹⁸ These provisions notwithstanding, has the government of Nigeria honoured the very provisions of the Constitution which is expected to guide governmental actions and also proclaimed to be the act of the people? We think not. Nigeria has not enjoyed any form of harmony in the face of the herdsmen and *boko haram*. More than ever before the North and South dichotomy in Nigeria is well pronounced and the gaps seem to be increasing every day. Despite several attacks on the people by herdsmen and *boko haram* some of whom have been described as bandits, no person has been arrested and or convicted for any form of violence or attack on any community? Wherein lies the harmony and promotion of good governance and welfare of all

¹²The Preamble to 1999 Constitution of Federal Republic of Nigeria.

¹³ The Constitution is cited as The Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1999

¹⁴ [1985] 1 R.C.S 721, 745.

¹⁵ Section 6 (6) (d) 1999 Constitution of Federal Republic Nigeria.

¹⁶ Mads Andenas Edt. The Creation and Amendment of Constitutional Norms. Comparative Law Series 285. The case of Estonia that was invaded and occupied for 51 but later adopted its 1938 Constitution after the exit of the usurper is very incisive of how the will of the people operate.

¹⁷ *McFoy v UAC* (1962) AC 150

¹⁸ Section 2 (1) 1999 Constitution of Federal Republic of Nigeria.

persons in a country as Nigeria and as prominently pronounced in the Preamble of the country's Constitution?

The people have a duty to obey a government that honours the very essence of its existence. The very government that does not regard and promote fundamental rights, we do not think there may be any moral obligation to respect such a government by the citizens. The social contract theory of Thomas Hobbes has not changed. The failure of the government to keep its part of the social contract ought to be the very beginning of the end of that government. The activities of the government of Nigeria have provided enough room for any ethnic nationality within it to seek for self determination.¹⁹

Similarly, the Nigeria Amalgamation Order-in-Council of 1914 which brought Northern Protectorate with the Colony of Lagos and Protectorate of Southern Nigeria has ceased to exist. January 2015 would have witnessed a turn of events in Nigeria following the cessation of the application of the Amalgamation Ordinance of 1914 by effluxion of time. Nigerians ought to agree either to renew the Order or enter into a new Treaty for continuation. Today the 1914 Amalgamation Ordinance has not been renewed. The Regions of what made up Nigeria has not entered into any new Treaty for continuation. That having not been done, it is our view that there is nothing binding any more on any of the Regions that made up Nigeria. The 1999 Constitution Decree supposedly stands upon the expired Amalgamation Ordinance of 1914. That Ordinance does not exist any longer. Nigeria is barely hanging-on on a nut that has long expired. It then means that there is no law in Nigeria that can prevent any ethnic nationality to seek self determination for her nationalities from this entity called Nigeria. It may be argued in some quarters that by Doctrine of Necessity the 1999 Constitution of Federal Republic Nigeria ought to hold-forth as the main binding force of law. We think otherwise. Doctrine of Necessity is invoked within the confines of the Law. Upon which law will the doctrine be anchored to hold-forth in the face of this unpardonable vacuum? The very foundation of Nigerias existence has ceased to exist. There is no other law apart from the Amalgamation Ordinance of 1914 which had ceased to exist. Nigeria must return back to pre-1914 structure or redefine its structure forthwith.²⁰ Beside this seemingly vacuum created by the cessation of the Amalgamation Ordinance of 1914 Nigeria is a signatory to some International Treaties or Instruments which expressly sanctions self determination by people. By Article 20 of the African charter on Human and Peoples' Right the right of the people to self determination is unquestionable and inalienable.²¹ That colonized or oppressed people shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.²² The people under review shall have right to assistance of States parties to the African charter.²³ This Law or instrument was duly ratified by Nigeria. So there exist a law upon which any ethnic nationality can anchor to seek self-determination. It may however be argued in Nigeria that since the foundation Ordinance of Nigeria has ceased to exist this instrument is not expected to be activated in Nigeria. While we may tend to admit this it is argued that so long as Nigeria is still hanging-on in the Committee of Nations the instrument of the Charter should be activated in Nigeria or at least in any of its component regions. The right to self determination is a right flowing to all. The international community has a duty to respect it in all circumstances in their relations with each other. However what we witness when self determination pursuit is activated is politics of avoidance.²⁴ Peoples or nationalities that seek self determination are abandoned to their fate.²⁵

¹⁹ In the recent past the demand for restructuring has been gaining momentum. Restructuring we think will not put an end to oppression and expression of supremacy of one race over another in Nigeria.

²⁰ Konye Obayi Ori, what next after edict that created Nigeria expires in 2014

<http://www.theafricareport.com/4963/> accessed Jan 22, 2021

²¹ Article 20 (1)

²² Article 20 (2)

²³ Article 20 (3)

²⁴ Karen Parker op cit p. 1

²⁵ The case of Biafra was a good example. It took more than 2 years for international Community to stop the genocide in Biafra

4. The Right to Self Determination under International Law

The coming into effect of the UN Charter of 1945 brought far reaching effects on the continent of colonized Africa. Several countries in Africa regained their independence within 15 years thereafter. It is not expected that the Charter and its content thereof in relation to self determination will have a limited and closed interpretation. It is provided in the United Nations Charter as follows: ‘With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of peoples the United Nations shall provide: (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination as to race, sex, language or religion,’²⁶ and to take appropriate measures to strengthen universal peace.²⁷

The UN Charter above stated is with respect to all peoples. It is not selective and thus applicable to ethnic nationalities in Africa who may well meet the criteria for nationhood earlier stated. The purposes stated in article 55 (C) is a necessity laid on UN to ensure its realization when the need arises. The need has arisen and is ripe in several regions in Africa. The case of Nigeria cannot be overemphasized. This is the time to act and save the world from further trauma in the face of dwindling world economy. In addition the rights of indigenous people have also been recognized by UN. This recognition is as to peoples’ rights to self determination and government. This right to self determination ought in a way to be compared with the Brexit. The UK was part of EU but today has exited the EU. Why will Africa and its governments not allow some nations within its Nation States to exit and exist on their own as an independent Nation? Part of the reasons for the demand for self determination has been stated earlier in this work. However, it is clear that some agitations for self determination arose out of disagreement in the way the wealth of the nation is managed.²⁸ Others seem to be from genuine desire to seek self determination. The colonialist’s lack of knowledge of the Nations they lumped together cannot be over emphasized. Some other Nations States can simply not co-exist within the existing structure on ground and derogation of Human Rights is also a critical factor.

5. Posture of the Sitting Government

The governments in different African Nation States have viewed every move and demand for self determination as a threat to its sovereignty. Yet the personnel of the several governments have not in the real sense believed in the entity; as in Nigeria *ab-initio*. At the time of the Kano riot of 1953, the North became secessionist in sentiments and openly expressed that the amalgamation or the union of the north and south in 1914, was a regrettable mistake in the political history of Nigeria.²⁹ Similarly Alhaji Tafawa Balewa publicized in 1947 that since the amalgamation of Northern and Southern Protectorates in 1914, Nigeria had existed only in paper ... It is still far from being united. Nigerian unity is only a British intention for the country.³⁰ It was also said that God did not create Nigeria, the British did. In the same vein, Awolowo affirmed as follows, ‘Nigeria is not a nation: It is a mere geographical expression. There are no Nigerians in the same sense there are English, Welsh or French; the word Nigeria is only a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not’.³¹ These Nigerians did not believe in the country or entity called Nigeria. These assertions have no form of patriotism in them. Each of the assertions does not have the Nigerian project in view. All their respective interests seem as it were in relation to the regions whereof it can easily be said they owe allegiance. Yet the government of Nigeria has been taking decisive steps against every nature of threat in the form demand for self determination. From the Niger Delta Republic to Biafra to Niger Delta Avengers as well as the Odua Peoples Congress, the story is the same. The only difference has been with the *Boko Haram*. *Boko Haram* is not an ethnic nationality and do not demand for self determination. Their demand it appears relates to implementation of Islamic law in Nigeria among other things. This posture taken in Nigeria is almost on all fours with other governments in

²⁶ Article 55 (c) UN Charter

²⁷ Article 1 (1) UN Charter

²⁸ The major of cause of crisis in DR Congo was the management of the country’s rich mineral resources.

²⁹ B.C. Nwankwo, *Authority in Government: Nigeria and World Politics in Focus*. Abbot Books Limited, 2011, 256.

³⁰ The Hansard of Legislative Council of March 20 to April 2, 1947. This was also cited by Jacob Olufemi Fatile et al in

‘Ethnicity and National Integration in Nigeria: The Post-Colonial Experience,’ *Nigeria Studies* 328

³¹ Obafemi Awolowo; *Path to Nigerian Freedom*. (Lond.) 1947 p. 47- 48.

Africa. The posture has made several governments in Africa to be ruthless against any ethnic group that demands self determination and actually take steps towards it.³² It may be argued that the continued demand for self determination in Africa poses danger and threats to other African Nations and International Community, in that demands may be heightened and increased in other regions in Africa. This may not really be so. Demand for self determination is not pursued as a matter of course. There are criteria that must be met and not all ethnic nationalities in Africa will meet it. Even where the criteria for self determination are met there may not be genuine desire in pursuit of self determination.

It ought to be noted that times have changed and it is still changing and very fast too. The continued posture of the sitting government to keep on resisting the pressures for negotiations towards peaceful separation and or co-existence has spelt doom in many African Nation States. Having the background of many Africans and how these African countries were established by the colonialists, it becomes imperative for these ethnic nationalities to negotiate their continued relationship, if Africa will indeed know peace.

In the gamut of the struggle, the judiciary though commendable has not lived up to expectations. The abuse of human rights in the countries of Africa where struggles and agitations for self determination have been experienced stare us in the faces. Most of the abuses are carried out by Government agencies. The ineptness of the judiciary has brought to bear on the continued struggle. The judiciary though have made some important inroads in Africa have dampened and continued to dampen the struggle for self determination.³³ What is the essence of domestication of a treaty in Nigeria when such treaty cannot be held to be applicable to Nigeria? The case of *Abacha V Fawehimi*³⁴ is very incisive. The Supreme Court of Nigeria opined that the African Charter though domesticated has international flavour and its provisions do not override those of the Nigerian Constitution. Our view is that the application of the Treaty that has been domesticated in Nigeria cannot reduce the authority and territorial landscape and or sovereignty of Nigeria, if applied. Lord Atkin has long opined that judges should not shrink from upholding the rights of the individual in the face of the executive.³⁵ The view expressed by Lord Atkin in *Eshugbayi*'s case is a liberal one and ought to be upheld in the face of the demands for self determination. The demands for self determination arose out of diverse reasons beginning from human rights abuses and suppression of divergent views, etc.

6. Conclusion

There are ample Nigerian laws as well as International Treaties ratified by Nigeria upon which genuine seekers of self determination can anchor to achieve their goals. The continued resistance by some African Nation States' government is not really in the best interest of the States. Ample resources; human and material are usually wasted in a bid to resist every demand for self determination. Self determination if allowed by some ethnic nationalities in Africa will bring unprecedented development and growth. The rancor will cease to exist as countries will now be viewed as equal in the Committee of Nations. It lies in the dissemination of information and proper orientation of the society for the demand for self determination to be met without much trouble and obstacles. The sensitization of the society on these existing laws whether local or international will broaden the peoples awareness and they will know that there are genuine reasons for the demand. Achievement of self determination by any ethnic nationality whether in Nigeria or elsewhere in Africa will very much depend on education and vigorous orientation of the people on the need for self determination, both of the seekers of self determination as well as the persons or group of persons to whom it is actually sought.

³²32 The Nigeria experience is unique. The war though ended over 50 years ago is still being fought in Nigeria through its several policies. The history of Ogoni 9 cannot be easily forgotten in Nigeria. These are all related to the struggle for self determination in Nigeria. The Experience in DR Congo relates to management and control of wealth source.

³³33 The North and South dichotomy is not unconnected with certain positions taken by the judiciary in Nigeria. The courts position that IPOB is a terrorist organization left much to be desired.

³⁴34 (2000) 6 NWLR pt 660 p. 228

³⁵35 *Eshugbayi Eleko v Govt of Nigeria* (1931) Ac 662 @ 672